

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

DATE: FRIDAY, SEPTEMBER 23, 2011
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:06 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Ron Agor
Dr. Sam Gon

Jerry Edlao
John Morgan

STAFF

Dan Quinn/PARKDS
Dr. Bob Nishimoto/AQUATICS
Kevin Moore/LAND
Dickie Lee/ENG

Scott Fretz/DOFAW
Sam Lemmo/OCCL
Ed Underwood/DOBOR

OTHERS

Colin Lau, Deputy Attorney General
John Omerod, C-2
Christian Omerod, C-2
Jordan Calato, C-2
Lea Hong, C-2
Brenda Garrigan, C-2
Han Kamakani Phua, C-2
Kyle Soares, C-2
Janice Marsters, F-1
Eric Leong, M-1

Abel Simeona Lui, E-1, C-2
Mary Ann Omerod, C-2
Ken Van Bergen, C-2
Maka'ala Shelly Nakoa Mahi, C-2
Ah Lui, C-2
Liko Martin, C-2
Kittrena Morgan, C-2
Paul Halston, C-2
Chipper Wichman, K-2
Wayne Sakamoto, K-1

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

Item A-1 August 12, 2011 Minutes

Member Gon recused from item A-1.

Approved as submitted (Morgan, Edlao)

Item A-2 August 26, 2011 Minutes

Item A-3 September 9, 2011 Minutes

Items A-2 and A-3 were not ready for this Board meeting.

Item E-1 Consent to Extension of Lease Term, General Lease No. S-4968, Smith's Motor Boat Service, Inc., Lot 21, Wailua Rice and Kula Lots, Wailua Marina State Park, Wailua, Lihu'e (Puna), Kaua'i

Dan Quinn on behalf of Division of State Parks indicated that this is an operation further mauka from the Marina operation and he pointed out the various landmarks on a map. This lease was under our Land Division for a number of years and within several years was transferred to Division of State Parks. The request is to extend the lease for an additional 20 years under § 171-36 (b) which allows for that kind of extension for self financed improvements. The tenant needs to do some improvements to the ponds by doing some repairs to the edges and other repairs and to make that economically feasible they would like to extend the lease. The lessee is here if the Board had any questions.

Member Agor commented that the Smiths have been really good stewards of this area and this would give them the tools to do an even better job. Mr. Quinn agreed.

Walter Smith (representing the lessee) testified that they tried to keep the place looking good and to help the adjoining areas, too and they want to keep it up. He described the challenges of maintaining the lagoons.

Member Gon asked whether he was okay with all of the conditions and Mr. Smith acknowledged he was.

Abel Simeona Lui testified in opposition to everything questioning who owns the land and per Chair Aila it belongs to the State. Mr. Lui said he will bring their land title before the Court because he is going to oppose this.

Unanimously approved as submitted (Agor, Morgan)

Item C-2 Contested Case Request Regarding an Agreement to Subgrant between the County of Hawai'i and the Board for the pass through of Federal Funds for the purchase of Approximately 550.871 acres, tax map keys (3) 9-5-16:025, (3) 9-5-16:006, and (3) 9-5-17:005, for

**conservation purposes as per U.S. Fish and Wildlife Service (USFWS)
Section 6 Recovery Lands Acquisition (RLA) Grant No. E-17-RL-1.**

A number of written testimonies was received and distributed to the Board members.

Scott Fretz representing Division of Forestry and Wildlife (DOFAW) conveyed that this is a submittal to recommend that the Board respectfully deny the contested case hearing request from the petitioner, Mr. Abel Lui. Mr. Fretz reminded the Board members that this was a request filed following the May 27, 2011 BLNR meeting in which the Division requested that the Board approve that we enter into a sub-grant agreement with the County of Hawaii so we can provide funds for acquisition of Kawa Bay. The purpose is to protect the endangered species and based on our review with the Attorney General's office staff is recommending that the petition be denied that the Board is not required to grant the contested case hearing. He will answer any questions the Board may have.

John and Mary Ann Omerod had submitted their written testimonies earlier and testified from it relating some family background. Ms. Omerod asked that the comments regarding the Apiki family be stricken from the May 27, 2011 BLNR minutes and requested that DLNR preserve the resources. She read written testimony from Harriet Ailau (Napoleon) Mamone asking not to grant a contested case hearing and that there is no proof of Abel Lui's claims and related other issues. All her family wants is to go clean the grave site, but they have had bad experiences with Abel Lui and his family. He is not there for the interest of the land.

Christian Omerod who is John and Mary Ann's son testified reading from his written testimony and pointed out what was said in the May 27, 2011 BLNR meeting regarding the PASH Trust that their family wants the land the way it was and opposed Abel Lui as a steward of that land that he is not restoring it.

Ken Van Bergen representing the County of Hawaii apologized for missing the May 27, 2011 BLNR meeting and explained that there are four parcels, three of them are before you today. The goal is to get a thousand acres and to work with the lineal descendents for that and the Olson Trust. The County is committed in using these funds for the comprehensive management plan (CMP) and asked for assistance. Mr. Van Bergen is in favor of this submittal.

Member Edlao asked who accepts the final CMP. Mr. Van Bergen said the County and they were here to get the acquisition.

Jordan Calato said the Board has his written testimony.

Maka'ala Shelly Nakoa Mahi testified that she represents the Native Tenant Protection Council which protects Native tenants along trails and related the issue of heirs. OHA [~~wants to evict~~] issued a cessation of eviction of Abel Lui and read Kai Markell's letter. She related other issues with the police, Admission's Act, filing her terrorism report with

the Coast Guard, the reason why the County wants to make these parks, and fraud titles by Title Guaranty.

Lea Hong, Program Director for the Trust for Public Lands testified that Kevin Van Bergen asked her to be available to answer any questions related to either the State Legacy Land Grant or the U.S. Fish and Wildlife RLA grant in which they assisted the County of Hawaii in applying for and noted the deadline for Federal funds.

Chair Aila asked during the process of negotiating who is responsible for doing the title search. Mr. Van Bergen said there has been extensive work done on the title issues that Mr. Olson could go deeper into it. On parcel 7 which adjoined these parcels as part of the same grant and same area, the County did acquire title insurance from First American Title and they have a warranty deed on that property which has been investigated thoroughly and the County ensures to process that. For the acquisition they are using two title companies – VG and First American for the title policies on these three parcels.

Ah Lui testified that she supports her brother and their family who are Moa clan. Mr. Van Bergen says that he cleared title through these insurance companies, but her family has been awarded by the Federal court this very land that he claims is clear where she presented certified copies of this court case. The \$2.5 million dollar lien that was placed on the land on her Aunt Rhoda and Eliza Simeona was to give a red flag to those who would want to purchase the lands and would see there is clouded title. Mr. Van Bergen stated he already spoke to the lineal descents and the Olson family's lawyers, but what they failed to state is they are trying to expunge a document that was already adjudicated in the Federal court. He is trying to expunge their names on something he says he already has clear title. These two insurance companies should be placed on our court docket for suite because as far as they are concerned the State has already awarded their family back in 1987 this parcel 993 and 1530. Ms. Lui related the Amaral family claims that they own the PASH rights. How another archaeologist over rode her family regarding this and that her family has been there prior to 1986 when her brother moved there. I don't know how a PASH right over comes a kuleana right of 7733 belonging to the Moa's. Ms. Lui related how they are Moa family which the Amaral and Apiki family are claiming, too. These families were given a trust fund to replace rocks where PASH rights only give you the right to the highest water mark and do not allow you to move around rocks. They find difficult why their family name is slandered in the papers by these families who claim to have greater genealogy. Her brother has been arrested 62 times for trespassing on tutu's aina and wanted to address the issues against her family.

Chair Aila explained what the issue is before the Board that it is not anybody's genealogy or what somebody said about someone else. The issue is whether to follow staff's recommendation of not granting a contested case hearing and asked everyone to keep it to that issue.

Ms. Lui testified and displayed a book which chronicles their issues with these families that they are in court and have standing and are the plaintiffs against the Olson Trust relating what happened at court. The merits the Olson Trust claims are suspicious,

deceitful, and slanderous because they are the family that lives there. Chair Aila said that they understand the claims that both sides are making that the title is clouded and you can purchase clouded title knowing that. Ms. Lui said then you are supporting the insurance companies that Mr. Van Bergen is talking about that you are going by the title. The Chair said we are going according to the title as represented by the title companies right now and we want to bring you back to the contested case hearing.

Ms. Lui said they hoped that the Board's sincerity to the clarity of the ownership be made because they are in court. The Chair reminded everyone to keep their testimony to the staff's recommendation which is not to grant a contested case hearing on this case. Also, not rebutting what others have said.

Brenda Garrigan testified that she was here to support her brother and her family, the Simeona family. Chair Aila said you are in opposition to the recommendation and Ms. Garrigan confirmed that.

Liko Martin testified wanting to read some Hawaiian laws. He understands the specifics and that there may not be an opportunity to address this by the proper jurisdiction. He read a paragraph about the chiefs and their people. Abel is a great steward on this land and Mr. Martin accepts the jurisdictional shortcomings and limitations of this Board like a catch 22 where you might not be able to accommodate those things. Member Gon asked for the pages Mr. Martin read from. Mr. Martin said its page 28, item 10 – The Business of the Chiefs to the Present Year. This book is a copy of a rare book from Lahainaluna that are the fundamental Hawaiian Laws of 1841-1842 and Lands to Support King Kamehameha III's Volume I, 1845-1846. He asked the Board give consideration for these laws.

Han Kamakani Phua testified that he is Abel's nephew and came here to validate Abel's standing on why Abel should be given a contested case. Mr. Phua has seen the contract report to protect the grant holder which is the Department of the Interior and any time the contract is not fulfilled they can collect \$1 million dollars or property of the same value or others. He didn't think the property can be taken because it is still in litigation through the court and the County has not been forthcoming truthfully because of this. In that whole document there was only one Hawaiian that claims to own the land. Mr. Phua presented a common law deed found in 1986 by his grand aunty Rhoda Simeona who was the administrator for his family. Common law liens supersede all mortgages and equities cited in 1898 and satisfying only when a court of common law is called to convey pursuant under Amendment 7 of the Bill of Rights. He read on until Chair Aila said that we are not here to determine title that we were here to determine whether to grant the contested case hearing to Abel. The Chair assumed Mr. Phua is in opposition to staff's recommendation to not issue a contested case and asked him to focus on that. Mr. Phua said he came here to say that the County has not been forthcoming that they are not informing the Board that there is a landowner, Abel Simeona Lui and his family and it's in litigation of the court that there is a \$2.5 million lien on the property where Abel is heir of by his aunt which proves standing and that he should be given a hearing because it proves ownership. The County never approached their family to ask to purchase it from

them and never did a good title search. It seems like they chose Olson over us and they cannot see how the County can buy property without seeking the permission of the owner. Abel and his family have standing and have proof of ownership. His due process has already been granted by the Federal Court reiterating what was said previously about being in court with Olson Trust which hasn't made a judgment yet and asked the Board to wait until that happens. If you don't then you are disregarding Abel's standing on this common law lien. He has copies of it.

Chair Aila requested that Mr. Lui's testimony be relative to the contested case hearing and in the Board submittal before us.

Abel Simeona Lui testified thanking the Board for the opportunity. He tries to be the best steward and presented his display Boards of his family and the plants he grows. They say he has no standing and to look at his garden. The bad is the spraying and what it has done to the land and the animals describing his experiences with that. He questioned why people who want the land would go so far to kill everything on it. Mr. Lui wanted this case to be on the Big Island for his family and because it causes him stress. Everyone has an interest in this land. I love everybody showing his pictures of netting and putting up signs of a shark attack. Staying with the monk seal when it was sick that no one would come to help it because no jurisdiction at Kawa, but how come the police come down to arrest Abel. He related living with and caring for the animals. He is not here to point fingers at anybody and just want to bring home his kids from Canada who was sent there because he fought for this land. Mr. Lui related using his own Social Security money to pay for a public toilet taking care of the beach and the highway. A house was destroyed and they are evicting him. The Chair reminded Abel to address the Board. Mr. Lui said he lived on the land for 20 something years and he wants to defend this land for his family that you guys are telling me I have no standing. His grandfather was the one who built all the roads in Hawaii – Ikiolo and his father is Timoteo. If I don't have standing then all of you folks don't have standing either. I waited for over a year over there for the Governor, the mayor to come and talk to Abel. They going to build that road to come inside here. In fact the road they like build in is where all the trouble when start. It's not even the road and we got arrested for nothing where people were beat up and taken to jail or end up in the hospital. You say I don't have standing? Go to Ka'u and ask the people. They feel safe at Kawa that no one has been raped, or robbed, or killed. When you go to any park somebody is being murdered or there is crime. I am the last man standing for the land and this land is Keawe. This not my land and I am just the steward.

Chair Aila asked Ms. Morgan to keep her testimony to the agenda item.

Kittrena Morgan testified regarding Ms. Apiki's comment to be stricken from the record and what she said about the Apiki Trust. Chair Aila said we are not going to do that today. It's not necessary. Ms. Morgan said that what Ms. Apiki said about feces are blatant lies and presented some pictures of the site that they are not taking care of it. The Chair said it is not pertinent to the Board. Ms. Morgan read page 5 of the PASH regarding sanitation and maintenance of the resources. Chair Aila reminded her to speak to the issue. Ms. Morgan said why let this other young man go on about picking fruit

they don't need and letting it rot, but when I went on and we harvested 200 ipus which go to halau. As a member of the public she wants the contested case hearing to be okay. There seems to be a problem with Abel's submission of the petition for a contested case hearing which is missing page three (3) and read what was missing. Approximately a month ago this item was put on the agenda without Abel's knowledge and he got a phone call from Mr. Paul Conry less than 30 hours prior to the scheduled meeting where they delayed that to put it on today's agenda to give him (Abel) time to respond to the Attorney General's letter, etc. Ms. Morgan shared a book written by a high school student about Abel and an Uncle Mosses as the caretakers that shared the stories of the ancient place. She had a petition going around the Big Island requesting that the contested case be approved and held on the Big Island. The cooperative agreement has a statement saying they are exempt from doing an EIS because the planned usage of the land is no different than the current usage which is a blatant lie. Right now families are welcome to come in and camp. They bring in their dogs on a leash because seals do come in occasionally and we don't want any children harmed. You can't do this anywhere on the island. Her petition has over 240 signatures, another on the Big Island with 200, and a couple on the internet. This was written by Uncle Ha'a and Uncle Kuamo'o who passed away or they would have been here to support Abel. Ms. Morgan said that what she might have said isn't true is about the Apiki's being a third cousin and described a Beth Ehu who said that Abel is her third cousin and that she lived in Kawa in the 1950s. They are related to all the Apikis who are all cousins. We are all heirs of Timoteo Keawe. Ms. Ehu granted permission to Abel to be the konohiki since she lived in Hilo and said she would come to court and testify, but passed on before that. No one on the land has taken down those walls or desecrated the site which is about the same as when she first came there about 2-1/2 to 3 years ago. No body goes down there to do their business because they are taken care of by Abel. If you come and see the site, you'll see the testimony stating the place was trashed was a lie. Mr. Lui confirmed this having to pick-up after people.

Kyle Soares representing BK Livestock Company testified that they lease 2500 acres and own kuleana lands on two ahu'pua'a. He supports staff's recommendation to deny the contested case hearing. He related entering into lease agreements in 1994 and addressed all of his neighbors and gets along with them well and tries to have a diplomatic relationship with everybody. Also, he described the area, gave some of his background having gone out protesting at Ka Iwi Coast. Why he is in support of no contested case hearing is that there is a great misconception of what stewardship is. Stewardship of the land is the true subject. Obtaining ownership and control is the problem. We have to work within the parameters of the system before us. There was a civil judgment 4590 which was done in the 80's, the Apiki family and Honoa family. From the Old Government Road where he resides to the Helea River which he lives along in perpetuity the easements for pedestrians and equestrian travel from the Government Road to the mouth of Helea River to Helea Bay. Mr. Soares wife and kids were assaulted by Abel's sister that he has pictures of her punching Mr. Soares' wife in front of the little children. His wife had to have three months of back surgery. Mr. Soares went down there someone pulls a knife, he took them down, took away the knife and more arrests were made. We never had any intention to raise cattle down in Kawa although it is part of the

ranch. From the beginning with respect to Abel with what was going on in his life and Mr. Soares left it at that. He and I sat down many times on many issues, ho'oponopono, working with the State's Highways Division on waterways so that the water could continue to travel. It is upsetting to me that us locals have to fight amongst each other when we are actually trying to achieve the same thing which is to nurture and show our appreciation for what the land needs. The continued stewardship of Kawa in a park type setting from what Mr. Soares gathered through his involvement with the South Kona Coastal Task Force legislation. They work extensively with a lot of different people that tries to achieve to preserve so they don't lose these places to resort development because these are lands that are sought after. Mr. Soares lives across the street and been there 17 years and continues to raise cattle, goat, improve the land and spend all his money in achieving some kind of balance and perpetuating our food supply. He thanked the Board and that he support's staff's recommendation by not allowing the contested case hearing.

Paul Alston representing the Olson Trust testified in support of staff's recommendation and urged to deny the request for a contested case because under Chapter 91 a contested case is available only when the legal rights of specific persons are required by law to be determined after a hearing. There is nothing in State Law that entitles any specific person to a hearing of any kind in this context. It is entirely inappropriate to conduct the contested case hearing. I understand the concerns about the stewardship of the land, but there is nothing you do today in allowing this to go forward that would apead the County's ability or willingness to proceed with some public process for determining what should be done with the land. There is one thing clear and that is Mr. Olson has clear title to this land. There were three judgments that establish title and I can provide them to you. Under the most recent one Mr. Olson has the right to evict Mr. Lui and his supporters from the property. We have held off because we think when the grant goes through the land will go into public ownership and all of this can be resolved at the County level in a public process that will permit everybody to be heard, to be reviewed and to be considered. This isn't the place. This isn't the time. And, a contested case hearing isn't the appropriate vehicle for having this resolved. Leave it to the County; they are capable of doing it. Mr. Olson has owned this land for several years and was appraised at over \$7 million dollars. He has agreed to sell it to the County for \$3.9 million dollars that he had done that some time ago when he was promised a quick closing, but has been delayed a number of times and now set the deadline for October 16th for closing. Mr. Olson has been more than patient, but this needs to get moving that allowing a contested case when none is permitted under the law or authorized under the law would be a grave mistake and an injustice to the community that is trying to get this land under public control.

Ms. Mahi said that Mr. Olson needs to get broker insurance. Chair Aila said you have the right to your opinions about law and there are judges that decide that, but we are not going to decide that today. What we are going to decide is whether a contested case hearing will or will not be granted.

Ms. Mahi asked if this Board was bond by Section 106 for Federal undertaking...Chair Aila said Section 106 is an advisory law that requires Native Hawaiian organizations to

be consulted with and that's it. There is no adjudication for anything to be consulted with. If there was a claim that Section 106 was not followed there is a process to adjudicate that, but this is not the matter before the Board right now. Standing is the matter before us right now.

Ms. Mahi said there is the Admission Act. Chair Aila said we have staff's recommendation which she may disagree with or may disagree with the analysis and everybody who disagrees with this Land Board has the opportunity to go to court and that is the process.

Member Gon made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it.

11:00 AM EXECUTIVE SESSION

11:20 AM RECONVENED

Member Morgan disclosed that he is a member on the Volunteer Advisory Board which is counsel for the Trust for Public Lands.

Chair Aila thanked him and asked our Deputy Attorney General whether that prevents any further discussion by the Land Board member. Mr. Lau asked perhaps if he could inquire with the person from TPL whether there is a substantial financial interest involved.

Member Morgan asked her would you classify my involvement as having a substantial financial interest. Ms. Hong answered no.

Chair Aila asked Scott about the circumstances of the missing page #3. Mr. Fretz said he was not aware that there was a page missing. Chair Aila said for the record the 3rd page of the application for the contested case hearing. Ms. Morgan said that every other page was included in our submission. Mr. Fretz said correct. It's missing from mine as well and apologized. Chair Aila said that they have been advised in terms of legal notice that the missing page(s) do not put into question the authenticity of the document or the intent of the document. We do agree there is an application on file that is missing a few pages and Ms. Morgan had read the substantive matter into the record. Ms. Morgan said that she also read the admission by Paul Conry stating about the Attorney General's involvement claiming that Abel has no standing and page 3 pertains to more reason why he has standing. Chair Aila said in your opinion and thanked her.

Ms. Mahi said that the Attorney General is suppose to get involved with the Department of Justice Criminal Civil Rights Issue and I don't know what the progress report on that is, but they are suppose to be looking into that letter from the Department of Justice about Federal criminal civil rights statutes violations that was dropped off at the Chief of Police

and the Mayor's office. She asked the Deputy Attorney General if he received anything or are looking at the issue of forced removal of Native tenants and what are the consequences for that. Chair Aila said it is irrelevant to the case before us and appreciated the advice. Mr. Lau said he has no response to that.

Member Agor moved to approve staff's recommendation. Member Morgan seconded it. All voted in favor.

Unanimously approved as submitted (Agor, Morgan)

Item F-1 Request for Approval of Special Activity Permit 2012-3 for Mr. Steve Prokop, Kalaupapa National Historical Park, National Park Service, to Take State Regulated Corals Incidental to Kalaupapa Harbor Improvements

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) said that Dr. Janice Marsters was here who did the permitting and design for the project. He indicated this was for harbor improvements to provide for a safe landing to supply the Settlement. The repairs are expected to destroy coral colonies within the project area. The numbers of coral was not specified. A list of the corals is in the appendix. The National Park Service did an environmental assessment (EA) and the Department of Hawaiian Home Lands was the authorizing agency for purpose of compliance of Chapter 343, HRS and determined the FONSI on this project and the May 8th publication of the Environmental Notice in which a FONSI was determined. The EA specifically addressed corals and the mitigation efforts. The mitigation will use six mooring buoys to accommodate an estimated four recreational vessels each to prevent further damage with the buoys in place. Staff's recommendation was that the Board declares, finds and decides to authorize approval of the stated conditions the proposed activity permit.

Chair Aila asked what will happen to these coral samples. Dr. Janice Marsters said she knows that they've been talking to a couple professors about taking some of the coral in advance and she has to be honest that she is not the biologist. Eric Brown the park biologist submitted testimony yesterday and was not able to be here.

Dr. Nishimoto said that a doctor from HPU will be contacted if there is anything special or significant, but will be damaged anyway. His concern is the large coral heads within the area of the mooring buoys and staff asked them to use their best management practices to preserve those, but they understand their needs also and it is a difficult decision. Dr. Brown will take every possible means to save whatever needs to be done.

Dr. Marsters commented that there is a list of coral species and sizes in the submittal which is not on the list of what is going to be damaged or removed. They will avoid the corals around the mooring buoys which is the purpose of the mooring buoys, to protect the coral. Right now boats moor in this location with anchor. The instructions to the contractor are to put the pin for the buoy in a hard rock area and basalt area. The corals that will be removed will be from rocks that have fallen into the birthing basin and are a

navigation hazard. The Board members have the survey where they looked at the coral in all of the areas and the goal is not to disturb any of the coral in the areas of the mooring buoys and dock pilings. Not to disturb any of it.

Member Gon asked whether there were any plans to document the eventual extent of the take and to document best management practices. Ms. Marsters said it is included in the project specifications and the coral one water certification. We addressed those types of issues and they have an applicable monitoring assessment program under the 401 which prescribes what steps have to be taken for the contractor to document that type of thing. It includes all of the water quality requirements and they also have to count the coral that they removed from certain areas or damaged. Member Gon thanked her that he wanted to make it public record so the public is also aware of the process that this is documented. Ms. Marsters said they are proposing the mooring buoys as a compensatory mitigation and part of that is to check that the six mooring buoys they propose adequately compensates for the coral that is removed or damaged and if necessary they will adjust the compensatory mitigation to match what has occurred.

Member Gon moved to approve as submitted. Member Edlao seconded it. All voted in favor.

Unanimously approved as submitted (Gon, Edlao)

Item K-2 Proposed Rule Amendment KA 10-1 Request for Public Hearing and Small Business Impact Determination: Petition to Amend Title 13, Chapter 5, Hawaii Administrative Rules (13-5, HAR) to Establish the Lawai Kai Special Subzone by National Tropical Botanical Garden (NTBG) at Lawai, Island of Kauai, TMKs: (4) 2-6-002-001, 004, 005, 006, 007, 008, 009 and submerged land of Lawai Bay

Written testimony from Andrew K. Evans was distributed to the Board members.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) briefed the Board on this item that it is also a request to for permission to go to public hearing and to make a small bids impact determination. All of this is for the purpose of establishing a special subzone on Kauai called the Lawai Kai Special Subzone. The petitioners are the National Tropical Botanical Garden (NTBG). The landowners, Allerton Garden Trust which is on the south shore of Kauai. The petition area is about 110 acres. The applicant is here to answer any questions. We have seven or eight special subzones established in the State of Hawaii – Sea Life Park, Hawaii Loa College, Limahuli Garden NTBG on Kauai was the last special subzone that this Board approved. This one is unique because they are not only asking to establish the terrestrial land area as a special subzone, the Lawai Garden proper, but they want to extend that special subzone and add the marine area. This is from their Master Plan that shows you a little more detail than what is in the staff report about the area that would be part of the subzone. Staff is not asking you to approve anything today other than approving us to go out and seek the Governor's approval to hold a public hearing on Kauai to take public testimony on this matter. Then

come back to the Board with staff's recommendation on whether or not to go down this road. Mr. Lemmo received written testimony from an Andrew Evans which the Board has. Because they are establishing a subzone in the marine area we are naturally a co-applicant where we would have to sign any petitions, landowner. Also, it quite probably draws in two of our divisions in terms of management responsibilities. The number one is DOBOR because the applicant is seeking to establish some rules of practice and procedure and perhaps DOCARE for enforcement purposes if it should come to that. The reason is this is a unique area, unique ecological values, and the whole idea here is to try to do everything we can to preserve this resource into perpetuity. Staff figured why not give them a chance, take them through the process, and see where it goes. Staff is asking your approval today to process this petition. Determine that the rule amendment will not impact or affect small business. Authorize afore mentioned request for a public hearing for the proposed rules to the Governor. Upon executive approval publish a hearing notice. Appoint a representative to run the public hearing on Kauai.

Chipper Wichman representing Lawai Kai testified relating some past history and the process to do a special subzone. What engaged him was the idea of bringing together the near shore fisher, the ocean, the bay, the beach, the stream, and the land and be able to look at it and manage it holistically based on the ahupua'a principles involved that has been so effective for them at Haena and engaging the community. They were recognized by the Hawaii Congress of Planning Officials with an award for this Master Plan which he read. The question is whether the larger community will support this and this will go out test that water. Mr. Wichman said that Andrew Evans is part of their Citizens Advisory Group and what Andy didn't say in his written testimony was that he is a commercial operator coming in and anchoring in the bay. All the proposals they did they worked with Andy taking the group out on his boat and Andy said this is where I like to come in and this is where I like to anchor. They finalized and submitted the plan in 2009 when Andy was in support of it and Mr. Wichman finds it interesting that he now opposes going to public hearing. They expect some people will oppose the process like anything, but Mr. Wichman is confident that the community will really rally to support this. I think it's a great concept. Contrary to what Andy is saying it doesn't cut off anything. The bay and beach have been a challenge to get into unless you trespass over private property. The most controversial thing in here (Master Plan) was what we were suggesting some form of dedicated terrestrial easement which the State or the County doesn't want to accept liability for which may or may not be removed from their proposal. A&B is the neighboring landowner and they are in support of that and it will all come out in public testimony. It feels fantastic to be here at the beginning and he thanked the staff and the Board members.

Member Morgan thanked Mr. Wichman for his leadership expertise that this is not the first time that he has been a cutting edge leader in conservation of natural resources and he appreciated it.

It was moved to approve as submitted by Member Agor and seconded by Member Gon. All voted in favor.

Unanimously approved as submitted (Agor, Gon)

Item M-1 Mutual Termination of Harbor Lease No. H-90-04 Dated January 1, 1991, Issued to Hawaii Stevedores, Inc. and Issuance of a Revocable Permit for a Maintenance Facility on a Portion of the Former Lease Premises at Pier 35, Honolulu Harbor, Kapalama and Iwilei, Island of Oahu

Eric Leong, Property Manager for Department of Transportation (DOT), Harbors Division indicated that he was here for any questions on item M-1 which was for Hawaii Stevedores, Inc. (HSI) to vacate most of the premises and retain 23 stalls and 60 square foot portion under a revocable permit to continue their maintenance facility. This is so that the majority of the building warehouse can be made available and for design and construction to begin for the move of the University of Hawaii, School of Ocean, Earth Science and Technology from it's current location at State Harbor to occupy this Pier 35 building facility which will be one of the first steps to begin development of the Kapalama Container Terminal project. September 30th is proposed, ultimately, the date of determination shall be determined by HIS fulfilling the terms and conditions and a completed satisfactory inspection of DOT as outlined in Exhibit C.

Board member Morgan asked whether HIS were in favor of this and the HIS representative confirmed that.

Unanimously approved as submitted (Gon, Morgan)

Item K-1 Conservation District Use Application (CDUA) OA-3593 for Consolidation and Subdivision of Land by PP85 McCandless Ranch/PP McCandless Ranch, LLC at Ohikilolo, Waianae, Island of Oahu, TMK(s): (1) 8-3-001:14, 28, 29, 30, 31, 32, and 33

Mr. Lemmo presented some background on item K-1 which is in the limited subzone and is very restrictive. The owners of seven irregular small parcels are here and the application seeks to separate the ownership interests in these parcels between the Stacks and McCandless which was by a settlement agreement that was approved and ordered by the First Circuit Court and this was a result of that. What they are proposing to do here is take the seven parcels, do a consolidation, and re-subdivide them into three parcels. Staff has been dealing with this case for many years and it has taken many steps and he wanted to confirm that they had seven legal lots on record where he went to the AG and they gave him a high level of confidence that there are, in fact, seven legal lots on record. The reason for this was there was a question on how many of those seven parcels had any value. Staff went through a process that verified in fact there were seven parcels and they went back and forth on a number of things and eventually they came up with consolidate the seven and come up with three. There really is one big parcel with the smaller ones in there and they want to make three coastal parcels. One of the issues during this process is that one of the objectives of the conservation district with respect to subdivision or consolidation is you cannot increase density of the land use. If you have land you can't

really subdivide it unless it's for a government or public purpose. You can consolidate or decrease in density and subdivide as long as you start with two or end up with two. In this case they started with seven and ended up with three so on paper it seems like they are giving up a lot, but this is not an increase density it's a decrease in density. I didn't see it that way. It was a possible increase in density because now you'll have three possible speck lots where before you had seven and you may have one or two good lots. Staff went back and forth on this. It is the order of the court to do the partition and I think they went a long way to make everybody happy. The Court settlement did talk about security and wanted people to get true ownership. Or, at least divide interest in these areas so they could secure the areas because there is a lot of homelessness and vandalism going on. They were willing to have public access easements from Farrington Highway to the shoreline and I think they are still offering it, but the problem is I don't know of anyone in government that would take responsibility for those easements and furthermore State laws require only to provide public access to the shoreline if you subdivide creating six or more lots and you're not required to do it. They just offered it. There is no development being proposed. This is simply a consolidation of the division. If somebody wanted to build a house on a parcel some time in the future they would still have to come back and file a conservation district use application. Staff will look at all the factors and nothing is guaranteed. This consummates the Court order settlement. Staff is comfortable with the action and feels it's a reasonable solution to the problem and staff feels it doesn't violate the intent of our rules and recommend you approve the action.

Wayne Sakamoto, Court Appointed Commissioner testified by thanking staff and the Department for all their patience, courtesy, and cooperation throughout these years.

Member Morgan moved to approve as submitted. Member Gon seconded it. All voted in favor.

Unanimously approved as submitted (Morgan, Gon)

**Item C-1 Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contracts for the Waianae Kai Forest Reserve Feral Cattle Removal Project
and
Request Approval of Declaration of Exemption to Chapter 343, HRS Environmental Compliance Requirements for the Waianae Kai Forest Reserve Feral Cattle Removal Project**

Mr. Fretz conveyed some background on item C-1 that the purpose is to find a contractor to go in and remove the cattle from the area that staff wanted to see what proposals are out there. The Attorney General's office suggested slightly different language in this exemption declaration and he distributed the amended exemption that the only change is the way it's worded and formatted. Member Gon asked whether it doesn't change the wording of staff's recommendation and Mr. Fretz acknowledged that is correct. Member

Morgan asked what the estimate of how many feral cattle was left. Mr. Fretz said there are feral cattle that are remnant from this area that was with the ranch and staff worked with the previous rancher to get out as much as they can and this is what is left that they've given up on them. He didn't know the number.

Member Morgan asked whether this was all mauka lands because there were complaints about cattle going down into the farmer's lands below, correct. Is this the same area? Chair Aila said those are some of the same cattle.

Mr. Lau asked since this is conservation district land did you check with OCCL. Mr. Fretz acknowledged that, but they are not required to get a conservation district use permit for these routine actions in forest reserves.

Member Morgan made a motion to approve as submitted and Member Gon seconded it. All voted in favor.

Unanimously approved as submitted (Morgan, Gon)

Item D-3 Request for Approval of Special Installment Agreement for Payment of Retroactive Rent under General Lease No. S-4665 to DMS Diesel Repair, LLC, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-37:98.

Kevin Moore, Hawaii District Land Agent for Land Division related some background on item D-3 and asked that the Board amend staff's recommendation 2 from September 1st to October 1st.

A motion to approve as amended was made by Member Morgan and seconded by Member Edlao. All voted in favor.

The Board:

Approved as amended. Amended Recommendation 2 to change the commencement date of monthly payments under the special installment agreement to October 1, 2011.

Unanimously approved as amended (Morgan, Edlao)

Item D-7 Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach for October 1, 2011 to September 30, 2012, Waikiki, Honolulu, Oahu, TMK: (1) 2-3-037:021 (Portion).

Mr. Moore conveyed some background on item D-7 and asked to add October 1, 2011 to the list of display dates in Exhibit B. It doesn't require any changes to the recommendation as questioned by Member Gon.

Member Morgan moved to approve as amended. Member Agor seconded it. All voted in favor.

The Board:

Approved as amended. At applicant's request, added October 1, 2011 to the list of "Display Dates" set forth in Exhibit B.

Unanimously approved as amended (Morgan, Agor)

- Item D-1 Cancellation of Governor's Executive Order No. 4045 to County Of Kauai for Residential Treatment Facility, Hanapepe, Waimea, Kauai, Tax Map Key:(4) 1-8-008: 63.**
- Item D-2 Issuance of Revocable Permit to Donna Nunes-Hoopii for Residential Purposes, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-5-011:010.**
- Item D-4 Amendment of General Lease No. S-3660 and Reduction of Performance Bond Amount, Hilo Bay Printing Company, Ltd., Lessee, Lot 9, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-50:77**
- Item D-5 Amend Prior Board Action of June 23, 2011, Agenda Item D-4, Forfeiture of General Lease No. S-5357, Richard Leopoldino, Lessee, Waiakea, South Hilo, Tax Map Key:3rd/2-4-07:39.**
- Item D-6 Cancellation of Governor's Executive Order (GEO) No. 2850 and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation as the Hana Boat Launching Ramp Site, Wananalua, Hana, Maui, Tax Map Key: (2) 1-4-04: 36.**
- Item D-8 Consent to Assignment and Amendment of Grant of Non-Exclusive Easement S-5623, Castle Family LLC, and Windward T&C II, Assignors, to Castle Family LLC and Vision Windward II, LLC, Assignees, Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-2-003:030 (Portion).**

There was no public testimony when questioned where Member Gon moved to approve staff's recommendations for the above items. Member Edlao seconded it. All voted in favor.

Unanimously approved as submitted (Gon, Edlao)

Item J-1 Denial of Request for a Contested Case Hearing for Mr. Lee W. William Regarding Ahu O Laka Administrative Infraction Citation Issued on July 4, 2011

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reminded the Board that this was one of the violations for the “no alcohol zone” at Ahu O Laka. Prior to that meeting Mr. William’s attorney, Michelle Aduja requested a contested hearing and during that Board meeting she had rescinded her request for that hearing. Subsequent to that Board meeting she had a change of heart and submitted a petition for a contested case, but that came in late and was past the deadline. In consultation with the Attorney General’s office there is no standing for a contested case hearing and staff requests that this request be denied. Ms. Aduja did phone yesterday and requested the Board defer this matter because she couldn’t make it today and wanted it on another date. There is no standing in this case, but they will defer to the Board if they want that for a future date. There was some Board discussion. Colin Lau, Deputy Attorney General said but the question is, was the request either timely or effective.

Member Morgan made a motion to approve staff’s recommendation. Member Gon seconded it. All voted in favor.

Unanimously approved as submitted (Morgan, Gon)

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

Item L-2 Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 57 - Kehena Reservoir (HA-0052) Dam Alteration/Removal, Island of Hawaii

Dickie Lee representing Engineering Division reported that there are no changes to items L-1 and L-2.

Unanimously approved as submitted (Edlao, Gon)

Item M-2 Issuance of Revocable Permit FIA Card Services, National Association, for Inconsistent Use, Honolulu International Airport, Oahu

Item M-3 Issuance of a Master Lease FAA Agreement to DTFAWN-12-L-0041, United States of America, Federal Aviation Administration, Lanai Airport

Chair Aila asked if anyone was here from DOT and there was no one.

Unanimously approved as submitted (Morgan, Gon)

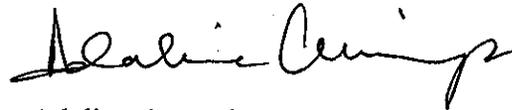
Item H-1 Non-Action Item Open Discussion by Board Members about Issues, Policies, etc. affecting the Department of Land and Natural Resources (DLNR) or Board of Land and Natural Resources (BLNR)

The Board deferred item H-1.

Adjourned (Edlao, Morgan)

There being no further business, Chairperson Aila adjourned the meeting at 12:02 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