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

DATE:	FRIDAY, SEPTEMBER 8, 2006
TIME:	9:00 A.M.
PLACE:	KALANIMOKU BUILDING LAND BOARD CONFERENCE ROOM 132 1151 PUNCHBOWL STREET HONOLULU, HI 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Jerry Edlao
Mr. Sam Gon III
Mr. Ron Agor
Ms. Taryn Schuman
Mr. Rob Pacheco

STAFF

Mr. Paul Conry, DOFAW
Mr. Dan Quinn, SP
Ms. Dawn Hegger, OCCL
Mr. Steve Molman, Land
Mr. Russel Tsuji, Land
Mr. Sam Lemmo, OCCL
Mr. Curt Cottrell , DOFAW
Representative from DOT Harbors

OTHERS

Mr. Reid Shimabukuro, C-1
Mr. Ken Miller, K-2
Ms. Tootsie Peleiholani, D-5
Ms. Leona Alatini, D-12
Mr. Glen Koyama, K-1
Mr. Mark Hee, K-3
Mr. Johns S. Carroll, D-12
Mr. An Sui Lee, D-15

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

Item A-1: Minutes of August 25, 2006

Unanimously approved as submitted (Edlao, Schuman)

Item D-5: Amend (48) General Leases Awarded for Residential Purposes, Pursuant to Act 314, Session Laws of Hawaii 1991, as Amended, Covering Portions of Government Lands at Kikala and Keokea, Puna, Hawaii, TMK: (3) 1-2-43:1-69 (HDLO/Wesley)

Mr. Russel Tsuji, Administrator of the Land Division, stated that this is a series of the amendments to the leases for Kikala and Keokea. These leases were issued, through legislation, to those displaced by volcanic activity. Further legislation allocated money for the construction of infrastructure which the Department of Engineering is currently wrapping up. At the request of the lessees, Staff is bringing to the Board some amendments to these leases that they felt were just and equitable due to lessee's having trouble applying for insurance and mortgages.

Aunty Tootsie Peleiholani expressed her concern over certain lots that are not yet filled and would like to see them leased to the Ohana of the lessees, mostly the children of those who were issued the original leases. Otherwise she was happy with staff's recommendations.

Mr. Tsuji disclosed that Attorney General Linda Chow, not present, had raised a question in regards to not charging rent for a certain period of time for certain lessees. To clarify, Mr. Tsuji stated that they are not waiving anyone's rent, rather they are not charging people rent for the period in which they could not be on their property (i.e. during construction).

Unanimously approved as submitted (Pacheco, Edlao)

Item M-5: Issuance of Revocable Permit to Dewain A. Dedrick, Sole Proprietor, Vicinity of Pier 24, Honolulu Harbor, Oahu.

Unanimously approved as amended (Schuman, Edlao)

Item K-2: After the Fact Conservation District Use Application for a Single Family Residence Located at Ninole, Island of Hawaii, TMK (3) 3-2-004:044

Mr. Sam Lemmo, Administrator for Office of Conservation and Coastal Lands, stated that the Land Board, approved this area for farm use and granted permission to build a shed. However a single family residence has been built without permits. The applicant has gone through the violation process, has paid the fines, and has completed an after the fact CDUP. All requirements have been fulfilled; therefore staff is recommending Board's approval.

Unanimously approved as submitted (Pacheco, Edlao)

Item K-3: Briefing for Conservation District Enforcement File HA 04-08 Regarding Unauthorized Logging of 135 Koa Native Trees, Unauthorized Extraction of 2 Ohia Native Trees, Unauthorized Grubbing and Grading and Unauthorized Skid/Haul Road

Construction Located at Papaikou/Paukaa, island of Hawaii, TMK (3) 2-7-001:00.

This is a follow up with an enforcement problem dealing with the logging of 135 Koa trees, unauthorized grubbing and grading, and an unauthorized skid/haul road on the Big Island. A few years ago, the Board imposed a penalty on Koa Timbers for these actions and the end result was a payment of a large fine (aprox. $141,000), which has been paid, and a habitat restoration plan for Land Board approval, which would outline the steps they would take to restore the land.

There were 3 major objectives in the plan:

1. Koa Timber must restore the native habitat in the conservation district
2. They would remove exotic and invasive species growing in the conservation district areas.
3. They will comply with mandated fines as opposed by the board

The Board allowed Koa Timber $20,000 to be spent on the 6 acre, test plot area and Koa Timber has taken steps to meet the objectives as listed above. Ultimately, they spent $30,000 or herbicide, weed removal, etc. and Staff has conducted several site visits and has undergone several plan reviews. Staff feels that the restoration plan's goals and objectives were not completely met and the Department of Forestry and Wildlife has also concurred with this in a written report. Compliance fell short of expectations because the native koa regeneration wasn't as high as expected. There were also a few timing issues: a) Koa Timber was late with a few of the plans b) OCCL had failed to do a site visit and c) Koa Timber failed to submit a 3rd final plan so OCCL decided to accept the 12 month plan as a 24 month plan. Mr. Lemmo mentioned that the agreement stated that if the Board did not feel that Koa Timber had not met their expectations, the Board could continue to fine them. OCCL staff feels this is not necessary.

Mr. Paul Conry, Administrator for DOFAW, reiterated that the restoration efforts fell short of expectations, but staff feels that a fine would be unwarranted at this time. This was a good case to show that what may work in one location is not going to deliver the same results in another. There may be environmental factors involved and we just don't know what all of them are and how the environment will respond.

Michael Constantinides did most of the monitoring for the area. He stated that it was a challenging site and that the goal was to restore the site to a similar condition to what might have been before logging. It underscores that after the expenditure of significant amount of funds per acre, more than would be normally economically viable, they weren't able to see the site get restored to the condition they had hoped. In response to a question by Board Member Gon, about key limiting factors, Mr. Constantinides stated that this is one of the wettest locations where there are standing pools of water, therefore, he believes that soil moisture definitely was a key factor. Also, there may have been some type of pathogen or fungus within the soil and that the weed and pig pressure is high in this location. The under story was heavily infested with tall strawberry guava thickets and there was a lot of California and tall grass.

Mark Hee, from Koa Timbers, stated that the area was loosing about 9 trees a day due to strawberry guava. Regeneration did occur some within the buffer zone considering there was absolutely no regeneration of koa outside the buffer area. They worked as hard as they could and were very respectful to the area.

This was a non-action item.

Item K-1: Conservation District Use Application KA-3307 for a 500,00-Gallon Water Storage Tank and Site Improvements Located at Kapaa Homesteads, Kawaihau, Kauai, TMK (4) 4-6-003:010

Mr. Lemmo stated that this area already has a 1 million gallon water tank so they're not developing new water supplies, just more storage capacity. It has already gone through the permitting process and the County and State (Feb.8, 2006) had issued them a FONSI. Staff is recommending the Board's approval of this request, subject to standard conditions.

The Board:

Amendment to page 5 under criteria 6

"Staff notes that the [~~foree~~] <u>project</u> main will have a minimal impact on open space."

Amendment to Recommendations page 5:

"Based on the proceeding analysis, staff recommends that the Board of Land and Natural Resource APPROVE this application for [~~both~~] a water tank, associated site improvements, <u>and subdivision of the parcel.</u>"

Unanimously approved as amended (Agor, Gon).

Item D-15: Amendment of Prior Land Board Action of July 14, 2006, under Agenda Item D-12, Encroachment Determination on State Land and Imposition of Fine, An-Sui and Tracy Leiko Sakotani Lee, Aiea, Ewa, Oahu, TMK: 9-9-09:013 (por) (ODLO/Cecil)

Mr. Tsuji stated that Mr. An Sui Lee and Tracy Leiko Lee is requesting for a 30 day extension due to their lawyer not having completed the right-of-entry agreement with the Kane's, who own the property.

Mr. An Sui Lee stated that an agreement was reached with the plaintiff, but the written agreement has not been finalized yet.

Unanimously approved (Schuman, Edlao)

Item D-12: Forfeiture of General Lease No. S-3856, Hemaloto Alatini and Leona Alatini, husband and wife, Lessee, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-024:023 (ODLO/Cecil)

Mr. Tsuji stated that the property was supposed to be used for diverse agriculture as defined in the lease. Pursuant to a complaint received by the land division, staff went out and conducted a site visit and discovered it was being used as a base yard for Nilasoni Landscape, Inc. There is very little agriculture going on and it seems it is being used for personal consumption rather than as a faming operation. It is about 10 acres of prime agriculture land in Waimanalo. Staff received a call yesterday that the applicants were attempting to clean out the area and as of today they have remove roughly 70-80% of all of the stuff. However, the notice of default was issued in April 2006 and clean up started a day before the Board meeting.

Chairman Young stated that the Board has had some experience in Waimanalo recently through a number of meetings and during that process he hopes not to repeat that extended process.

This situation looks very similar to the last case that they encountered. However this applicant was allowed a 90 day cure period from the date that the notice of default was issued. It was also stated in the lease that the lessee shall derive his/her principle income from diversified agriculture.

Steve Molman, from the Land Division, stated that 20% of the land is being used for some type of agriculture. The reason that the Alatini's acquired the land was for their relatives to do their business out there. He stated that Staff recieved a letter in December from the Alatini's CPA stated that they were not using the land for agriculture rather they were using it for their personal use. Mr. Molman met with the Alatini's and Mrs. Alatini was very sincere in wanting to do the right thing. He worked with her and informed her what needed to be done. He also spoke with the Alatini's lawyer; John Carroll, who also knew what needed to be done. He stated that Mr. Alatini was traveling and upon his return, the relatives realized the severity of situation and is now tying to comply. When question about a farm plan, he answered that they received none. Mr. Tsuji added because the lease was acquired out of bankruptcy, most likely it wasn't necessary.

Mrs. Alatini's lawyer, Mr. John Carroll was hired 3-4 weeks ago. Mr. Carroll on the subject of diversified agriculture stated that there are agriculture practices occurring on the land. They have a tapioca crop, palm trees worth $3500, bread fruit, banana trees, and they did have a kawa crop, but it was infested. Mrs. Alatini has been sending him daily reports on their progress. He is asking for an additional 45 days for the Alatini's to finish the clean up, fix the defects in accounting documents, and to get conservation plan done.

If the Board grants them an extension the applicant will be asked to develop a diversified agricultural plan.

Motion to accept Staff's recommendation (Schuman, Edlao)

Chairman Young asked to meet with their attorney, therefore to go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Board member Edlao withdrew his second to the motion.
Board member Schuman, withdrew her motion.

Motion to go into executive session, unanimously approved (Edlao, Gon)

Board went into executive session at 10:15 am

Meeting back in session at 10:33 am

Mr. Tsuji stated that the applicant is not denying the violations. The reason for the harshness of the submittal is because has made several site visits and nothing has changed. He feels that the submittal has allowed Mrs. Alatini to gain control of the situation and come into compliance.

The Board:

Approved staff's recommendation for forfeiture, but delayed implementation of the lease forfeiture until this matter is again brought before the Land Board at its meeting on October 13, 2006.

Additionally, the Lessee is required to: (a) provide staff by October 2, 2006, a Diversified Agricultural/Business Plan for the 9.470 acres of leased lands; and (b) complete cleanup and removal of all items and personal property inconsistent with the use restriction of diversified agriculture.

Unanimously approved as amended (Agor, Pacheco)

Item D-11: Grant of Perpetual, Non-Exclusive Easement to Faauuga Tootoo and Sheryl Turbeville for Access Easement Purposes, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-010:088 (por) (ODLO/Cecil)

Mr. Tsuji stated that this was a kuliana access easement for personal use only.

Applicant was present.

Unanimously approved as submitted (Schuman, Gon)

Item C-1: Proposed Off-Highway Vehicle (OHV) Project and lease to Sand Island Off Highway Vehicle Assoc., Inc. for a portion of Sand Island State Park, Oahu, TMK: 1-5-041:006

Mr. Conry stated that the proposal is asking the Board to agree in concept and authorize the Division to work with the Sand Island Off Highway Vehicle Assoc. to develop a part of the Sand Island State Park for off highway vehicle use. The land would remain under State Parks and would be a new use for the Sand Island State Park. The Sand Island Off Highway Vehicle Assoc. would then go into a 2 year lease with the board and would have the authority to develop, construct, and manage the site. There will be a series of public trails and riding areas designed for off highway vehicles. DOFAW's Na Ala Hele Trail and Access Program would help to fund this because they are given Federal money to develop programs such as this. The Sand Island Off Highway Vehicle Assoc. Inc. would be giving the Department help in managing and staffing the area and in exchange, they would receive funding from the Division for the operation and maintenance of the site. The need is due to the limited sites here on Oahu and they want to get the riders off private lands and away from the sensitive areas.

There were corrections in the aerial shots taken, in which the motor cross track would switch with the parking area.

Curt Cottrell, Na Ala Hele Program Manager, states that he believes that this is a great program. The track in Kahuku, run by Hawaii Motor Sports, has been doing great and has been open since the 1970's. They have also finished a program out in the Waiakea forest reserve that has also been doing well. He has a lot of confidence in this group and feels this would be a unique program. This would be the 3rd authorized OHV park on DLNR land. The track record at Kahuku has been good and they will have the required insurance.

Reid Shimabukuro, head of the Sand Island Off Highway Vehicle Assoc. Inc, believes that they can provide kids a safe place to learn rather than letting them go out into the pineapple fields or trespassing on private land. The YMCA in Kalihi had a program 20 years ago called Honda 50 Motorcycles for Kids but stopped when they lost their lease in Keehi Lagoon. Therefore this is not a new program in Hawaii and they are asking for support from the Board.

The Board:

Amendment to Staff Recommendations:

"4. Authorize to the Sand Island Off Highway Vehicle Assoc. Inc. and its agents/representatives a right of entry to conduct any studies necessary to prepare the documentation."

Unanimously approved as amended (Schuman, Agor)

Item C-2: **Request for approval to enter into contracts to implement the FY07 watershed mgmt grant program**

Board member Gon recused himself.

Unanimously approved as submitted (Edlao, Pacheco)

Item D-13: **Consent to Assign Homestead Lease No. 37, (1) Joseph L. Kaahu, Assignor to Joseph L. Kaahu, Hattie K. Kaahu, Kehaulani M. Kaahu, Kevinnoa K. Kaahu, Assignees, (2) Susiana K. Kanoa, Assignor to Cedric K. Kanoa, Herman Olsen Kanoa, Assignees, (3) Agnes K. Alo, Assignor to Lefty N. Alo, Assignee, Hauula, Koolauloa, Oahu, TMK: 5-4-01:027, 030. (ODLO/Cecil)**

Lefty Alo was present.

Unanimously approved as submitted (Schuman, Gon)

Item M-1: **Consent to Sublease Retail Concession DFS Group L.P to Island Shoppers, Inc. Kahului Airport.**

Item M-2: **Amendment No. 1 to Concession Agreement No. DOT-A-05-0009 Retail Concession at Hilo International Airport and Kona International Airport at Keahole.**

Item M-3: **Issuance of Concession Agreement for the Statewide In-Bond (Duty Free) Statewide Airports.**

Item M-4: **Consents to Sublease Retail Concession DFS Group, L.P. to Maui Divers of Hawaii, Ltd. Kahului Airport.**

Item M-6: **Issuance of Construction Right-Of-Entry Sandwich Isles Communications, Inc. Kalaeloa Airport.**

Unanimously approved as submitted (Agor, Gon)

Item L-1: **Approval for Award of Construction Contract – Job No. J00CF34A Lava State Monument, ADA Barrier Removal, Hilo, Hawaii.**

Item L-2 **Certification of Election for Hamakua Soil and Water Conservation District Directors.**

Unanimously approved as submitted (Edlao, Agor)

Item D-1: **Withdrawal from Governor's Executive Order No. 4007 and Reset Aside to County of Kauai, Department of Water for Water Storage Tank and Emergency Generator Shelter Purposes, Kekaha, Waimea, Kauai, TMK: (4) 1-2-02:por. 01. (KDLO/Tommy)**

Item D-2: **Forfeiture of General Lease No. S-3960, Hitoshi Miyabara and Hatsue Miyabara, and Mark Kakimoto, Lessees, Hanapepe, Kauai, TMK: (4) 1-9-2:1 and 20. (KDLO/Tommy)**

Item D-3: **Cancellation of Revocable Permit No. S-7309 to George B. Fernandes and Issuance of Revocable Permit to Michael J. Fernandes for Pasture Purposes; Wailua, Kawaihau, Kauai, Hawaii, TMK: (4) 4-1-9:08. (KDLO/Joanne)**

Item D-4 **Request to Write-off Uncollectible Accounts on the Island of Hawaii (ADMINISTRATION/Charlene)**

Item D-6 **Sale of Lease at Public Auction for Commercial Purposes, Waiakea, South Hilo, Hawaii, TMK: 2-4-41:45 (HDLO/Harry)**

Item D-7 **Amend Prior Board Action of October 14, 2005 (Item D-7), Cancellation of Revocable Permit Nos. S-7208 and S-7209; Issuance of a New Revocable Permit to Raycom National, Inc. dba KHNL/KFVE-TV, Makawao, Maui, TMKs: (2) 2-2-7:14 and 15. (MDLO/Daniel)**

Item D-8 **Amend Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28226, Issued to Friedrich Bathelt and Thorunn Bathelt, Honopou, Maui, TMK: (2) 2-9-3:portions 16, 17, 20 and 39. (MDLO/Daniel)**

Item D-9 **Grant of Perpetual, Non-Exclusive Easement to Misha Bowman for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-3:portion 50. (MDLO/Daniel)**

Item D-10 **Set Aside to City and County of Honolulu for Park Purposes, Honolulu, Oahu, TMK: (1) 1-7-027:001. (ODLO/Barry)**

Item D-14 **Issuance of Perpetual Non-Exclusive Easement for Access and Utility Purposes, Dillingham Ranch Aina LLC, Mokuleia, Waialua, Oahu, TMK (1) 6-8-3:41 (ODLO/Barry)**

Unanimously approved as submitted (Schuman, Agor)

There being no further business, Chairperson Young adjourned the meeting at 11:18 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,

Lauren Yasaka

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources