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

DATE:	FRIDAY, MARCH 24, 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 9:00 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young (left at 9:02 am)
Mr. Ted Yamamura
Mr. Ron Agor (arrived at 9:20 am)
Mr. Tim Johns
Mr. Gerald DeMello
Ms. Taryn Schuman

STAFF

Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, Parks
Ms. Christen Mitchell, DOFAW
Mr. Ross Smith, DOT
Ms. Charlene Unoki, Land
Mr. Glen Abe, DOT
Mr. Richard Rice, DOBOR
Ms. Athline Clark, DAR

OTHERS

Mr. Randy Ishikawa, Deputy Attorney General
Mr. Douglas Chin, D-3
Ms. Diana Bertsch, E-1
Mr. Gary Lambert, J-1
Mr. Mike Tousad, F-3
Mr. .Don Palawski, F-3
Mr. Robert Braun, F-3
Mr. William Moore, D-2
Mr. John Sakaguchi, K-1
Mr. Phil Hauret, D-7
Dr. Bud Antonelis, F-3
Ms. Cha Smith, F-3

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

Motion made to amended the title of item F-2 to read

"The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI)."

Unanimously approved to amend the title of Item F-2 (Johns/Schuman).

Item A-2: Minutes of February 24, 2006 briefing.

Deferred due to lack of quorum.

Item A-4: Minutes of March 10, 2006

The Board made the following changes:

1) Page 3, first sentence

"[~~Kaui~~] Kali Watson, attorney for All Tree Service, Inc., appeared before the Board and together with Dave Kendrick and Terry Rodriguez conducted a power point presentation showing the subject site and their operation."

Unanimously approved as amended (Yamamura/DeMello).

Item D-3: Consent to Assign Grant of Easement Identified as General Lease No. S-4227, SWVP Keauhou L.L.C., Assignor, to KBH, Inc., Assignee, Kahaluu, North Kona, Hawaii, TMK: (3) 7-8-13:42.

Charlene Unoki, Acting Assistant Administrator of the Land Division let it be known that the current tenant SWVP Keauhou LLC is in the process of selling their hotel and would like to transfer the subject easement to the new owner. Ms. Unoki recommended the Board consent to the assignment of the existing Grant of Easement identified as General Lease No. S-4227, from Keauhou L.L.C., as Assignor to KBH Inc., as Assignee subject to the terms and conditions listed in staff's submittal.

Douglas Chin of Carlsmith Ball LLP was present and noted his agreement with staff's recommendation.

Unanimously approved as submitted (DeMello/Schuman).

Item D-2: Conveyance By Land Patent Grant of Addition to Hilo Medical Center, Hawaii Health Systems Corporation, Piihonua, South Hilo, Hawaii, TMK; (3) 2-3-032:portion of 001.

Ms. Unoki is seeking the Board's permission to convey a piece of property (10 acres) that is currently being used as a parking lot. She reminded the Board Act 262, SLH 1996 created the Hawaii Health Systems Corporation (HHSC) for the purpose of operating the community hospitals statewide. Ms. Unoki also noted that HHSC is asking that the rent be waived although staff is not in agreement. Ms. Unoki recommended the Board authorize the fee simple conveyance by land patent grant of an approximate 10-acre portion of TMK: 2-3-032: 001 to HHSC and grant an immediate right of entry to HHSC to allow planning and construction of the parking lot and related improvements.

William Moore, a Planning Consultant representing Hilo Medical Center and Ron Terry, the chief author of the Environmental Assessment project were present to answer any questions. The Board asked Mr. Terry if an agreement was made on a rent amount to be paid starting in 1997, why has his organization failed to make payments. Mr. Moore noted that the State is subsidizing the hospital and they are willing to pay the back rent as well as the agreed upon rent.

Unanimously approved as submitted (DeMello/Schuman).

Item E-1: Request from the World Triathlon Corporation to use the Hapuna Beach State Recreation Area in South Kohala, Hawaii for the 2006 Ford Ironman 70.3 Honu Half Triathlon (70.3).

Dan Quinn, Administrator of State Parks mentioned that the World Triathlon Corporation is seeking permission to use the Hapuna Beach State Park to stage the 2006 Ford Ironman 70.3 Honu Half Triathlon. Mr. Quinn conveyed the swim portion of the Triathlon will be based out of the park. Race organizers are asking to begin set up on Thursday, June 1, 2006. Mr. Quinn recommended the Board approve the issuance of a Special Use Permit to the World Triathlon Corporation to utilize the Hapuna Beach State Recreation Area for the 2006 Ford Ironman Honu Half Triathlon subject to the four conditions listed in staff's submittal.

Diana Bertsch representing the World Triathlon Corporation was present.

Unanimously approved as submitted (DeMello/Yamamura).

Item K-1: State Civil Defense Warning and Communications Device Installation at Haena Beach Park, Haena, Halele'a, Kauai, TMK: (4) 5-9-005:019.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands noted that the County of Kauai is requesting placement of a warning and communication device at Haena Beach Park. Mr. Lemmo recommended the Board approve this application to install a State Civil Defense Disaster Warning and Communication Device subject to the terms and conditions listed in staff's submittal.

John Sakaguchi representing the agent Wilson Okamoto announced that he has read staff's submittal and is in agreement with the terms and conditions.

Unanimously approved as submitted (Agor/DeMello).

Item K-2: Amendment to Condition 7 & 9 of Conservation District Enforcement File No. HA-05-19 located at Hokukano, Ka'u, Island of Hawaii, TMK: (3) 9-5-016:036.

Motion to Withdraw.

Unanimously approved to withdraw (DeMello/Agor).

Item J-1: Consent to Mortgage and Amendment for Extension of Lease Term, General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona, Hawaii, Tax Map Key: 7-4-008-042.

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) communicated that GKM, Inc. dba Gentry's Kona Marina would like to acquire a mortgage from First Hawaiian Bank for $1,000,000 to make improvements at the subject site. As a requirement of the mortgage Gentry is seeking to extend the term of the lease for an additional twenty years. Mr. Rice recommended the Board consent to the mortgage between GKM, Inc., Mortgagor and First Hawaiian Bank Mortgagee subject to the terms and conditions listed in staff's submittal.

Gary Lambert, General Manager of Gentry's Kona Marina and Vice President of GKM, Inc., appeared before the Board seeking their approval of staff's recommendation. Mr. Lambert let it be known the proceeds from the mortgage will be used to renovate the haul out slip, travel lift and an existing steel building on the property. They estimate these improvements to cost $1,000,000.

Unanimously approved as submitted (DeMello/Yamamura).

Item M-3: Amendment to Issuance of a Direct Lease Together with a Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1) 9-1-14:24 (Por) and (1) 9-1-74:37 & 38 (Pors).

Item M-4: Issuance of an Inconsistent Revocable Permit A Tom Moffatt Production, Inc. Pier 19 Ferry Terminal Building, Honolulu Harbor.

Unanimously approved as submitted (Yamamura/DeMello).

Item M-1: Issuance of Revocable Permit Ground Transport, Inc. for Inconsistent Use Honolulu International Airport.

Item M-2: Consent to Sublease Retail Concession DFS Group L.P. to Maui Divers of Hawaii, Ltd Honolulu International Airport.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-7: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access and Utility Purposes, Sunset Beach Elementary School, Pupukea, Oahu, TMK: 5-9-05:18 portion.3

Member Johns recused himself.

Ms. Unoki announced that the state acquired the property from the James Campbell Estate in 1975 and with the property came an encumbrance by Hawaiian Electric Company for a term easement. Ms. Unoki recommended the Board authorize the issuance of a perpetual non-exclusive easement to Hawaiian Electric Company, Inc. covering the subject area for access and utility purposes.

Phil Hauret representing Hawaiian Electric was present.

Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).

Item F-3: The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).

Athline Clark, a Planner with the Division of Aquatic Resources (DAR) noted this is the first access permit to the Northwestern Hawaiian Islands (NWHI) being issued. This permit would allow access for the National Marine Fisheries Service to conduct three different types of activities – setting up a monk seal recovering camp and recovering work, conducting green sea turtle research and conducting a research project on sharks and shark incidents involving monk seal pups at the French Frigate Shoals. The second permit which is a supplemental permit would allow access for the research vessel. Due to the timing of the project, Ms. Clark noted that the review process has to be cut short but noted that it is their intention to go through the entire review process on future permits. With regards to the permit review process, Ms. Clark noted that three staff members were asked to review the permit and went through each of their recommendations. Ms. Clark recommended the Board authorize and approve with stated conditions, a Research, Monitoring and Education Permit and Special Activity Permit to the National Marine Fisheries Service and the Oscar Elton Sette, for activities and access within the NWHI.

The Board asked Ms. Clark to update them on the formulization of the permit review committee. Ms. Clark communicated they are in the process of putting together a permit

review committee that will be made up of someone from the Kahoolawe Island Reserve Commission (KIRC), a staff member from the Division of Forestry and Wildlife (DOFAW) that works at Kure Atoll, staff from DAR, individuals form the Office of Hawaiian Affairs (OHA), staff from Fish and Wildlife Service, the National Fisheries Service and NWHI Ecosystems Reserve. Ms. Clark informed the Board the next set of permits will be reviewed by the committee.

Mike Tousad, Deputy Regional Administrator for the Pacific Islands regional office of the NOAA Fisheries Service came forward to provide testimony. Mr. Tousad let it be known that they hope to address some of staff's recommendation but agrees with the need to work with the State and the Fish and Wildlife Service to regulate these activities. He feels there is a need to slow the decline in the population of monk seals.

Dr. Bud Antonelis conducted a power point presentation that dealt with a shark removal Experiment at French Frigate Shoals. Mr. Antonelis believes the Hawaiian monk seal is a national and international treasure and is one of only two endemic mammals in Hawaii. He went on to say the Hawaiian monk seal population is at its lowest level in recorded history and is in a crisis situation. At present through mitigation efforts the decline in the populations has slowed to about 4% per year. Mr. Antonelis believes the number of seals will probably fall below 1000 within the next five years. A large factor contributing to this decline is the juvenile mortality rate of the monk seals due to attacks by sharks. He went on to say a discrete number of Galapagos sharks have learned to predate on young pup seals and this shark behavior likely stems from such factors as loss of habitat, access to pups and easy access into the atoll via previously dredged channels. Dr. Antonelis went over the results of the shark removal experiment at French Frigate Shoals. The results showed that the removal of sharks preying on young pups before or near the time of weaning is one of the most successful and measurable actions taken to enhance juvenile survival. Predation on pre-weaned pups has dropped significantly from 37 in 1997 to an average of about 10 per year since the study began in 2000.

Don Palawski, who works for the US Fish and Wildlife Service and manages eight (8) national wildlife refuges in the central Pacific, testified. He spoke of the Hawaiian Islands refuge that was established in 1909 by Teddy Roosevelt which extends from Nihoa to the Pearl and Hermes. He spoke of their work at the French Frigate Shoals and working with the National Marine Fisheries Service to monitor and inventory monk seals and green sea turtles. With regards to staff recommendation, Mr. Palawski agrees with and supports monitoring and inventorying of the monk seal and sea turtle population. Mr. Palawski noted they started this project five years ago in which they researched if sharks were getting pups before being weaned from their mothers and what techniques through research would be used in the future to protect these young seals. In closing, Mr. Palawski agrees with staff's recommendation to monitor the monk seal and turtle population but would like other actions to hold until various organizations will be able to meet and discuss if this is the best way to proceed.

Cha Smith, Director of Kahea read comments supplied by Stephanie Fried. Ms. Fried had four impressions upon reading staff's submittal 1) The first permit application for the

new NWHI State Refuge is notable for what it does say as well as what it doesn't say; 2) the permit request is for the killing of apex predators in this apex-predator dominated ecosystem; 3) there have been only very limited consultation with the Native Hawaiian community and 4) the realization that it is the Department's first attempt and although somewhat bumpy will be worked out once protocols are established. Ms. Fried's letter expressed significant concern that there is no recognized panel of ecosystem scientists to evaluate the impact to the ecosystem. She also noted that there is no mention made by NMFS of the fact that juvenile seals are also found emaciated and starving and that lack of prey may play an important role. Ms. Fried believes it would be important to learn what measures could be taken to reduce competition for monk seal prey.

Bob Braun, a veterinarian in Hawaii for twenty years and a contractor to NOAA Fishers provided testimony. Mr. Braun spoke of their efforts in 2001 to haze the aggressive sharks then deter the sharks prior to attacking the pups. At that time the take requirement for the sharks was that the shark would need to attack a pup while staff maintained visual contact of the shark only after the second attack could they take down the shark. Mr. Braun feels the opportunity for public input is more than adequate. Lastly, Mr. Braun communicated that there is a mixing of two types of issues – the overall decline in the population of juvenile monk seals being attributed solely to sharks and secondly the taking of sharks to prove this theory.

The Board amended the Recommendation Section by deferring the recommendation dealing with sharks and instructed staff and the permit applicant to work with US Fish and Wildlife Service and the Native Hawaiian community to come up with some protocols.

Unanimously approved as amended (Yamamura/Schuman).

Item F-1: **Request for Approval to Amend/Extend a DLNR/UH Contract (No 47471 – Hawaii Fish Aggregating Device System) to Provide Additional Funds ($320,000) for the Period of July 1, 2006 Through June 30, 2007.**

Item F-2: **Request for Approval to Amend/Extend Eight (8) Project Agreements with the Research Corporation of the University of Hawaii for FY07 for the Following Projects: Coral Reef Initiative (Contract No. 49090), Coastal Stock Enhancement (Contract No. 49820), Public Fishing Areas (Contract No. 50027), Stream/Estuarine Studies (Contract No. 51059), Marine Population Survey (Contract No. 51058), Ulua Tagging (Contract No. 52851), and Finfish Broodstock and Larvae Culture (Contract No. 52994), and Hawaii Marine Recreational Fishing Survey (Contract No. 48518).**

Unanimously approved as submitted (Yamamura/DeMello).

Item C-1: **Request approval of Contract with Ms. Denise Laitinen to Coordinate the Federally Funded Assistance Function of the Hawaii Firewise Program for the Division of Forestry and Wildlife.**

Item C-2: **Authority to Conduct a Public Hearing to Add the Land of Wao Kele O Puna (Tax Map Keys: (3) 1-2-010:002 and (3) 1-2-010:003) to the Forest Reserve System.**

Unanimously approved as submitted (DeMello/Yamamura).

Item D-5: **Forfeiture of Duke Kahanamoku Beach Concession Contract Filed as General Lease No. S-5801, C & K Beach Service, Inc., Concessionaire, Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, TMK: 2-3-037:021.**

Motion to defer.

Unanimously approved to defer (Yamamura/Agor).

Item D-1: **Grant of Term, Non-Exclusive Easement to Brendan McNamara for Access and Utility Purposes, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-06:within 53 & 54.**

Item D-4: **Grant of Perpetual, Non-Exclusive Easement to John Ellis and Claudia Johnson-Ellis for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-05:portion 20.**

Item D-6: **Withdrawal from Governor's Executive Order No. 1786 to the Board of Harbor Commissioners for Beach Control Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-3-37:21, 2-6-8:29.**

Item D-8: **Rescind Prior Board Action of January 28, 2000 (Item D-22), Department of Agriculture Requests for Designation, Set Aside for Addition to the Kalaeloa Agricultural Park and a Management Right-of-Entry at Honouliuli, Oahu, TMK: (1) 9-1-31:portion of 1.**

Item D-9: **Set Aside to the City and County of Honolulu Department of Parks and Recreation for Park Purposes, Waiawa, Oahu, TMK: (1) 9-7-68:4.**

Item D-10: **Amend Prior Board Action of January 13, 2006 (Agenda Item D-16), After-the-fact Approval of Lease of Federal Property with the Secretary of the Air Force on behalf of the Department of Education, for Public School Purposes, Hickam Air Force Base, Oahu, TMK: (1) 9-9-01:13 (Portion).**

Unanimously approved as submitted (DeMello/Agor).

Item L-1: Approval for Award of Construction Contract – Job No. J00CF11A, Iolani Palace State Monument ADA Barrier Removal, Honolulu, Oahu, Hawaii.

Unanimously approved as submitted (Yamamura/DeMello).

Item E-2: Briefing to the Board on the Status of the Diamond Head Crater Celebration at Diamond Head State Monument, Oahu.

Mr. Quinn went over the set up on the grounds of Diamond Head as well as the line up of entertainers. He indicated the organizers of the event will be setting up throughout the week leading up to the event. Mr. Quinn informed the Board staff would be present beginning on Friday and through the end of the event.

The Board instructed staff to report to the Board at the completion of the event.

No Action.

Item E-3: Update to the Board of Land and Natural Resources on action taken at the September 23, 2005 BLNR meeting relating to Kealakekua Bay.

Member Johns made it known that he is still receiving calls and emails from members of the community stating that there has been insufficient time for input prior to this report coming before the Board.

The Board instructed staff to re-double their efforts in working with the community.

No Action.

Item A-1: Supplement to January 13, 2006.

Member Yamamura recused himself.

Unanimously approved by the remaining Board members (Schuman/Agor).

Item A-3: March 9, 2006

Member DeMello recused himself.

Unanimously approved as submitted by the remaining Board members (Yamamura/Schuman).

Item A-5: Minutes of March 16, 2006.

Member Johns and Yamamura recused themselves.

The Board made a change on page 2, third paragraph to read

"Board Member Agor asked the Attorney General if a situation occurs in which an agent of the state inspects a private dam and a decision is made that immediate [~~mediation~~] <u>action</u> needs to happen will the state take responsibility for that dam or do we instruct the private owners to do something about that situation."

Unanimously approved as amended by the remaining Board members (DeMello/Schuman).

There being no further business, Chairperson Young adjourned the meeting at 10:55 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