

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

DATE: FRIDAY, MARCH 9, 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 9:12 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
David Goode
Jerry Edlao

Ron Agor
Dr. Sam Gon
Rob Pacheco

STAFF

Russell Tsuji/LAND
Paul Conry/DOFAW

Sam Lemmo/OCCL
Scott Fretz/DOFAW

OTHER

Colin Lau, Deputy Attorney General
Alethea Rebman, D-7
Jeremy Kwock, M-1
Suzanne Shriner, K-1
Reggie David, C-1

Ivan Lui-Kwan, D-7
Don Kitaoka, D-7
Bill Spencer, K-1
Michael Lee, K-1

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

Item A-1 January 27, 2012 Minutes

Unanimously approved as submitted (Pacheco, Gon)

Item A-2 February 10, 2012 Minutes

Board members Pacheco and Gon recused from Item A-2. The Board members had the February 10, 2012 minutes before them, but there wasn't enough for quorum. Item deferred.

Deferred

Item D-7 Quitclaim of State's Interests, if Any, in Kalia Road to the City and County of Honolulu, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-6-008:adjacent to 001.

Written testimony from Alethea Rebman was distributed to the Board members.

Russell Tsuji representing Land Division presented item D-7 and referred to the map where there was an Attorney General opinion written indicating that the State DLNR has no jurisdiction over roads except if the County needs a deed in order for it to sell as a remnant then that would be the sole exception. The State can issue a quit claim deed which is what is before the Board.

Ivan Lui-Kwan representing the Hilton Hawaiian Village said he had nothing to add.

Alethea Rebman, a resident representing other residents in the area testified that this transfer is not for road use and suggested an environmental assessment for public transparency. Member Pacheco inquired what constitutes a change in use. Ms. Rebman said Hilton Hawaiian Village is going to build 2 new towers and will take that corner for their bus turnaround. It will not be a public road which is a change in use.

Board member Goode asked her under 343 what triggers requiring an environmental assessment. Ms. Rebman said the State is transferring this land in the special district which requires an environmental assessment. Member Goode asked whether she could cite a specific section in 343, but Ms. Rebman couldn't because she just got this notice yesterday and didn't get to research it. She understands there is a 10 day appeal period and hopefully that won't have to be advised.

Member Goode said that the State is quit claiming everything it has to the City. The City will sell the parcel and has rules, regulations and ordinances on how to dispose of the property and asked how the city will do that. It was Ms. Rebman's understanding that they are going to give it to the Hilton.

Mr. Tsuji explained that staff is transferring it as a road and the exception is because of that Statute if the County were to sell what may be laid out in a map as a remnant then the State can quitclaim their interest to the County to proceed with the transaction. Member Pacheco noted that we've done this before.

Ivan Lui-Kwan representing Hilton testified first that the County will give the property to Hilton which is a significant consideration involved in the transaction. Second thing is as indicated in staff's submittal, this is based on Act 288 where the property is owned by the City and County of Honolulu and in this case when a request is made by the City and County or the State a transfer will be made. In fact, the purpose of Act 288 envisions that the County would sell it to

somebody else for use other than a road and that is the reason for the transfer. That is the underlying purpose of Act 288 which is the authority being used for this transfer.

Don Kitaoka, Deputy Corporation Counsel with the City and County of Honolulu said he agreed with what Mr. Lui-Kwan had stated in that Act 288 and what is known as Resolution 93-287 from the City both contemplated this kind of situation where there is a government road and the City wants to dispose of it and the State will quitclaim this interest to the Counties for that purpose. This falls within the intent of both of those laws – Act 288 and Resolution 93-287.

An inquiry was made by Member Goode whether the County is giving it away and per Mr. Kitaoka they are not giving it away. Member Goode asked whether the City has ordinances that say if you are going to sell or rent a piece of property then it has to be offered to all the adjoining owners or if there is a bid process. What is it? Mr. Kitaoka said that there is a procedure for disposal of City and County lands. They will follow all those ordinances in making this disposition.

Member Goode asked whether he knew if the underlying zoning for that parcel is different from the Hilton. Mr. Kitaoka said it was Kalia Road before, but the way it was developed they took this parcel out of Kalia Road. He didn't know the exact zoning, but it would be consistent with what the entire Kalia Road was from where it turns at Ala Moana. Mr. Lui-Kwan pointed out as indicated in staff's submittal it is resort mixed use as far as zoning which is the same as the Hilton.

Unanimously approved as submitted (Goode, Pacheco)

Item M-1 Approval in Principle for Acquisition of Privately Owned Lands for Educational Purposes at Honouliuli, Ewa, City and County of Honolulu, Island of Oahu; Tax Map Key: (1) 9-1-016:158.

Jeremy Kwock representing Hawaii Department of Education (DOE) briefed the Board on item M-1.

Unanimously approved as submitted (Goode, Gon)

Item K-1 Time Extension Proposal for the Initiation of Construction of the Hawaii Oceanic Technology, Inc. Open Ocean Fish Farm under Conservation District Use Permit (CDUP) HA-3495 located Offshore of Malae Point, North Kohala, Island of Hawaii, TMK: (3) Submerged Lands

About 427 written testimonies were submitted and distributed to the Board. The majority was a form letter where the names were changed.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed some background on item K-1. One of the conditions was initiation within 2 years (October 23, 2011) and completion within 5 years (October 23, 2014), but staff received a letter from Hawaii Oceanic Technology, Inc. (HOT) seeking a 2 year extension where initiation would be October

23, 2013 and completion by October 23, 2016. The request was received 3 months after the initiation deadline expired. But, OCCL has a provision for a 1 year grace period in lieu of automatic termination provided they come in within 1 year after the expiration deadline. The Board may grant them an extension as quoted in the rule on page 2, item (d). HOT is in the process of getting their Army Corp permit and other permits. Staff doesn't see any reason not to issue the extension as it is a routine process where people seek extensions of initiations of deadlines. He noted that staff received around 400 letters in opposition to the extension. The letters are somewhat similar, some are identical with some variations to the letters complaining that the project has changed or the project is going to have this impact or that impact and there were a number of objections. Staff recommends approval of the extension.

It was pointed out by Member Pacheco that in the form letters people said that HOT self imposed these delays. We have these all the time which are part of the CDUP process and asked if this falls into that same category? Mr. Lemmo acknowledged that he doesn't see this any different from a lot of the cases staff reviews. Especially, major projects like these that tend to go longer than initially anticipated. He doesn't see why you would self impose or constrain your own project. They (HOT) seem to be attempting to procure the approvals needed to move forward.

Member Pacheco asked with the CDUP, if there are substantial changes what would trigger bringing it back to the Board or the applicant during the process. Mr. Lemmo said first the applicant has not approached their office indicating there was a change and he doesn't know of any changes. He has heard there has been changes made that the Army Corp permit HOT filed has some nuances that are different from what we had approved, but Mr. Lemmo continually told the applicant that if you are making changes to your project come talk to us as early as possible so we can determine whether or not the changes warrant any further Departmental or Board discretionary review. A lot of times people make plan modifications that staff can accommodate if they are routine or minor. There are limitations of the design of the project as you get more engineering specs or more information necessary, things can be changed. They come in with 30% of the plan that's a conceptual engineering plan. Once they come in with 100% of the plan the situation might be slightly different. If there are materials changes or the project is completely different or put in a different location or different in nature then yes they can talk about bringing it back for possible further review.

Member Edlao asked whether the applicant is obligated to notify staff of any changes they make. Mr. Lemmo said it doesn't matter because we have to approve the construction plans and he explained what that involves, but he has told the applicant that if they think they are going to be different don't walk in the door with plans and expect us to sign it.

Member Gon inquired to address the objections that we've received, the time and process in which to object is when the actual plans are received and that is the chance for the Board to review those plans. At this point, it is merely an extension of deadlines for initiation. Mr. Lemmo said that's correct.

Member Goode made a query on why the extension request came in 3 months late. Mr. Lemmo said to ask the applicant. But, staff has been in contact with all the aquaculture entities making site visits to existing fish farms and getting assessments of the situation. Staff meets quarterly

with the Open Ocean Farm Working Group, Department of Agriculture (DOA) and the State veterinarian people.

Bill Spencer representing Hawaii Oceanic Technology, Inc. (HOT) testified that the request for extension was late because there are so many permit conditions that he missed that particular deadline. He spoke to staff at the end of November and they were kind enough to remind him that conditions exist that some of the staff he wanted to talk to were out of town and had to wait until January 3, 2012 to send in the formal request after speaking to staff.

Member Agor said he was excited about this project and there is opposition and asked Mr. Spencer to stay in line with what the Board approved. Mr. Spencer said absolutely. As Sam had said it has been several years since the original environmental impact statement (EIS), new information comes to light, initial engineering work and the Army Corp process was initiated within a month of them receiving their lease commitment. We were requested by Army Corp to reapply for a different scope and that re-application process started the process again and there was a staff change. We decided to articulate the engineering path we were taking up to our first ocean sphere. There are details there that need to be taken to actual build and test one of these things. We consider ourselves compliant with all the conditions required and continue to be in touch with staff. We will also continue to keep staff in touch with the community where they had several meetings since they last met (with the Board). A majority of the community support what they are doing.

Suzanne Shriner from the Big Island representing Food and Water Watch testified that they have 2500 members and that 1700 people in the Kohala area signed a petition against this project that there is considerable community resistance. They want to see this extension rejected and asked to defer this issue until a Land Board meeting can be held on the Big Island and more stakeholders can testify in front of you. They feel that the delays are self imposed because of the continued change to the project scope referring to the Army Corp permit asking HOT to re-submit their permit and their failure to meet deadlines. There are engineering changes as you grow a project out of this size, but what HOT is talking about doing is returning to a standard net pen type enclosure where the project was originally designed as an ocean sphere. That is not what they are talking about coming in, they are talking about a 16 month phase of a standard net pen which according to their EIS if they did they would be required to submit a new environmental review under the EIS for that. She compared this to being a homeowner submitting different plans to a planning board. Ms. Shriner reiterated the change that this project be put on hold until they have a better idea of what they are proceeding with. They think the CDUA process has been disregarded by the way the plans have changed over time.

Member Pacheco asked whether she was aware that what is before the Board is not addressing the plan's process and that will be coming forward from our process today. It's a standard thing that we process CDUPs and give extensions. Ms. Shriner said she understands that. Mr. Lemmo's office had conversations with her about the change in plans.

Michael Kumukauoha Lee testified that he is a Native Hawaiian cultural practitioner in limu medicine and coral medicine and related he is recognized by the First Circuit Court, Federal Court and cited other cases. He opposed this permit because the currents could get up to 20

miles an hour in that area where you could lose a sphere. Mr. Lee related as Hawaiian cultural practitioners their work is not monetarily based, but based on cycles of nature, how to increase abundance without collapsing the cycles with checks and balances in place. Going into fisheries is a good idea, a sound idea. It would bring jobs, bring revenue, but the way you are doing it is a bad science fair project. What is at risk is the health of our fisheries. There is 30 years of documentation of how these nets are a failure worldwide. The people who live there are opposed to this.

Mr. Lee gave Chair Aila a copy of a document and Mr. Lee related as a practitioner in this case he submitted on July 6, 2010 to the U.S. Army Corp. of Engineers, Regulatory Branch and this was certified and came back to him. As a cultural practitioner in the 106 process he put in all his objections and he never received any comments back which opens the door for a law suit because the Army Corp. of Engineers did not follow Federal law. If this is ever approved either KAHEA or Food and Water Watch as someone who has foundation of eminent risk of his practice there recognized in the Federal Court case already for this area, there will be a law suit. Mr. Lee highly pushed that this be deferred because you're going against the people who live there. You already have a Native cultural practitioner recognized in another case at Federal Court and the process set up in the 106 has not been followed. Mr. Spencer and all the people who invested in this are decent people and they need a return on their investment. Mr. Lee has come up with the strategies where we can have the protections and they could have those filtered systems that wouldn't collapse. You could have commerce and trade, but these things he put in are not being paid attention to and that is sad because you are missing an opportunity. We have 2300 years of experience of what is in the guts of these pelagic fishes and what they really eat. Not just the investors who know nothing about the sea. Not listening to us will have a major affect on the fishery which is a Hawaii cultural resource and public trust resource. If you don't listen to us the consequences are going to be dire and we will be back.

Chair Aila asked from a cultural practitioner perspective, how a cage in the ocean prevents you from doing traditional customary practices. Mr. Lee explained we don't put one species when we do our loko i'a (fish pond). We have a tier of multi-faceted food set-ups that are there. Multi types of fish that clean and take out the disease like kaku (barracuda) that take out the diseased fish. You have specially breed fish for this genetically engineered to grow fast resistant to disease. When you have a lot of fishes in the loko i'a we have several protection resources that they put in place. Little groups of seaweed that are medicine for the fish, they put hau trees around it that are medicine (the flower and the leaf), the cleaner wrasp, the shrimp and all kinds of tiers to protect and they have different types of fish in there that also protect. Mr. Lee related the Kona Blue case where a cage got lose and damaged the reef that they use for medicine. They don't go out 3 miles to get this. They know what Kanaloa moon will bring it to us at the beach and when to harvest it. There is no insurance here to protect us of any spheres crashing into something and destroying what we utilize. It is a whole tier effect of a wider issue.

Member Pacheco made a motion to approve as submitted. Member Edlao seconded it.

Member Gon said there are opportunities as this develops to hear more about the details of these things and at this point he was willing to move forward with the extension.

All voted in favor.

Unanimously approved as submitted (Pacheco, Edlao)

Item C-1 Request for Approval of Incidental Take License and Habitat Conservation Plan for Kaua'i Lagoons Resort, on the Island of Kaua'i, Hawai'i

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) introduced Scott Fretz, the Wildlife Program Manager who is processing the HCP (Habitat Conservation Plan). Mr. Conry gave some background on item C-1 before turning it over to Mr. Fretz who reported that the HCP is to cover nene, water birds and sea birds on the resort. The activities covered are resort operations and construction and it's a low level of take for all of those. The mitigation is to do predator control on site.

Member Goode made an inquiry on what initiated the HCP process and Mr. Fretz said probably there are so many birds there. A bird was injured by a vehicle during construction. The birds have been increasing where the potential for take will increase.

Member Gon asked whether there was some mitigative behavior as a result. Mr. Fretz acknowledged that and said that the HCP requires all of the employees to follow protocols so they are not injuring birds.

Member Goode wondered because of one injury there was a need for the HCP. Mr. Fretz said the HCP was requested by the applicant and they could speak to that. It is a voluntary thing where they come to staff to apply. There were more discussions about this where Mr. Fretz said what you are getting at is will this cause more birds to come there and affect their neighbors. Member Goode said or more HCPs to come. Mr. Fretz said that this is part of the operation to move birds off of the property because they are a threat to aviation safety that this resort lays between the 2 runways. While this HCP was getting done staff got a directive from the Governor to move the birds off the property for public safety which they are doing. There will be fewer and fewer birds in the long run.

Member Gon asked don't the birds return. Mr. Fretz said staff just started and it's rare for a nene to fly between islands, but it has happened. Staff tried moving the birds to Koke'e, but the birds do return and it's too hard to make them stay at Koke'e. The only way to solve the problem is to take them off island.

There was an inquiry about habitat modification by Member Gon, but Mr. Fretz said that will be down the road and connected to the removal of the nene because they want to restore nesting sites and discourage nene from nesting on the site. The habitat is really productive for the water birds and nene right now and doing the predator control with the birds they have there they have a good production of birds.

Member Gon asked whether the nene was the only aviation concern or other birds as well. Mr. Fretz acknowledged that is the main concern depending on who you ask. The aviation people will tell you any bird is a threat, but during discussions with them the consensus was to focus on

the nene. Member Gon said behaviorally nene would be the highest risk where Mr. Fretz said they are big, slow flying and they fly in flocks. There was a comment about cattle egrets which are a pest and are removed routinely.

Member Gon said it is good that Kauai has a key predator missing, but it is unfortunate the nene population is increasing in the face of safe aviation. He is not sure how moving the nene population to another island will work, but its happening. Mr. Fretz said that they've moved 50 of the 90 pairs and are half way through. Staff needs to do it 5 years in a row to complete it.

Member Agor asked about the budget. Mr. Fretz said it takes about a million and half the first year and about \$800,000 each year after. There is a plan if you want to see it from State DOT. Mr. Conry said that they've been a great cooperative partner and have been happy with the operations done by staff. Their entire funding for the 5 year plan is \$5 million, but DLNR with the cost of staff we're putting in \$1.2 or \$1.8. Mr. Fretz said the amount we're putting in is about 30%. It's been taking so long to recruit people that they've been using our own staff to make it up. Mr. Conry said this is a good balance that DOT needs this coverage to protect their properties and get the proper permitting as we scale down the airport risk. There are other endangered species that are covered by the plan they will have the coverage to go forward with that as well.

Reggie David representing the applicant said they were ok with the plan.

Unanimously approved as submitted (Agor, Gon)

Item D-8 Request to Write-Off Uncollectible Accounts on Maui and Oahu.

Mr. Tsuji indicated there was an amendment to Section 4-82, Hawaii Revised Statutes that should be corrected as 40-82.

Unanimously approved as amended (Edlao, Pacheco)

Item D-1 Amend Prior Board Action of October 28, 2011, Item D-7, to provide that Monthly Rental is to be Determined by Independent Appraisal Subject to Review and Approval by the Chairperson. Authorize the Cancellation of Revocable Permit No. S-6842 for Sugar Cultivation and Pasture Purposes to Gay and Robinson, Inc., Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-8-006:002, (4) 1-8-007:003, (4) 1-8-007:010 and (4) 1-8-008:020 and Authorize Issuance of Revocable Permit for Diversified Agriculture and Pasture Purposes to Gay & Robinson, Inc., Hanapepe, Waimea, Kauai, Tax Map Key:(4) 1-8-006:002, (4) 1-8-007: 010 and (4) 1-8-008:020.

Item D-2 Consent to Assign General Lease No. S-4664, Jack D. Umphrey and John D. Umphrey, Assignor, to J. D. Umphrey & B. A. Umphrey, Co-Trustees of The J. D. Umphrey & B. A. Umphrey Trust Dated April 7, 2004, Assignee, Waiakea, South Hilo, Hawaii Tax Map Key: 3rd/2-2-37:97.

Item D-3 **Reconsideration of Rent for Milolii-Hoopuloa Residential Leases, Phase II, Consisting of Twenty two (22) General Leases for Residential Purposes at Milolii and Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 014-035.**

Item D-4 **Issuance of Right-of-Entry Permit to Angela Lund, dba The Island Nanny, for a Sand Sculpting Event at Wailea Beach, Honuaula, Wailea, Maui, Tax Map Key: (2) 2-1-008: seaward of 109.**

Item D-5 **After-the-Fact Consent to Assign Grant of Perpetual, Non-Exclusive Water Pipeline Easement bearing Land Office Deed No. 27996, The Estate of Walter Victor Weber, Jr. on Behalf of Walter Victor Weber Jr., Assignor, to William James Munger and Michelle Ann Munger, Assignee and for Amendment of Grant of Non-Exclusive Easement bearing Land Office Deed No. S-27996 to Provide for Easement to Run With the Land, Makawao, Maui, Hawaii, Tax Map Key: (2) 2-4-013:Portion of 078.**

Mr. Tsuji had no changes for the above agenda items.

Unanimously approved as submitted (Pacheco Gon)

Item D-6 **Consent to Lease of Lands under Governor's Executive Order No. 4087 to The County of Maui at Waiohuli-Keokea Beach Homesteads, Maui, Hawaii, Tax Map Key: (2) 3-9-007:003 and Portion of 005.**

Member Goode recused from item D-6.

Unanimously approved as submitted (Edlao, Pacheco)

Item L-1 **Appointment of Jeffrey Rebugio as West Maui Soil and Water Conservation District Director**

Item L-2 **Appointment of Leonard Vierra as East Kauai Soil and Water Conservation District Director**

Chair Aila related what items L-1 and L-2 were.

Unanimously approved as submitted (Edlao, Gon)

Item K-2 **Temporary Deferral of Reporting Requirement Conservation District Use Permit MA-3542 Advanced Technology Solar Telescope by the University of Hawaii, Institute for Astronomy at Haleakala High Altitude Observatories Site (HO) at Pu'u Kolekole, ahupua'a of Papa'anui, moku of Honua'ula, Makawao District, Maui, TMK: (2) 2-2-007:008 and (2) 2-2-007:007 (part; staging only)**

Mr. Lemmo briefed the Board on item K-2 that the University of Hawaii, Institute for Astronomy was required to do an annual report to the Board, but staff didn't think it was a good idea for them to come in to do an annual report while the CDUA is still pending. Staff seeks your permission to defer this annual report until the decision is made.

Member Goode asked deferred until when. Mr. Lemmo said theoretically if this is not approved it doesn't matter. If it is approved he thinks the report would be in quickly after the legal process.

Unanimously approved as submitted (Edlao, Agor)

Adjourned (Edlao, Agor)


There being no further business, Chairperson Aila adjourned the meeting at 10:04 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:



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