

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

DATE: FRIDAY, FEBRUARY 24, 2012  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

**MEMBERS**

William Aila, Jr.  
Jerry Edlao  
Rob Pacheco

Ron Agor  
John Morgan  
Dr. Sam Gon

**STAFF**

Paul Conry/DOFAW  
Russell Tsuji/LAND  
Dan Quinn/PARKS  
Alton Miyasaka/ DAR

Tiger Mills/OCCL  
Scott Fretz/DOFAW  
Robert Rushforth/DOCARE

**OTHER**

Julie China, Deputy Attorney General  
Leilani Pulmano, K-2  
Bill Moore, D-4  
Doug McClafin, C-2  
Ashley Paglawan, E-2  
Doug Cole, E-1

Greg Mooers, K-1  
Edward Knox, K-2  
Jeremy Kwock, D-6  
May Au, E-2  
John Fox, E-2  
Enjon Angelo, H-1

{NOTE: Language for deletion is [bracketed], new/added is underlined.}

**Item A-1 Approval of January 13, 2012 Minutes**

Member Pacheco recused from item A-1.

**Approved as submitted (Morgan, Gon)**

**Item A-2 Approval of January 27, 2012 Minutes**

The Chair deferred item A-2 to the next meeting.

**Item C-1 Request for Approval of a Memorandum of Understanding Between the United States Fish and Wildlife Service (Department of the Interior) and the Department of Land and Natural Resources (State of Hawaii) Regarding the Programmatic Environmental Impact Statement for the Control and Eradication of Invasive Rodents and Mongoose in Hawaii Using an Integrated Pest Management Approach (IPM)**

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) briefed the Board on item C-1. Staff recommends authorizing the Chairperson to approve and sign the MOU pending review from the Department of Attorney General (AG).

There was some discussion between Board member Edlao and Mr. Conry about changes to pesticide labeling and use and whether staff was aware of those changes. The labeling changes are for local organizations to use under tighter controls noting that Environmental Protection Agency (EPA) issues those labels. Because the regulation is nationwide the concerns are for foxes, native coyotes, etc.

Member Morgan asked whether eradication is possible and Mr. Conry said that would be localized like off-shore islands or eliminating predators within a fenced area giving Kaena Point as an example. To rid all these pests throughout the State probably won't happen. It was pointed out by Member Gon that New Zealand has demonstrated having a zero tolerance policy where you get as close to zero eradication as possible as certain rare birds have come back and he is hopeful for the same here. Mr. Conry agreed being an island habitat. The Chair described the positive results at Kaena Point due to technology from New Zealand.

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

**Item K-1 Conservation District Use Application KA-3607 for a Single Family Residence and an After the Fact Culvert by Jason and Teresa Stanley Located at Waioli, Hanalei, Kauai, TMK: (4) 5-5-008:001 & 002**

Tiger Mills representing Office of Conservation and Coastal Lands (OCCL) presented item K-1 that a violation occurred with a road access easement and an after-the-fact culvert was created without authorization in October 1989 and the former landowner was non-compliant. The landownership changed and the violation came back to the Board in 2006 where it was resolved. Once the violation was resolved and the fine was paid the Board said that the landowners in the Waioli Valley area could apply for after-the-fact authorizations. Ms. Mills described the property and access to the property. A small linear pond located on State land which appears to be a former ditch and auwai where the former land owner constructed a culvert consisting of a 30" corrugated metal pipe to cross upon to access their private property. The applicant proposes

constructing a single family residence which Ms. Mills related details on. In regards to the after-the-fact application for the stream culvert, a stream alteration application is also being processed by the Commission of Water Resources Management (CWRM). County of Kauai Public Works had concerns of flooding and maintaining existing drainage down stream, but the area is zoned in an area that has no regulations for flooding. There was a concern by the Fire Department that the fire engines would not be able to cross the culvert during a fire. The applicant stated that they have additional water tanks for fire prevention. The structure will be constructed to comply with regulations and standards. Staff said they share the same concerns as the County, but they also believe the applicant has the freedom to choose where he wants to live which is off the grid. Staff approves the approval of the application; however, they will require a condition be met for waiver of indemnification for the State. As for the after-the-fact culvert, this land use will be conditioned upon CWRM determination for the stream alteration application and a disposition from the Land office. Staff also recommends as built engineered stamped plans be submitted to the Department for the existing culvert. It was unclear whether the applicant would be able to acquire this so staff is recommending authorization if the culvert has to be removed that a single span bridge for an easement be constructed.

It was asked by Member Gon what the conservation sub-zone was and whether there was agriculture on this land parcel. Ms. Mills said it is the resource sub-zone and based on the history it appears to be an agricultural lot – there were lo'i terraces on the property.

Member Agor queried about the access easement and Ms. Mills said it was described as a dirt road covered with gravel.

Greg Mooers representing the applicant(s) testified and confirmed what Tiger said that the applicant is dealing with a culvert that they didn't install on State land and is not on his property, but he is getting the permit from CWRM.

Member Edlao said there was always a concern with using the property for commercial use and now we see with the exception of wilderness camps approved by the Board and he has a problem with that. It's recommendation #4 on page 13. Ms. Mills explained that their rules have been amended and we have created a new identified land use for wilderness camps in which transient accommodations could be done there. In this case they did not apply for a wilderness camp so there cannot be any transient rental there. Member Edlao said because it is there anything could happen down the line. Since he has been on the Board saying (and he repeated the condition) creates problems and he would like to strike wilderness camp.

Member Morgan asked whether that staff is just stating the statute or rule that is on the books and by removing it doesn't remove the opportunity under the law and should be silent on this. Member Edlao agreed and said he does not want to see any commercial period. Member Pacheco clarified that what Member Morgan said is that sentence is stating what is in the rule that changing the rule are prohibited except for wilderness camps and striking out wilderness camps is not changing it.

Member Agor made a motion to approve staff's submittal with the amendment to recommendation #4 eliminating the exception of wilderness camps. Member Edlao seconded it. All voted in favor.

**The Board:**

**Amended recommendation #4, the last paragraph on page 13 deleting [, with the exception of wilderness camps approved by the board] otherwise staff's submittal was approved as submitted.**

**Unanimously approved as amended (Agor, Edlao)**

**Item K-2 Conservation District Use Application MA-3613 for the Auwahi Wind Farm Project Papaka Road New Alignment by Auwahi Wind Energy, LLC located at Ulupalakua, Island of Maui, TMK: (2) 2-1-004:006**

Written testimony from Edward Knox was distributed to the Board members.

Ms. Mills related some background on item K-2 that the area was initially graded during the construction of ranch roads which she described. There was no rare endangered species or traditional cultural practices observed. There are eight (8) archaeological sites along the proposed new alignment staff has recommended to preserve and do data recovery of those sites. Auwahi Wind Energy is proposing to construct a new alignment of Papaka Road to transport large equipment and heavy machinery and which improves existing ranch roads. Staff recommends approval subject to the 20 noted conditions.

Leilani Pulmano representing Auwahi Wind Farm testified thanking staff for their diligence and hard work. They will maintain the road per Member Edlao's question.

Edward Knox, a law and business student at the University of Hawaii testified summarizing his written testimony that these are short term trade offs for long term goals for renewable energy and supports this application.

Ms. Mills requested amending the conditions by striking #16 since it repeats #10 and to renumber everything.

Member Edlao made a motion to amend staff's recommendations. Member Morgan seconded it. All voted in favor.

**The Board:**

**Amended staff's recommendations by deleting recommendation #16 and renumbered the following recommendations. Otherwise, staff submittal was approved as submitted.**

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

**Item D-4 Mutual Cancellation of General Lease No. S-5988, Kawaihae Restaurant, LLC for Commercial Purposes, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/6-1-03:15.**

Russell Tsuji representing Land Division informed the Board that the Lessee was going to construct a restaurant until the new flood maps came out and a portion of the property is in the flood zone. The County says it would require a modification of the plans and specs prepared and the bank is unwilling to finance it now. Staff met with the Lessee that they don't think there are alternatives and they support a cancellation.

Member Pacheco asked what will happen to the commercial property and Mr. Tsuji said staff is thinking of reissuing later and going back out to auction that anyone coming in would recognize a portion of the property is within a flood zone and propose a project to accommodate it. The applicant is still interested in the site, but not with the proposed plan and that there maybe others as well. It is still a usable property.

Member Edlao inquired whether rent was owed. Mr. Tsuji said payment was due December 1, 2011, but they were aware by then that the new flood maps would be a problem. It is probably half the annual rent of \$69,000 so roughly \$35,000. Mr. Tsuji said that the applicant wants to proceed in a State auction or State lease if he is prohibited for five (5) years. The flood maps came in the summer. It was asked by Member Agor whether staff will collect the rent and Mr. Tsuji answered no. Member Pacheco said the Lessee put in almost \$400,000 into the project and the rezoning is not under their control.

Bill Moore, Vice-President of Kawaihae Restaurant, LLC testified relating the history and reiterating what staff said earlier. The County Department of Public Works (DPW) said under County regulations the best available information applies and which is why they have to comply with the new flood maps. Structural fill would be prohibited, they met with staff and requested the termination before the December 1<sup>st</sup> deadline and not trigger the next payment. Mr. Moore related some background about the owners who owns some property at Kohala Ranch. Their vision was to use this area as a beach club and restaurant, but with the loss of the 20% of the land area it didn't work. In the long run when that property becomes right, having a beach club there maybe a viable use rather than a restaurant. If later someone comes up with a use that is great for the State or if not they are definitely interested to look at a different use.

It was asked by Member Agor what the grade elevation is now. Mr. Moore said for the restaurant it is 23 feet and that he had the plans here. The grade is 9 feet so 9 feet of structural fill under the building itself.

There were some discussions between the Board member Edlao and Mr. Moore about the traffic study, topographic survey, drainage studies and that the Lessee came in with a good faith effort. Member Edlao said he has an issue with the State giving away money and that is how he feels.

Mr. Tsuji said what another agency does may impact negatively on the value of our land. Mr. Moore said they have over \$400,000 of actual expenses excluding the two partners and him that he has \$50,000 of time not billed to the project.

Member Morgan commented he understands the change in rules that no one was a party to and he was inclined to go with staff's recommendations.

Member Edlao made an inquiry about the letter the Lessee had sent where Mr. Moore explained the dates, various communication(s) and letters with DPW that their formal letter to the Department went in November 21, 2011. Mr. Tsuji related what had happened with staff wanting more information about these flood maps that the staff submittal came through two (2) weeks ago hoping to create a lease to accommodate the Lessee, but after that meeting it wasn't viable.

Member Edlao suggested looking at the rent from November 2011 to January 2012, two months rent that in the private sector you would still have to pay. Mr. Moore said it is better than being in default if it is the wishes of the Board they will comply with that.

Member Pacheco disagreed with Member Edlao coming from the private sector giving the scenario of renting a house that they can't rent a property that is out of their control.

It was asked by Member Edlao whether they are still in default if we go with the recommendations and not look at the rent owed. Mr. Tsuji said it was not presented as a default, but as a mutual cancellation.

Member Pacheco made a motion to approve staff's submittal as submitted. It was seconded by Member Morgan. All voted in favor except Member Edlao who won't support it.

**Approved as submitted (Pacheco, Morgan)**

**Item D-6 Cancellation of Governor's Executive Order No. 1623 that was issued to the County of Hawaii for Library Purposes; Reset Aside to the Department of Education, for Addition to Holualoa Elementary School and Community Related Purposes, Holualoa, North Kona, Hawaii, Tax Map Key: (3) 7-6-004: 005.**

Written testimony from Richard Burns, Hawaii State Public Library System was distributed.

Mr. Tsuji conveyed some background on item D-6 that Department of Education (DOE) was willing to accept this property without the Phase 1 Environmental and staff requested this be approved.

Jeremy Kwock, Chair of DOE testified he was here for any questions.

Chair Aila noted testimony in support of this.

**Unanimously approved as submitted (Pacheco, Gon)**

**Item C-2 Request Approval for Three Year Extension of the Cooperative Game Development and Management Agreement Between Castle and Cooke LLC and the Department of Land and Natural Resources for the Cooperative Game Management Area on the Island of Lanai, Comprising Approximately 30,000 Acres, and Delegation of Authority to the Chairperson to Extend the Term of the Agreement**

Scott Fretz representing DOFAW briefed the Board on item C-2 and indicated that this is an important hunting area for visitors, residents and the economy. Also, he noted in the Board submittal that Castle and Cooke is Inc. and not LLC. The other change is to the agreement itself which he distributed and added information to the chronology. Staff recommends approval.

Member Gon asked to characterize the economic benefits of this Game Management Area is. Mr. Fretz said it's important to the community and the residents because it supports a lot of their businesses. It brings in revenue of about \$80,000 a year to the Department, but is important to the island's economy. There are no changes, but to extend it. Mr. Fretz referred to the area on the map.

Doug McClafin representing Castle & Cooke testified thanking staff. It's important to the economy as mentioned and to make this happen.

Chair Aila said he received a dozen phone calls about this all waiting for it to happen. Mr. McClafin said they are pleased to work with the Department and to provide this.

**Unanimously approved as submitted (Morgan, Pacheco)**

**Item C-5 Request for Approval of Amendment to Incidental Take License and Habitat Conservation Plan for Lanai Meteorological Towers to Extend to 2016**

Mr. Fretz reported that this is to extend the Habitat Conservation Plan (HCP) which was originally approved by the Board in 2008 expiring in 2010 where the Board extended it from 2010 to 2012 expiring in March 2012. The applicant requested extending it to 2016. The purpose of the HCP covers any incidental take, but there has been no take as a result of the towers. All the terms of the HCP has been implemented including the mitigation which has been successful in eradicating strawberry guava and predator control to the petrels in the area. Staff recommends extending it.

Mr. McClafin thanked the Board and Mr. Fretz for a great relationship.

**Unanimously approved as submitted (Edlao, Morgan)**

**Item D-3 Amend Prior Board Action of October 28, 2010, Item D-4, as amended, Issuance of Direct Lease to Hawaii Oceanic Technology, Incorporated for Aquaculture Purposes, to Modify Performance Bond Requirement and to Reflect the Complete Legal Name of the Lessee, Offshore Waters of Puanui,**

**Puaiki, Kiiokalani, and Kaihooa, North Kohala, Hawaii, Tax Map Keys: 3rd/5-8-001: and 5-9-003: Seaward of Puanui, Puaiki, Kiiokalani, and Kaihooa.**

Written testimony from Cory Harden was distributed.

Background on item D-3 was presented by Mr. Tsuji which is a request to amend the lease to reflect the current name and the applicant requested to modify the bond requirements reminding the Board that they set the Bond for \$100,000 as that was estimated to be the removal of any sphere that had to be retrieved if it became lost in the ocean and this is to issue one sphere that if there were any more the applicant would have to come back to the Board to adjust the bond requirement. As pointed out on page 3, staff thinks the applicant should put out some security bond and a bond provision be modified in the lease to reflect the Lessee's request, but to also require two times the annual rent which is \$3500 to be posted in the interim and when its ready to be deployed the first sphere submit the bond for an additional \$100,000. There are testimonies in opposition.

Member Agor asked about using surety companies for insurance and Mr. Tsuji said that we don't necessarily require a Hawaii insurance company, but have to be rated A- or higher. Member Agor asked whether you would be inclined to insure something like this. Mr. Tsuji said surety's can insure anything and you just go to pay the premium. We make sure it's financially sound which is why they go by best A- or higher to make sure the bond has backing behind it.

Member Edlao inquired about the rental amount. Mr. Tsuji said its \$3500 or 1% of gross whichever is higher and it's 2 times the \$3500 for the interim until the sphere is deployed.

Bill Spencer, President and co-founder of Hawaii Oceanic Technology, Inc. testified thanking staff and the Board. He pointed out they are obligated by the lease to provide \$2 million insurance, \$1 million upon occurrence that for us it's a matter of timing. They are still waiting for the Army Corp of Engineers to approve their permit with them which has been in process since January 2010. Even if they started today on construction it would take at least a year before they are in the position to put anything in the water.

Mr. Tsuji clarified that the insurance Mr. Spencer is referring to is liability insurance for property damage. What we are talking about is a performance bond that covers any default under the lease such as a lost sphere.

Chair Aila pointed out comments from Cory Harden which he summarized.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item D-10      Withdrawal from Governor's Executive Order No. 1598 issued to Department of Agriculture and Sale of Remnant to Kailua Nursery Inc., Lianne S. Suzuki Trust, Reynard L. Akui Estate and Janice T. Yamane, situate Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-024:071 (portion).**

Mr. Tsuji conveyed item D-10 and indicated there were no changes.

James Thompson representing the owners of Lot 3 of the Waimanalo Agricultural Lot testified describing what the owners did to Lot 3 and that it has never been subdivided. The State reserved the 10 foot wide ditch right-of-way through the property. The Tax office took each of those parcels and gave them independent parcel numbers which led to believe they were buying individual lots of record which happened to several of his clients. Now the property is undivided interest amongst four (4) entities and they want to divide it equitably. The only way is through the City and County by purchasing this ditch right-of-way. Staff recommended the sale of this remnant.

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

**Item M-1 Final Approval of the Acquisition of Privately-Owned Lands and Set Aside to the Department of Transportation for Addition to the Existing Kahului Airport, Situate at Spreckelsville, Wailuku, Maui, TMK: (2) 3-8-1:03 (por.) and 04.**

Mike Auerbach representing Department of Transportation (DOT) – Airports reminded that staff was before the Board a year ago for preliminary approval and the seller has satisfied all the preliminary approval, they gotten final sub-division and all the environmental requirements have been met on the lands they are acquiring which he described. The State contacted an appraiser, the values were acceptable and they request the Board authorize the final acquisition on the private lands and set aside Executive Order.

**Unanimously approved as submitted (Gon, Edlao)**

**Item E-2 Establishment of a Volunteer Curatorship Agreement for the Kam Mon Store (Visitor Center), in Ahupua'a 'o Kahana State Park, O'ahu**

Dan Quinn representing State Parks briefed the Board on the recommended amendments to the recommendation by adding the following “To make sure it is subject to review and approval by the Department of the Attorney General.” and “Other such terms and conditions as prescribed by the Chairperson that would best serve the interest of the State.” He described the curatorship program that the Kokua partnership of HAKC (Ho’ala ‘Aina Kuponon Corporation) has an interest in operating the Kam Mon Store. It is intended as a visitor center in Kahana State Park where visitors can obtain information about the Park as they enter the area. It has been in place for several years now with displays and exhibits to provide orientation. This agreement will not allow any sales, but there has been discussion for the potential for valley residents to sell items that they might grow or crafts that they might create. Our understanding from the AG is in order for them to be able to do that they would have to have a lease and we are not proposing a lease at this point. Staff recommends the Board approve this for a two (2) year period and amend it as per the recommendations that he handed to the Chairperson.

May Au, a resident of Kahana and former President of HAKC testified how she started the non-profit and is now a director and treasurer. She has been operating the store/visitor center for 2010 and 2011 by herself and now they have 3 trained resident volunteers. It is hard to find volunteers from the residents even after putting notices in Kapalapa (newsletter) for 2 or 3 years.

The residents can make-up their hours by working in the visitor center, but many of the residents have full time jobs. She has no problem making her hours because she loves doing Hawaiian culture. At her age she hopes to train someone to take over the curatorship.

Board members Morgan and Gon expressed their thanks for her leadership and she is a great mentor for a lot of people. Ms. Au said if anyone is interested in taking over the leadership she would be happy to do so. The State has a valuable collection in the building and it would be necessary for whoever takes over to safeguard that property.

Ashley Paglawan testified that she is the great grand daughter of Kam Mon who was the owner of the store/visitor center. They commend HAKC for stepping up for the curatorship, but from the beginning the Kam Mon Store residents was a project of the Kam 'ohana. It was understood that when the Kam Mon Store was to re-open priority would be given to the Kam family as to management of the store as it is their heritage. They tried to be included in the operation of the visitor center, but were constantly denied because they are not lessees. They have concerns of the non-profit organization looking to have sole curatorship and why other non-profits weren't offered to be a curator of the Kam Mon Store. From what she learned from other people who were in the store there is lack of leadership and inventory taking there. Is it a conflict of interest that your State Parks coordinator for Kahana serves as a director on a non-profit organization that is trying to take over curatorship? She asked that this curatorship be held off to a family member that is interested in the curatorship be put on the non-profit board.

Chair Aila asked whether they are interested in volunteering and taking part of...Ms. Paglawan said yes, that they had asked for a key because other residents had a key, but she was denied a key.

Member Edlao queried that she mentioned she wasn't included in the corporation because she wasn't a resident. Ms. Pagalawan reiterated what she said earlier that they offered to help, but they cannot. HAKC want the donations to put in the store, but they don't want to give them a key and she questioned if this is the Kam Mon Store why is their family put in a little corner with the brooms, dust pans and its all dirty. It should be up front like a family shrine.

Chair Aila said depends on what the purpose of the visitor center is. The Board would much rather see families work things out and try to do that first. In regards to the lease, there was a bill passed 2 years ago by the Legislature and the Department is moving forward to try to resolve the lessee issue and will come back to the Board at some time in the future where we can request for the authorization and just to explain to the Board members we are taking steps to deal with the situation that there are families there without leases right now, but they are working with issues like wastewater treatment, fresh water access and things like that. This doesn't prevent families from talking. Ms. Pagalawan said they are not trying to prevent, but are trying to be involved as they should be and she related not learning about this meeting through the Kapalapala or community meeting, but someone overheard them talking about it in the store which is being sneaky. Chair Aila said that is your assumption, but there is a need to work out the communication.

Ms. Au said that they handed out 5 keys and all are accessible on Valley Road to whoever wants to work in the store. Chair Aila asked from your perspective if anyone from that family wants to be part of the process you will issue a key. Ms. Au said yes, she would love to work with them and of course since Ms. Paglanawan is a descendent of Kam Mon Ms. Au will issue her a key.

John Fox testified that he is a descendent of residents of Kahana and is Vice-President of the non-profit. The non-profit gains nothing except what their charter requires us to do which is do what is best for the residents of Kahana. We are not taking in any money or anything and we are not moving into the store. They are not responsible for the inventory until the curatorship occurs and until the Board signs it. Martha is doing the State's portion and they are going over that tomorrow. They will see other donations from residents or other people so they can do a proper inventory. The curatorship requires them to do inventory every day. Mr. Fox related the background of the members of Ho'ala (HAKC) naming the 3 oldest and the 3 younger members who couldn't be here because they are at college or at work and couldn't make this meeting. They are preparing the younger kids to take over. The reason they came up with the store is because kupuna who can't go out to the lo'i or into the fishpond or have arthritis, but have the knowledge can be at the store. There was a training session where volunteers learned how to open up the store. Even he doesn't have a key or the combination because he won't be working there and he doesn't need the 25 hours. That is the reason they are going through this and that is the process right now. If it works out and they have enough volunteers to get their 25 hours and open the store after 2 years they will come back.

Chair Aila asked how many hours is the visitor center open and Mr. Fox said as many as they can get volunteers for. A lady from the audience said they are open 3 or 4 times a week for a couple hours – Monday, Wednesday and Fridays from 9 to 1. If there are groups on Saturday, Aunt May will come to open it up. Most groups are pre-arranged. On Monday, Wednesday and Friday they have about 6 to 12 tourists come through, sometimes more.

**The Board:**

**Amended staff's recommendation by adding at the end:**

- 1. Subject to review and approval by the Department of the Attorney General;**
- 2. And such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.**

**Otherwise, staff's submittal was approved as submitted.**

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

**Item E-1 Establishment of a Volunteer Kokua Partnership Agreement for Pupukea-Paumalu State Park Reserve, Oahu**

Mr. Quinn briefed the Board on item E-1 with the same recommended changes as item E-2 and that this is for the land above Pupukea/Paumalu. About 1100 acres was purchased by the State and the County has about 30 acres on the makai stretch on the flats. It is a State Park Reserve and they have no staff or funding. The North Shore Community Land Trust (NSCLT) stepped forward and through several special use permits have been keeping things under control. They teamed up with the North Shore Trail Association (NSTA), a non-profit organization who

stepped forward to be co-curators to care for the area. State Parks would not be the recipient of this if they didn't have confidence in the NSCLT being a long term partner. Federal monies, State monies, private money, the Army acquisition funds and the County bought the makai piece which was a good thing. It will be very critical 30-50 years down the line for the North Shore and continued open space. This is for a 5 year agreement with the NSCLT and the NSTA with the added amendments as he suggested earlier.

Doug Cole representing (NSCLT) testified thanking everyone and related what happened 10 years ago one of the most critical components is someone willing to take these lands. They are appreciative to the State and State Parks for holding the property. The community played a big role in maintaining this resource for the past years. They've tried to build a sense of stewardship by maintaining the existing road for emergencies.

Members Gon and Morgan thanked him for his commitment in helping State Parks and for the great examples of positive work in the community.

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

**Item B-1 Request Approval to Seek the Governor's Approval to Indemnify the City and County of Honolulu Department of Parks and Recreation for the Use of the Koko Head Shooting Complex for Firearms Training.**

Robert Rushforth representing Division of Conservation Resources and Enforcement (DOCARE) conveyed some background on item B-1 which is for their training needs at the Koko Head Range which is critical for their operations. They would have to assign the officers to desk work if they weren't able to perform their training needs. The officers have to qualify twice a year and public firearms training needs they are obligated to provide.

Member Morgan commented it is worthwhile and necessary.

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

**Item C-3 Request for Approval to Enter into a 2-Year Contract with the Zoological Society of San Diego to Provide Services to Operate the Endangered Bird Captive Propagation Facility on Maui, the Maui Bird Conservation Center, and to Provide Expert Avicultural Services to Conduct Related Forest Bird Propagation Projects at the Keauhou Bird Conservation Center on the Island of Hawaii and Throughout the State**

**And Request Approval of Declaration of Exemption to Chapter 343, HRS Environmental Compliance Requirements for the Project**

**Item C-4 Amend Prior Board Action of August 23, 2002 and November 19, 2004 by Adding Tax Map Keys to the Title and Location Sections and Amend Acreage – Delegation of Authority for the Issuance of Right-of-Entries for**

**Grazing Purposes in Pu'u Wa'awa'a, North Kona, Hawai'i, to Include Tax Map Keys: (3) 7-1-003:016, and (3) 7-1-004:018.**

**Item C-6 Request for Approval of the Amendment to Incidental Take License to Decrease Take of (1) Newell's Shearwater From 40 Birds to 25 Birds, (2) Hawaiian Petrel from 40 Birds to Four Birds, and (3) Remove the Notably Higher Take Level, and Approve the Second Amendment to the Implementing Agreement for Kaheawa Wind Power, on the Island of Maui, Hawai'i**

Mr. Fretz said there were no changes to items C-3, C-4 and C-6.

Member Gon asked to give a summary to date on item C-6. Mr. Fretz said the take is much lower than expected. No take of shearwaters and only 2 petrels to date.

**Unanimously approved as submitted (Gon, Edlao)**

**Item D-1 Issuance of Right-of-Entry Permit to Trade-Winds Management Group, Ltd. for a Teambuilding Event at Shipwreck Beach, fronting the Grand Hyatt Kauai Resort & Spa, Poipu, Kauai, Tax Map Key: (4) 2-9-01: portion seaward of 02.**

**Item D-2 Consent to Assign General Lease No. S-3595, Opportunity Management Hawaii, Inc., Assignor, to Hawaii HVAC, LLC, Assignee, Amendment of the Terms and Conditions Regarding Allowed Use, Assignments, Subleases, Insurance and Bond Requirements for General Lease No. S-3595, Lot 18, Kanoiehua Industrial Lots, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-50:86.**

**Item D-5 Issuance of Right-of-Entry Permit to Malama O Puna For Alien Red Mangrove and Pickleweed Eradication Project on Unencumbered Lands at Kealakehe, North Kona, Hawaii, Tax Map Key: (3) 7-4-08:71 por.**

**Item D-7 Forfeiture of Revocable Permit No. S-7764, Felix Ibarra, Permittee, Waiohinu, Ka'u, Hawaii, Tax Map Key: 3<sup>rd</sup>/9-5-05: portion of 03.**

**Item D-8 Grant of Perpetual Non-Exclusive Easement to City and County of Honolulu for Drainage Easement Purposes, Waimanalo, Koolauloko, Oahu, Tax Map Key: (1) 4-1-009:portion of 262.**

**Item D-9 Set Aside to Department of Agriculture for Agriculture Purposes, Waimanalo, Oahu, Tax Map Key: (1) 4-1-018:048.**

Mr. Tsuji said there were no changes to the above items.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item F-1 Request for Approval of Special Activity Permit 2011-89 for Dr. Nancy Grumet Prouty, US Geological Survey, Pacific Science Center, to Conduct Research Using Core Samples from State Regulated Stony Corals in Kona, Hawaii to Study Historical Groundwater Trends**

Alton Miyasaka representing Division of Aquatic Resources (DAR) reported that there were no changes to item F-1.

**Unanimously approved as submitted (Pacheco, Gon)**

**Item J-1 Permission to Contract with a Consultant to Provide Professional Appraisal Services to Determine Fair Market Valuation of all Mooring Rates and Fees for the Division of Boating and Ocean Recreation**

Written testimony from Sam Monet was distributed.

Bill Andrews representing Division of Boating and Ocean Recreation (DOBOR) conveyed that there were no changes to item J-1.

**Item J-2 Appoint A Hearing Officer And Delegate To The Chairperson The Authority To Select A Hearing Officer To Conduct All Hearings For One (1) Contested Case Hearing Regarding An Enforcement Action Located At The Ahu O Laka Safety Zone to Mr. Charles Stone**

Rebecca Alakai also from (DOBOR) said there were no changes to item J-2.

Member Agor asked what prompted Act 197. Was it a senator who wanted to do it? Mr. Andrews said he believes so. There is a lot of interest in the harbors. Chair Aila said there were various ways over the years to try to value and come up with a reasonable way to calculate these.

Chair Aila pointed out that they have written testimony from Sam Monet for item J-1.

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

**Item H-1 Discussion on State Leases at Banyan Drive, Hilo, Hawai'i**

Member Pacheco said he was asked by some people in the business community to come before the Board to talk about general issues with the leases, but being no one is here...He doesn't know the particulars of what they were bringing before the Board. Someone was supposed to be here.

**Item L-1 Permission to Hire Consultant to Prepare an Environmental Impact Statement and Master Plan for Hanahanapuni Public Shooting Range, Wailua, Kauai, TMKs: (4) 3-9-01:por.02 and (4) 3-9-02:por.01**

**Item L-2      Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. F77C634A, Replace Comfort Station, MacKenzie State Recreation Area, Hawaii**

Carty Chang representing Engineering Division said he had no changes to items L-1 and L-2.

**Unanimously approved as submitted (Agor, Gon)**

**Item H-1      Discussion on State Leases at Banyan Drive, Hilo, Hawai'i**

The Board asked Mr. Tsuji to sit in since a member of the public was here to monitor this item.

Member Pacheco said that there was a concern with the state of the Naniloa lease and what is going on. There were concerns of infrastructure, Hilo tourism and the new direct flights coming in.

Mr. Tsuji said that the Chair has an interview today regarding Naniloa. He related some background about the Naniloa Hotel that they were down to their last 10 years and the Lessee was not able to get financing and they are not going to do it with 10 years remaining. Land Division staff negotiated with the existing Lessee for early termination, staff brought that before the Board and the re-issuance of the law based on appraisal evaluations - roughly \$6 million that the winning bidder pays for the building for the remaining 10 has to be given up and that value is determined by appraisal at \$6 million. They would come in immediately to pay for that and pay whatever rent they bid up to. It was always understood that the existing Lessee would be a bidder and if he won the bid he would have to give up all improvements he did for the last 10 years.

Member Pacheco noted there are also conditions for improvements. Mr. Tsuji said the condition was \$5 million dollars for the improvements subject the amount of time of 3 years. They went to auction where the existing Lessee was not the winning bidder. Ken Fujiyama got the bid at \$500,000 and the upset rent was \$100,000 a year. He paid the \$6 million for the building and he has been paying the \$500,000 for the rent and he put in \$5 million dollars of improvements and staff did ask for documentation to support that. There are 3 towers and one tower hasn't had any improvements done. The lease doesn't say renovate completely to certain level all 3 towers. We just said to commit to put in \$5 million worth of improvements within X amount of time and Mr. Fujiyama did and he was able to show that. Staff doesn't believe he was ever in default.

Member Pacheco asked at the end of the year the Board approved taking half the bond and applying it to the rent. Mr. Tsuji said that the performance bond was a typical 2 times the annual rent, \$1 million dollars and Mr. Fujiyama asked to reduce that to \$500,000 which is one year's worth of rent because he posted \$1 million cash to apply to the rent and the Board approved that. Member Pacheco asked whether that rent was for 2012. Mr. Tsuji said the last time he checked there is rent due for the next 6 month period at February 1 and he didn't think staff received that. Through the normal course if Mr. Fujiyama doesn't pay it staff will issue a standard Notice of Default which they do for all the thousand or so leases. If staff doesn't get the payment by a

certain time it automatically triggers a Notice of Default. The Lessee is notified, given time to cure it and if not staff will write something up for Board action. That is to Naniloa.

Mr. Tsuji spoke of testifying at the Legislature on a bill to transfer title to all the Banyan Drive leases over to a new entity called East Hawaii Development Corporation and we opposed that because number one they are looking to improvements to the State leased property and those are the resorts or hotels there. The Legislature passed a bill for Banyan Drive which has it in the preamble of Banyan Drive that allow these leases that normally cannot be extended because they are already lapsed. If they commit to a certain amount of improvements, X dollars for whatever for resort type improvements they can qualify to ask the Board for extension. That was designed to somehow alleviate or assist the Banyan Drive resorts with that issue. It has been on the books since July 1, it's just that we haven't had any applicants.

Mr. Tsuji related with respect to the infrastructure outside the lease premises staff pointed out in their testimonies to the Leg. that the roads and parks are County. After Member Pacheco's query about the golf course Mr. Tsuji said it is under the Naniloa lease. We thought there was adequate testimonies that said with the County ordinance on improvement districts being set up that the County would start improving the area, tax the respective tenant who would benefit from the area. It's out there that this law they were trying to propose was not necessary. It was asked by Member Pacheco whether the golf course is the same lease or separate and Mr. Tsuji said it is part of the same lease.

Member Pacheco said not knowing how much the property brings to the State, but it's a prime chunk. I don't know if you got tsunami inundation zone issues there. Mr. Tsuji confirmed that there is that issue with the property.

Mr. Tsuji said that the bid rent is based on \$500,000 or the higher of 2% of gross and Mr. Fujiyama hasn't gone over the 2% of gross.

Member Pacheco said another concern that was raised in the monetary amount of improvements that Mr. Fujiyama is also a general contractor and did a bunch of the improvements under his contracting license for his company. Mr. Tsuji acknowledged that and said he visited the site multiple times during construction, mid-way through and at the end with various finished rooms. From the outside it doesn't look like much, but inside there is substantial improvements to the rooms in certain towers.

Member Pacheco asked he understands the area looks very decrepit when you come in and there is a piece of property that is not theirs and is fee simple. Mr. Tsuji said he thinks it's private. Staff did receive a notice of something like that in the parking lot area, they checked it out and they made sure the tenant cleaned up his area. Member Pacheco inquired about the pool area that there were concerns about that. Mr. Tsuji said he didn't know about the pool, but as far as the parking lot area there was an issue of it being outside the leased area and they couldn't mandate anything other than the leased area. He may be leasing from the private property owner the other site and storing stuff there, but from staff's perspective it is outside the leased area.

Mr. Tsuji related throughout the year since the auction staff had gotten complaints from some people and they work with Ken Fujiyama. His view is Mr. Fujiyama is up straight and he tries to take care whenever our staff raises issues. If the Board wants to look at the Naniloa they can arrange something. Mr. Tsuji was there when Mr. Fujiyama was doing construction and he explained what he was doing and when Mr. Tsuji visited again afterwards these rooms are very nice for the amount he charges. Initially, when Mr. Fujiyama came in and won the auction there was a Leg. hearing on it because certain Senators were upset that Mr. Fujiyama did not retain a lot of people and staff and Mr. Fujiyama had to deal with that.

But, when Mr. Tsuji went to look at the construction Mr. Fujiyama explained what his plans were and what he was doing with his construction where lot of it was his company's that he can get it cheaper to do more improvements. The improvements he put in were marble and built in custom wood louver doors instead of drapes. It doesn't look like much outside, but inside its quite nice considering the age of the hotel. You can only do so much like the air conditioning is so old many in many units that in the higher end suites Mr. Fujiyama put in the split system which is expensive.

Mr. Tsuji described what Mr. Fujiyama said at the Leg. that Naniloa was going to be this grand resort and he'll charge \$250 a night and people laughed because you can't get that in Hilo. Later Mr. Tsuji asked what they were charging kama'aina and Mr. Fujiyama said \$89.00 which surprised Mr. Tsuji because you can go down the street and pay close to that amount. The reason \$89.00 is because the market can't support it any higher.

Mr. Tsuji asked whether the Chair went there and the Chair confirmed that and he was impressed by the rooms. Mr. Tsuji said it's not complete. Mr. Fujiyama had done what he was required to do, but I don't want to say don't do any more because he should continue what he is trying to do. Chair Aila agreed that you can only go so fast. Member Pacheco said he has some extreme challenges.

A gentleman from the public asked about the Naniloa and other State leases. Mr. Tsuji said none of the other Lessees have come forward and asked. They are trying to take advantage of the law that was recently passed. Except there was one bid and that one is not a resort, but the lease was issued to be a hotel. What happened was long ago the market wasn't there and someone came to the Land Board to ask to amend the lease to allow for residential type that he couldn't remember the name, but was individual coop units and that might not qualify. That one asked and inquired about the law which had difficulty fitting into that Statute.

Member Edlao said that if there are specific concerns he's sure if you (the gentleman) called Land Division they could answer his questions.

Member Gon said or if there are any concerns he (the gentleman) wants to voice now. I am always interested when someone from the public comes in specifically on an item what motivated them to come in and what questions they may have or specific concerns.

Enjon Angelo testified that he was reading the paper (Hawaii Tribune Herald) a few weeks ago and it sparked his interest which is why he showed up and wanted to listen in.

Member Pacheco asked whether he was with the visitor industry and Mr. Angelo confirmed that and he works for the Mauna Kea Resort. Mr. Tsuji asked what article was this. Mr. Angelo described it was about the Waiakea Villas leased land where there were 4 articles that talked about the State leases and the community development committee that was trying to take over from DLNR. Member Pacheco said there was history and background on the leases where one was about Mr. Fujiyama and the Sheraton bidding against him that the improvements especially from the exterior looks pretty bad. Mr. Angelo said the article went through the history of the lease and Mr. Fujiyama acquiring the lease, fixing the hotel and public comments about it.

Chair Aila said for further questions please contact our Land Division on the Big Island.

Mr. Tsuji said the \$500,000 Mr. Fujiyama gave compares with the rest of the Lessees who are paying anywhere from \$60,000 to low hundred thousands which is the base rent per Member Pacheco's inquiry. Member Pacheco and Mr. Tsuji had some discussions about the Hilo Hawaiian that they are less than \$100,000 per year. That is why staff's upset was about \$120,000 and it is high because the two bidders had a bidding war. Member Pacheco asked when staff does the auction they are in a room bidding against each other. Mr. Tsuji said they were at the State Building on the steps. It's just like foreclosure on the Court House steps. He related how he was worried in the early years about a default situation on whether the Naniloa can support a \$100,000 a year. Member Gon asked so far no default. Mr. Tsuji said except Mr. Fujiyama hasn't paid the February deadline. Member Pacheco said his bond paid for the second half of last year. Mr. Tsuji noted you got to understand that Mr. Fujiyama has substantial improvements in the building that he doesn't want to lose and Mr. Tsuji can't recall whether he has a mortgagee, but if he does I can assure you the bank will step in. I always view it as a mortgage loan on the leasehold that you got two who really care about the property – the Lessee doesn't want to lose it and that is why staff has to give Notice of Defaults to the bank as well because if the Lessee can't cure it has to make a business decision on whether to come in and start paying the rent otherwise the lease is terminated and the lien is gone.

**Adjourned (Edlao, Agor)**

There being no further business, Chairperson Aila adjourned the meeting at 11:09 a.m. Recording(s) of the meeting and all written testimonies 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:



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