

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

DATE: FRIDAY, AUGUST 10, 2007
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Interim Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:11 a.m. The following were in attendance:

MEMBERS

Ms. Laura Thielen
Mr. Tim Johns
Mr. Samuel Gon III

Mr. Jerry Edlao
Mr. Ron Agor

STAFF

Mr. Russell Tsuji, LD
Mr. Morris Atta, LD
Ms. Kimberly Mills, OCCL
Mr. Paul Conry, DOFAW
Mr. Dan Polhemus, DAR

Ms. Charlene Unoki, LD
Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, SP
Ms. Christine Ogura, DOFAW
Mr. Allan Smith, CO

OTHERS

Mr. William Wynhoff, AG's Office
Mr. Mark Murakami, K-1
Mr. Paul Balberde, D-5
Mr. Alan Rietow, C-1

Ms. Linda Chow, AG's Office
Ms. Camille Kalama, K-1
Mr. Michael Sheehan, D-1

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

Chairperson Thielen introduced herself.

Item A-1 Minutes of July 13, 2007

Item A-2 Minutes of July 27, 2007

Unanimously approved as amended. (Johns, Gon)

Item K-1 Conservation District Use Application (CDUA) Regarding Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge by James Campbell Company LLC. Located at Kahuku, Koolauloa, Oahu, portion of TMK:(1) 5-6-002:010

Mr. Sam Lemmo, Administrator for Office of Conservation and Coastal Lands (OCCL), reported submittal background. He informed the Board the State permits sub-division of public lands if there is a public purpose behind it which staff has determined there is. Staff recommends approving this sub-division for public purposes subject to standard terms and conditions.

Mr. Mark Murakami, of Carl Smith, agent representing the applicant reported he is comfortable with the submittal. Member Edlao asked if the applicant will be grading or building anything? Mr. Murakami replied no construction.

Ms. Camille Kalama, staff attorney with the Native Hawaiian Legal Corporation, requested a contested case hearing on behalf of Ilioulaokalani Coalition.

Member Johns asked Attorney General whether to act or not? Ms. Linda Chow of the Office of Attorney General replied best to defer this and ask if there is any testimony. Member Johns added written request must be provided within 10 days.

Member Johns made a motion to defer pending resolution of the contested case.

Deferred. (Johns, Gon)

Item E-2 Request for Approval of the Placement of Hazard and Management Signs on Improved Public lands: Makena State Park, Maui and Kuilei Cliffs Beach Park and Diamond Head Beach Park, Honolulu, and Approval of Revised Falling Rocks Warning Sign Pursuant to Act 82, Session Laws of Hawaii, 2003

Mr. Dan Quinn, Administrator for State Parks, reported requesting approval for three items. 1. Location of warning signs at Makena State Park, Maui. 2. Two City & County parks in Honolulu: Kuilei Cliffs and Diamond Head Beach Park. He amended EXHIBIT 1, Station codes should be "MA" and not "HA." Mr. Quinn reported on maps and signage regarding rock hazards. 3. Request to modify design of one of the signs

approved by the Board from all upper case to upper and lower case the words “If in doubt, stay away.” at the bottom of the sign.

Member Johns asked is the AG alright with this? Mr. Quinn replied staff had AG representation on the risk assessment working group. Member Johns reported he received a letter regarding the closure of Makena. He asked what is the status of this? Mr. Quinn replied the letter refers to Black Sand Beach closure which will be alleviated with the signage.

Chairperson Thielen asked what is the time frame for posting the signs? Mr. Quinn replied staff should have it up in several weeks. Member Edlao asked he hears complaints from fishermen cars getting towed away. There are no “no parking” signs there. Why are they getting towed? Mr. Quinn answered if fishermen were inside the park beyond the closure hours they might have been towed, but he didn’t think his enforcement people would do that. It could be the county. He will check into it. Chairperson Thielen asked are there hours posted? Mr. Quinn replied there are signs posted.

Unanimously approved as amended. (Johns, Edlao)

Item D-2 Sale of Remnant to James G. Page and Judith C. Page, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-002: abutting parcel 25.

Mr. Russell Tsuji, administrator for Land Division, reported on submittal background. No changes and Ms. Judith Page were in attendance.

Unanimously approved as submitted. (Agor, Johns)

Item D-5 Forfeiture of General Lease No. S-4459, Paul Jerome Balberde and Cerila Balberde, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-56:18.

Mr. Russell Tsuji of Land Division gave submittal background.

Mr. Paul Balberde, lessee, apologized to the Board for delay in payment and he explained delegating responsibility to someone else. He reported that payment has been made.

Member Johns asked Mr. Tsuji if it was known that Mr. Balberde’s payment had been made this submittal would be withdrawn? Mr. Tsuji replied yes it would be withdrawn.

Member Johns asked what about staff’s recommendation of re-imposing the performance bond and updating the conservation plan? Mr. Tsuji replied the re-imposition of the bond is based on the history of delinquencies. Yes, staff is recommending re-imposing the

performance bond, but added if staff had known payment was received this submittal would not be before the Board. Member Johns asked Mr. Balberde “are you able to provide a performance bond of 2 times the amount of \$3,100 (\$6,200) annually?” Mr. Balberde answered if that is what the Board recommends he will pay it. He explained he didn’t have a phone. The money is not a problem.

Member Gon asked Mr. Balberde “do you have any plans to work on the updated conservation plan?” Mr. Balberde replied yes. He has some fruit trees and plan to go into organic farming, but the rock is difficult to grow on.

Mr. Tsuji confirmed payment was received.

Chairperson Thielen stated to the Board we have an amended recommendation. Item number 4. Re-impose the performance bond requirement in an amount equal to two times the annual rent in the event the Lessee cures the default.

Approved as amended. (Johns, Agor)

Staff confirmed that rental payment was received by the Department a few days ago. Therefore, the Land Board only adopted Staff’s recommendation no. 4 by requiring the Lessee to post a performance bond in the amount of twice the annual rent.

Item D-1 Set Aside State Lands to County of Kauai for Public Park and other Recreational Purposes, Portion of the Hanalei River between Tax Map Key: (4) 5-5-01:004 and Tax Map Key: (4) 5-4-04:01. Submittal to be distributed.

Mr. Russell Tsuji, representing Land Division, reported on submittal. He reported Mr. Michael Sheehan, a private land owner, was here to testify. No one from the County was here. Member Johns added the Board received testimony from the Hanalei-Ha’ena Community Association and Hanalei Watershed Hui in support of submittal. Mr. Sheehan submitted testimony in opposition. Member Agor expressed concern regarding the applicant, County of Kauai, and their comments on page 2 which he read under Comments from County of Kauai. If that is the only reason then he would be inclined to set aside lands from the boundary to the high water mark. But, he thinks there is more to this. We should discuss more to get County comment.

Mr. Morris Atta of Land Division reported this submittal was initiated by a meeting of the Mayor of Kauai, DLNR, and Mr. Daniel Inouye’s office. The Governor’s liaison on Kauai initiated. Kauai is experiencing problems with commercial boat operators loading and un-loading passengers at the shoreline area of Black Pot Beach and sand bar. Plus other unauthorized activity like commercial surf schools and use of the area for commercial activities. The county indicated experiencing problems with management of the area and control of all these activities. They approached DLNR for assistance by

providing clarity in regards to jurisdiction issues on who can do what in which areas. Historically, the defense in any county action is "we're not on your parcel; you can't do anything to us." Member Johns asked if this submittal is approved it will be used to address those issues? Mr. Atta replied yes and to manage the entire area as an extension of the park use which is currently being used in the Black Pot area. Member Johns asked the parcel that runs all the way to the shoreline? Mr. Atta answered yes to the ocean point. The actual designation of the precise area was set by staff to help the county to enforce and manage the area efficiently. Member Johns asked does DLNR share the same concerns regarding those activities? Mr. Atta reported the department is experiencing the same issues with commercial activity statewide.

Member Johns asked when does the Mayor leave office? Member Agor replied 2010. Member Johns stated the concern right now is it is under State jurisdiction and if the State feels there are control issues the Board has the ability to exercise what kind of controls over that property. If the Board sets aside and the next county administration decides to do something different, then the State is out of it. What the county has in mind right now is ok. But once the Board gives it away, it's a set aside with EO the State can't get it back. The reality is once the Board gives it away and staff will have to be happy with what the county does whether it affects State controlled issues or resources. Chairperson Thielen suggested it could be limited for a public park or other recreational purposes therefore there could be some conditions imposed on it. Staff sent a letter to the county defining what their responsibilities would be and limitations on the use of the land.

Mr. Atta reported state wide there has not been a uniform, consistent policy implemented to address these unauthorized commercial activities like surf schools or boating operations. Staff is surveying the counties to determine what kinds of procedures or policies they have in regards to commercial activities while developing a uniform policy ourselves. Staff is currently in the process of making their own policies consistent and enforceable which is an extension of this. Kauai County is addressing the boating issue and they've indicated how they are approaching it is not conflicting with the State's proposal.

Member Johns asked why is it urgent and if the Board defers are we missing the urgency? Mr. Atta replied it is urgent because the county told staff tempers are flaring and there are on-going protests. The reopening of boat operations in recent weeks has renewed these protests. Member Johns asked isn't the boating season going to end in September? Mr. Atta replied not necessarily. The boaters will run less per day. During the summer the boaters run more.

Member Johns asked in regards to the initiating offices. He assumed staff is aware of the Federal Court ruling that stopped the State's attempt to regulate boating? He would hate to have this get blown out of Federal Court again. Mr. Atta said that's probably what triggered this action. The general consensus from that initial meeting was while that ruling is in place there is nothing the State can do in the water. It would occur only on land or the general are including the river mouth which was a matter of convenience by the staff's stand point. Mr. Tsuji added he understands the passengers walk across into

the river area. He suggested setting aside the river area might help the county. Member Johns asked if the county thinks it can regulate this by preventing people from walking into the river on State's submerged lands, which the State set aside to the county and the solution is consistent with the Federal court ruling, otherwise the Board will be doing this for nothing? Mr. Tsuji stated he understands on the Federal side there is a proposed amendment to allow for regulation. Member Johns asked then if that is the case we don't have to give the county control over the water? Mr. Atta reported there is a problem with that. His understanding is the exemption may not be available because an exemption given on Maui was attached to the National Humpback Whale Sanctuary. For Hanalei, unless it is tied to a special unique feature of the bay or estuary it would be very difficult to get a Federal exemption to this regulation. It is a proposal, but it is not necessarily the solution to this issue. Member Agor stated he would like to see a re-submittal with the county depicting what problems they would like to address with this set aside to make logical decisions.

Mr. Michael Sheehan of Hanalei River Enterprises, Inc. reported he has a boat yard on the Hanalei River and his ex- wife's family laid claim to the submerged lands of Hanalei River. He gave the history. There was a law suit he and his former wife initiated against the County of Kauai, 930911. Federal Judge David A. Ezra ordered his wife to hand over all of the Hanalei submerged lands and ancient Hawaiian fresh water fishery contained herein, which he provided the information to staff. Staff was not aware of that federal law. The Federal court would look dimly at this submittal because it would interfere with commercial commerce. This is a poor vehicle to use because it would cause Mr. Sheehan to initiate a takings claim against the State of Hawaii which would bring up the past. In 2000 this Board made a rule change from 15 commercial boat permits to zero in the Hanalei area and it was found to be unconstitutional and illegal. He suggested the Board revisit the previously legally allowed rule, 1325636, and administer it as a part of the State boating permit. Mr. Sheehan suggested table this and deal with regulating tour boats in the Hanalei area.

Member Agor added he would like the county to depict what the problems are.

Deferred. (Johns, Agor)

Moved to defer to August 24, 2007 Land Board Meeting.

Item C-1 Kanaele Bog Protective Fence Project: Conservation District Use Permit Approval

Member Gon recused himself.

Mr. Conry, Administrator for Division of Forestry & Wildlife (DOFAW), reported there was a correction to the Board submittal, page 3, item 3. The property does fall within a coastal zone management area and does not fall into the Special Management Area. Also correction to "Chapter 205" to read "Chapter 205A." He gave more background and requested the Board to approve the CDUP.

Member Edlao asked is there a time frame to initiate and complete? Ms. Christine Ogura of DOFAW replied it is 5 years for completion. Chairperson Thielen asked does the applicant think they can complete in 5 years otherwise it goes back to the board?

Mr. Alan Rietow, field representative for the Nature Conservancy Program on Kauai, reported they have worked on this project for years. It's a 2 part project. The Nature Conservancy has raised the money, located contractors and everything is in place upon approval of this submittal. Five years is an appropriate time period. This area is the last of its kind and is getting destroyed by pigs.

Member Johns asked most CDUA applications come from OCCL and this one is through DOFAW which is fine, but he doesn't see anywhere that OCCL commented on the application? Ms. Ogura replied the application was sent to OCCL and there were no comments.

Chairperson Thielen commented regarding timing. At the land use commission a recommendation was submitted developments be completed by a certain time otherwise they keep coming back. But in this case it's difficult working with another partner. She would like to see a 5 year timeline on the fence because of the pigs. And to give the applicant some flexibility and not to incur additional expense. Ms. Ogura replied the Board would have a heads up if there is a delay.

Member Edlao asked will the applicant be using nails or screws because on the Maui boardwalk had problems with nails? Mr. Rietow replied the applicant has a plan to use recycled material and appreciates Member Edlao's suggestion.

Unanimously approved as amended. (Agor, Johns)

Amend on page 3, item 3: ~~[The project area does not fall within a Coastal Zone Management Area or Special Management Area.]~~ The project is in a coastal zone management area. However, it is not in a Special Management area. The project complies with and is consistent with the provisions and guidelines contained in Chapter 205A, HAR regarding Coastal Zone Management.

Item D-6 Acquisition of Private Lands for Set Aside to Department of Education for addition to Haaheo Elementary School, South Hilo, County of Hawaii, Tax Map Key: (3) 2-6-32:01 and 27. *Submittal to be distributed.*

Withdrawn. (Johns, Agor)

- Item D-3** Amend Prior Board Action of February 10, 2006, Item D-3, Set Aside to Department of Transportation, Highway Division for Road Widening Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-03: Portion 17.
- Item D-4** Issuance of Direct Land License to Yamada and Sons, Inc., for Removal of Rock Aggregate Purposes, Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-13: 142 & 160.
- Item D-7** Quitclaim of State's Interests, if any, in Remnants 3-B and 4, abutting West Kuiaha Road, to the County of Maui for Road Purposes, Kuiaha-Pauwela Homesteads, Makawao, Maui, Tax Map Key: (2) 2-7-008:113.
- Item D-8** Consent to Assign Grant of Non-Exclusive Easement S-5635, Glenn Masuo Masunaga and Harriet Mieko Masunaga, Assignors, to Ray Kazuto Uchimura and Lyndia Kazue Uchimura, Assignees, Makiki, Honolulu, Oahu, Tax Map Key: (1) 2-4-032:01 (Portion)

Unanimously approved as submitted. (Johns, Agor)

- Item E-1** Permission to Enter into a Revocable permit with S.M.C.A., Inc. for Food Sales and Rental of Swimming Equipment at Hapuna Beach State Recreation Area (Hapuna), Island of Hawaii
- Item E-3** Amend Prior Board Action of July 27, 2007, Under Agenda Item E-1, Request from the Good News Jail and Prison Ministry to use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii, for a Fundraiser Luau

Unanimously approved as submitted. (Johns, Edlao)

- Item F-1** Request for Final Approval of New Hawaii Administrative Rules, Chapter 13-76, Non-Indigenous Aquatic Species

Mr. Dan Polhemus representing Division of Aquatic Resources reported submittal background.

Unanimously approved as submitted. (Johns, Gon)

- Item L-1** Certification of Election of Mauna Kea Soil and Water Conservation District Directors

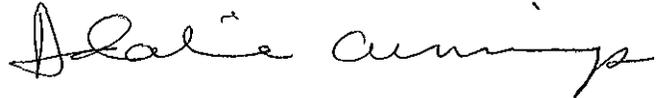
Unanimously approved as submitted. (Johns, Agor)

Item M-1 Consent to Sublease of Lease No. DOT-A-94-0007 Federal Express Corporation to Evergreen Aviation Ground Logistics Enterprises, Inc. Honolulu International Airport

Unanimously approved as submitted. (Johns, Edlao)

There being no further business, Interim Chairperson Laura Thielen adjourned the meeting at 10:14 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



LAURA H. THIELEN
Interim Chairperson
Department of Land and Natural Resources