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

DATE:	FRIDAY, JUNE 23, 2006
TIME:	9:00 A.M.
PLACE:	KALANIMOKU BUILDING LAND BOARD CONFERENCE ROOM 132 1151 PUNCHBOWL STREET HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ron Agor
Mr. Jerry Edlao
Mr. Tim Johns
Ms. Taryn Schuman

STAFF

Mr. Dan Quinn, Parks
Ms. Yara Lamadrid-Rose, Parks
Mr. Paul Conry, DOFAW
Mr. Russell Tsuji, Land
Mr. David Gaud, DOCARE
Mr. Randy Kennedy, DOFAW

OTHERS

Mr. Randy Ishikawa, Deputy Attorney General
Mr. Ron Baird, D-1
Mr. Bill Yuen, D-10
Mr. Robert Childs, D-9
Mr. Mark Anderson, E-2
Ms. Sandy Pfund, D-3
Mr. Ron Baird, D-10
Mr. Ron Gibson, E-1, E-2
Mr. Rex Johnson, E-2

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

Item A-1: Minutes of May 26, 2006

Unanimously approved as submitted (Johns/Edlao).

Item A-2: Minutes of June 9, 2006

Member Schuman recused herself.

Unanimously approved as submitted by the remaining Board members (Johns/Agor).

Item E-3: Subject: Kokee State Park, Waimea, Kauai – Concession Lease SP-0039, The Lodge at Kokee, LLC – Proposal to increase cabin rental rate.

Dan Quinn, Administrator of the Division of State Parks indicated the operators of the Lodge at Kokee would like to increase the rental rate of their cabins. He pointed out the present cabin rates are $45.00 per night plus $5.00 per person after the first three people plua Transit Accommodation Tax and GET. The lessee is requesting a new visitor rate of $90.00 and a Kamaaina Rate of $65.00 also adding a $5.00 person after the first three people per cabin plus Transit Accommodation Tax and GET. Mr. Quinn recommended as of July 1, 2006 the rate be increased accordance with staff's request.

Written testimony was received from the Friends of the Forest, Kokee Leaseholders Association and Wayne Jacintho.

Unanimously approved as submitted (Agor/Johns).

Item D-1: Amend General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Covering Portions of Government Lands at Hamanamana, Kalaoa 1st – 4th, and Ooma 1st & 2nd, North Kona, Hawaii, TMK: (3) 7-3-09: and 7-3-43:

Russell Tsuji, Administrator of Land Division gave some background information by disclosing that the Natural Energy Laboratory of Hawaii Authority (NELHA) is an agency attached to Department of Business, Economic Development and Tourism (DBEDT) and is presently under a master lease with the department. Terms of the lease states that NELHA must come back to the Board for consent should they want to sublease a portion of the master lease. Over the years, due to the amount of subleases the process has become a burden on the department and NELHA staff. Mr. Tsuji pointed out pursuant to Act 261, Session Laws of Hawaii 2000 as amended relating to Chapter 171-25, Hawaii Revised Statue states the Board of Land and Natural Resources is now authorized to waive requirements to obtain consents to subleases under public land leases for good cause. He believes there is good cause because NELHA has been a good tenant and a good steward of the lands in issuing subleases to their tenants who are trying to diversify Hawaii's economy.

The Board questioned if the department is entitled to sandwich profits from the sublease. Mr. Tsuji acknowledged that he was not sure if the lease terms allow for sandwich profits but the issue before the Board is that of consenting to NELHA's subleases. Mr. Tsuji went on to say that NELHA charges rent substantially below fair market value but they've been moving towards setting land and water rates more towards the fair market value.

Ron Baird noted his agreement with an addition to staff's recommendation section. Addressing the Board's question about the rent NELHA charges, Mr. Baird noted the lease usually call for rental reopening of the lease on the fifth, tenth or fifteenth years. Since December they've conducted a study to look at the fair market rate based on an internal rate of return and these are the values they are using to determine the rental rate. Mr. Baird also communicated that they're trying to develop a two tier lease structure – one for extractive uses (water bottling companies) and the other for aquaculture companies.

The Board

1. Amended the second C) recommendation to read

"[~~C~~] D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State."

2. Added the following

"E. The Land Board expresses its support of the NELHA Board's efforts to establish land use rents and water charges at fair market rate."

Unanimously approved as amended (Johns/Edlao).

Item D-3: Amend Prior Board Action of July 22, 2005, Item D-5, as amended-Cancellation of a Resolution Designating an Industrial Park; Cancellation of Governor's Executive Order No. 3892 to the Department of Land and Natural Resources for Industrial Park and Business Purposes; Set Aside to the Department of Transportation, Harbors Division for Maritime Purposes; and Issuance of a Management Right-of-Entry; Sand Island, Honolulu, Oahu, TMK: (1) 1-5-41:22 and 334.

Sandy Pfund was present.

Written testimony was received from the Department of Transportation.

Unanimously approved as submitted (Schuman/Johns).

Item D-10: Consent to the Merger between Sunrise Capital, Inc. and Kona Bay Marine Resources, Inc., as it relates to: (1) General Lease Nos. S-4946 and S-5367, and Revocable Permit Nos. S-7256 and S-7252, issued by the Board of Land and Natural Resources to Sunrise Capital, Inc.; and (2) Sublease K-20 issued by the Natural Energy Laboratory of Hawaii Authority to Kona Bay Marine Resources, Inc.

Mr. Tsuji stated that Sunrise Capital is a lessee of the department while Kona Bay Marine Resources is a sublessee of NELHA. Based on the department's and NELHA's lease there

is a provision which states if there is a merger of more than twenty (20) percent or fifty (50) percent in NELHA's case in the interest of the company it would trigger the assignment paragraph. This assignment paragraph would require staff to analyze if the department is entitled to a premium based on the assignment and to acquire the Board's consent on the merger. Mr. Tsuji recommended the Board consent to the merger between Kona Bay Marine Resources, Inc. and Sunrise Capital, Inc. with the later being the surviving entity subject to the conditions listed in staff's submittal.

Bill Yuen, attorney for Kona Bay Marine acknowledged that NELHA has already consented to the merger but they are still discussing the premium issue.

Ron Baird noted his concurrence with staff's recommendations.

Unanimously approved as submitted (Johns/Schuman).

Item D-9: Amend Prior Board Action of February 10, 2006, Item D-9; Issuance of Direct Lease for Private Noncommercial Pier Purposes, Honolulu, Oahu, TMK: (1) 3-6-01:30 seaward.

Robert Childs informed the Board it was unclear to him the relationship between the two (2) easements and the pier lease. Mr. Tsuji clarified that the easement for the wall was due to an encroachment onto state lands while the pier lease was needed if the pier would be kept in place. He went on to explain that the action before the Board is to include Mr. Childs in the Kaneohe Bay Piers Amnesty Program.

Unanimously approved as submitted (Schuman/Johns).

Item B-1: Request Board Approval to Enter into a Joint Enforcement Agreement between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the National Marine Fisheries Service, Office of Law Enforcement.

David Gaud, Assistant Chief of the Division of Conservation and Resources Enforcement (DOCARE) summarized the submittal by stating that since 1992 they've worked with the National Marine Fisheries Service and this agreement would allow DOCARE to obtain additional federal funding.

Unanimously approved as submitted (Johns/Schuman).

Item E-1: Briefing to the Board on the Diamond Head Crater Celebration at Diamond Head State Monument.

Mr. Quinn briefed the Board on the last Diamond Head Crater Celebration. He let it be known the days leading up the crater celebration brought lots of rain which in turn caused a landslide outside of the crater as well as a lake on the inside of the crater. Upon completion of the event it was revealed that there was one complaint from the community regarding a

bus making a right turn at Diamond Head Theater resulting in traffic being backed up. Mr. Quinn noted the only other concern was the muddy condition inside of the crater which resulted in reorganization of the portable toilets as well as some additional work. As a condition of the permit the Board asked the event organizer to include Hawaiian music performers in the event and Mr. Quinn went over that list of performers. He also pointed out the event organizer was required to conduct a briefing to the attendees of the crater celebration which talked about the cultural significance of the crater. The Board listened to a portion of that recording. Mr. Quinn pointed out the transportation worked out really well as people were cleared out of the crater within forty (40) minutes of the completion of the event.

Ron Gibson, the individual in charge of the crater celebration conveyed to the Board he approached the surrounding community boards to see if they would like to discuss the impact of the crater event and he was told since there were no complaints it was not necessary for him to appear before the neighborhood boards. He pointed out the only negative comment was the bus making a right run at Diamond Head Theater.

Mr. Quinn informed the Board that the Diamond Head Citizens' Advisory Committee has gone on record as being not in favor of this event continuing in the crater.

No Action.

Item E-2: Request to Use Diamond Head State Monument Once a Year for Two Years for the Diamond Head Crater Celebration.

Mr. Quinn noted there were several changes made in the permit requirements that vary from the previous permit conditions. The first change dealt with a non-refundable deposit of $2,100.00 to reserve the Monument as well as a payment of 5% of gross ticket sales for rental of the Monument. Mr. Quinn indicated the non-refundable fee was based on the daily amount collected by the department should the park be open to the public. As far the 5% of gross ticket sales Mr. Quinn conveyed that the figure was based on similar events that were held at the Waikiki Shell and Aloha Stadium. Other conditions added required the event organizer to: 1) pay for security by Division of Conservation and Resources Enforcement Officers during set-up and take-down for the event and whenever event personnel are on-site; 2) provide and pay for security for the Event in addition to the Division of Conservation and Resources Enforcement personnel; 3) pay State Parks 5% of gross receipts of food, beverage, event mementos and/or other related concert items during the event; and 4) allow the sale of alcoholic beverages in compliance with all City and County of Honolulu Liquor Commission rules and regulations. In closing Mr. Quinn recommended the Board authorize the issuance of a permit for the closure and use of Diamond Head State Monument one day in 2007 and 2008 for the DHCC and that the Board authorize the Department to enter into an Agreement with GM Entertainment subject to the conditions listed in staff's submittal.

Mr. Quinn acknowledged the event organizer committed to making a donation to a yet to be formed foundation but due to the terrible weather conditions which contributed to a lack in

attendance as well as additional costs that arose because of the weather Mr. Gibson is instead committing to making a personal contribution of $10,000 to this foundation.

Ron Gibson, organizer for the DHCC announced that the rates proposed by State Parks are fair but he'd like to have certain cost items (toilet rentals, electrical set up, water, etc.) off set by the rental rate charged. He believes the "magic" of the event is created by the venue itself. Mr. Gibson also asked that a cap be placed regarding how much they pay the department.

Mark Anderson, representing the Department of Business, Economic Development & Tourism spoke in support of the approval of a multi-year permit for the Diamond Head International Music Festival and Conference. Mr. Anderson spoke of their belief that the 'creative industries' such as the music industry are a vital part of Hawaii's economy. In fact their department has created a division dedicated solely to develop and promote the 'creative industries.' Like any industry, Mr. Anderson pointed out the industry requires infrastructure to be successful and Hawaii can assist in providing venues for artists to gain exposure to both local and international audiences. DBEDT believes that interest in a Diamond Head International Music Festival and Conference can be sustained on a yearly basis and with the proper permitting can become a major international event that will attract worldwide attention and participation. In closing, Mr. Anderson communicated that with proper sensitivity to the impacts on surrounding neighborhoods and the environmental impacts to Diamond Head Crater approval of a multi-year permit is consistent with their plans to develop and promote Hawaii's creative industries.

Rex Johnson, President and Chief Executive Officer of the Hawaii Tourism Authority (HTA) testified in strong support to use the Diamond Head State Monument. Mr. Johnson pointed out the goal of the HTA is to provide a " . . . quality tourism product unique to Hawaii that enhances the Hawaii visitor experience and enriches residents' quality of life." Mr. Johnson stated that the total value of the crater celebration's advertising and promotion was placed at approximately $827,000. From a marketing perspective, he feels the Diamond Head Crater Celebration can become an important complement to the Hawaii Arts Season which markets Hawaii to visitors from North America and Japan.

Written testimony was received from the Diamond Head Citizens' Advisory Committee, Hawaii Tourism Authority, Events International, the Honolulu Police Department and the Department of Business, Economic Development & Tourism.

The Board amended the Recommendation Section by adding the following

"21. <u>the agreement is subject to the review and approval of the Office of the Attorney General.</u>"

Unanimously approved as amended (Schuman/Johns).

Item C-1: **Amend Prior Board Action of May 26, 2006 (Item C-1), Approval of a Continuing Contractual Relationship for Operation of the Captive Propagation Program with the Zoological Society of San Diego.**

Unanimously approved as submitted (Johns/Schuman).

Item C-2: **Request Approval of Interim Actions to Implement the Legacy Land Conservation Program, Including Criteria for Evaluating Applications and Other Associated Materials; Request Authorization to Advertise for Land Conservation Funding Proposals Using the Proposed Interim Procedures: (2006).**

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) communicated a new bill allowed the establishment of funds to purchase important conservation lands.

The Board

1. **Amended page 3 of staff's submittal dealing with the list of attachments as follows:**

   "Legacy Land Conservation Grant Application form (See attachment 4)
   Legacy Land Conservation Commission Application instructions and form (See attachment 5)
   Criteria for evaluating applications (See Attachment 6)
   [~~Tentative~~] Illustrated timeline (See Attachment 7)
   Program brochure (See Attachment 8)
   Program logo (See Attachment 9)

2. **Amend Recommendation 1)**

   "Approve the interim actions to implement the Legacy Land Conservation Program, including criteria for evaluating applications and other associated materials with adjustments to meet requirements of Senate Bill 3077 if enacted.

3. **Amend Recommendation 2)**

   "Authorize the Chairperson to advertise for Land Conservation Fund proposals, using the proposed interim procedures with an adjusted timeline to allow public a minimum of one (1) month to submit applications."

Unanimously approved as amended (Schuman/Johns).

Item D-2: **Authorize Sale of Road Right-of-Ways and Related Improvements to the County of Hawaii and Issuance of Management Right-of-Entry; Authorize Bill of Sale and Grant of Perpetual, Non-Exclusive Easement**

and Issuance of Management Right-of-Entry to the Water Board of the County of Hawaii for Water System Infrastructure and Related Appurtenances, Kikala and Keokea, Puna, Hawaii, TMK: (3) 1-2-43.

Item D-4: **Amend Prior Board Action of January 28, 2005 under Agenda Item D-8, for Grant of a 55-year Non-Exclusive Easement for Seawall Purposes to Kauilani LLC, Honolulu, Oahu, TMK: 3-6-02:02 seaward.**

Item D-6: **Sale of Remnant to Jensen of Hawaii, Inc., Kapaa, Kawaihau, Kauai, TMK: (4) 4-6-39: Ditch No. 9.**

Item D-7: **Forfeiture of General Lease No. S-5576, Rex Provisor and Pantip Provisor, Lessee, Papa, South Kona, Hawaii, TMK: (3) 8-8-04:11.**

Item D-8: **Acquisition of Non-Exclusive Easement Over Private Lands and Set Aside to Department of Land and Natural Resources, Commission of Water Resource Management for Deep Monitor Well Purposes, Waihee, Maui, TMK: (2) 3-2-01:03 por.**

Written testimony was received from the Office of Hawaiian Affairs:

Item K-1: **Time Extension Request for Conservation District Use Permit HA-3137 for Saddle Road Improvements Section III - Located at Saddle Road, Milepost 19-27, island of Hawaii, TMKs: (3) 3-8-001:7, 8, 19; (3) 2-4-008:1, 4, 8; (3) 2-6-018: 4 & 10.**

Item L-1: **Approval for Award of Construction Contract – Job No. 500BO41A, Komo Mai Drive Rockfall Mitigation, Oahu, Hawaii.**

Item L-2: **Approval for Award of Construction Contract – Job No. 500BO41B, Old Puunui Rockfall Mitigation Nuuanu, Oahu, Hawaii.**

Item M-1: **Consent to Assignment of Harbor Lease No. H-87-29, as Amended, at Nawiliwili Harbor, Kauai.**

Item M-2: **Rescind Prior Board Action of November 19, 2004, Agenda Item M-1, Issuance of Lease by Direct Negotiation, Diamond Head Seafood Wholesale, Inc., Pier 38, Honolulu Harbor, Island of Oahu, Tax Map Key No. 1st/1-5-42.**

Item M-3: **Issuance of Direct Lease and Construction Right-of-Entry, Applicant: The Gas Company, LLC Vicinity of Pier 38 and Domestic Commercial Fishing Village, Honolulu Harbor Area, Kapalama and Iwilei, Honolulu, Oahu.**

Unanimously approved as submitted (Johns/Schuman).

Item D-5: **Amend Prior Board Action of February 23, 2001 (Item D-11) and August 24, 2001 (Item D-20), Issuance of Revocable Permits to Various Private Parties; Issuance of Immediate Rights of Entry; and Set Asides to DLNR Division of Aquatic Resources, Freshwater Fisheries Development, County of Kauai, DLNR Division of Forestry and Wildlife, and DLNR Division of State Parks, Wailua, Lihue, Kauai, TMK: (4) 3-9-01; 02; 3-9-02:01, 09, 20 and 4-2-01:03.**

Unanimously approved as submitted (Agor/Johns).

There being no further business, Chairperson Young adjourned the meeting at 10:12 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,

Terry Crowell

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources