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

DATE:	FRIDAY, FEBRUARY 9, 2007
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. Ron Agor
Mr. Samuel Gon III
Mr. Tim Johns
Mr. Jerry Edlao
Mr. Robert Pacheco

STAFF

Ms. Charlene Unoki, Land
Mr. Dan Quinn, State Parks
Ms. Jennifer Bethel
Mr. Russell Tsuji, Land
Mr. Gavin Chun, Land
Mr. Blaine Rogers, DAR
Mr. Sam Lemmo, OCCL
Mr. Paul Conry, DOFAW
Ms. Tiger Mills, OCCL
Mr. Dan Polhemus, DAR
Mr. Dolan Eversole, OCCL

OTHERS

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

Item A-1 Minutes of January 26, 2007

Unanimously approved as submitted (Jerry, Johns)

Item A-2 Amendment of November 17, 2006 Minutes as approved on December 8, 2006

Unanimously approved as submitted (Agor, Johns)

Member Johns recused himself.

Item D-11 Consent to Assign General Lease No. S-5654, Cates International, Inc., Assignor, to Grove Farm Fish and Poi, LLC, Assignee, Ewa, Oahu, Tax Map Key: (1) 9-1-005:Seaward. (ODLO/Steve M.)

Mr. Russell Tsuji, Administrator for Land Division, reported that the Land Division staff evaluated the financials to determine whether the premiums might be appropriate and met with Mr. Cates recently. The agreed upon premium was $1,000. Mr. Cates will decide whether to make arrangements to pay or he will make a percentage due to the past years.

Chairman Young asked if the premium calculation was circulated. Mr. Tsuji responded in the affirmative.

Unanimously approved as submitted (Agor, Gon)

Item D-3 Cancellation of Revocable Permit No. S-2902 to United States of America and Issuance of Direct Lease to United States of America, Department of Transportation, Federal Aviation Administration for Air Traffic Navigational Aid Purposes Together With a 20-Foot Wide Easement for Access and Utility Purposes, Kalaheo, Koloa, Kauai, TMK: (4) 2-3-07:21. (HDLO/Joanne)

Unanimously approved as submitted (Edlao, Ron)

Item D-7 Amend Prior Board Action of October 28, 2005 (Agenda Item D-11), Acquisition of Private Lands and Set Aside to Division of Boating and Ocean Recreation for Addition to the Manele Small Boat Harbor, Manele, County of Maui, Island of Lanai, TMK: (2) 4-9-17:02 por. and Rescind Prior Board Action of July 13, 2001 (Agenda Item J-2) Issuance of Lease by Direct Negotiation to Castle and Cooke Resorts LLC, Manele Bay Small Boat Harbor, Island of Lanai. (PROJECT DEVELOPMENT/Gavin)

Mr. Gavin Chun, from the Land Division, reported amending prior board action of October 28, 2005 related to acquisition of land at Manele Bay. He also reported that beside the Land Division, the Engineering Division and Attorney General's Office has been working a long time to negotiate the terms of the deal. He presented a warranty deed which indicates that Castle and Cooke are asking for some changes which staff and the AG's office approve but there seem to be other issues involved.

Deputy Attorney General Randy Ishikawa reported that the acquisition of land from Castle and Cooke at the Manele Bay Small Boat Harbor will be used as part of an improvement project that is underway now. On October 28, 2005 the Board approved this transfer of two acres to the State. Several discussions with Castle and Cooke have taken place over the past year. They're requesting that the deed be changed or amended

to delete testing of hazardous materials. After many discussions it was agreed to remove the testing provision Castle and Cooke would still indemnify if any hazardous materials are located on the property. After the subdivision there will be only three encumbrances, one is a subdivision and two unilateral agreements that are going to be remaining against this property. We won't be encumbering this two acre parcel which is coming over to the State. Castle and Cooke had also agreed to secure entitlement forecast in the earlier submittal. If it is approved by the board today we will go ahead and record it.

Mr. Midler of Castle and Cooke expressed the intent is not to impose material obligations on the County, but recognition that there are unilateral agreements affecting all of the property. We don't believe the County would be willing to take those on.

Chairman Young clarified the question whether those obligations stay with Castle and Cooke or should it transfer over to the State? The question is whether we do it or you keep the obligation? On the subject of the encumbrance does that mean we have the obligation to do it?

Mr. Midler replied yes. Again, the intent is not to impose the obligations on to the State.

Chairman Young asked if it would be done, whatever the conditions?

Mr. Midler stated that he was not that familiar with the conditions. I'm assuming they are pretty in oculus. There could be certain conditions that are peculiar to the owner of the property. For instance logs and things like that, but in regards to material obligations our intent is it should stay with Castle and Cooke.

Mr. Ishikawa stated so you could do a side agreement that goes through some split encumbrances where some we could take and some they should take.

Chairman Young asked Mr. Midler if he was ok with the drafted deed? Mr. Midler affirmed.

Mr. Ishikawa stated there's a number of encumbrances present and recorded against the larger part of this 2 acre parcel which is being subdivided.

Chairman Young asked if phase one has been reviewed?

Mr. Ishikawa stated yes.

Mr. Midler replied we look forward to continuing our relationship with D.L.N.R.

Unanimously approved as submitted (Edlao, Johns)

Item D-4 **Amend Prior Board Action of June 12, 1992, Item F-14, Authorization to Withdraw Land from the Operation of General Lease No. S-4413 and Right-of-Entry to the Department of Transportation, Highways Division for Contra-Flow Road Purposes, Wailua, Kawaihau, Lihue (Puna), Kauai, TMK: (4) 3-9-06:01 (por) and 012. (KDLO/Barry)**

Unanimously approved as submitted (Agor, Gon)

Item M-1 **Issuance of a sublease to Slow Down Town LLC., dba Down Town at the HISAM for a Restaurant, Bar, and Grill, Including related Activities such as Catering for Events; Retail and Office Use at the No. 1 Capitol District (formerly the Hemmeter Building), Honolulu, Oahu, Tax Map Key: (1) 2-1-17-001.**

Unanimously approved as submitted (Johns, Edlao)

Item K-2 **3rd Request for 60-Day Time Extension to the 180-day Processing Period for Conservation District Use Application (CDUA) OA-3266 to process Haseko request to utilize State-owned land for proposed drainage system improvements Ewa District, Island of Oahu, Subject Parcel TMK: (1) 9-1-11:002 and 003, c/o Sandra Wilhide Ishikawa Morihara Lau & Fong LLP, 400 Davis Pacific Center, 841 Bishop Street, Honolulu, Hawaii 96813, 808-528-4200**

Unanimously approved as submitted (Johns, Edlao)

Item K-1 **Conservation District Use Application (CDUA) MO-3376 for Kuleana Land Use Single Family Residence and Sustainable Agriculture located at Kiaoao, Wailau Valley, Halawa, island of Molokai, TMK: (2) 5-9-005:007**

Sam Lemmo of Conservation and Coastal Lands related that it was approved that a parcel used for residential and agriculture purposes has the right to continue those uses as presumably statute. This request is low key due to the relatively small structure, all self sufficient and obviously no road access. She plans to hike in on the trail to the residence. She went through the review process. Concerns were raised and addressed. She is here to seek your approval on the continued use of substandard conditions.

Sam Gon stated it seems clear the applicant is suppose to have those rights with the family who had those kuleana rights.

Unanimously approved as submitted (Edlao, Johns)

Item D-8 **Consent to Financing Agreement and Estoppel Certificate, General Lease No. S-4212, Western Apartment Supply & Maintenance Co., dba Maui Oceanfront Inn, Lessee, Kihei, Wailuku, Maui, Tax Map Key: (2) 3-9-04:029. (ADMINISTRATION/Charlene)**

Unanimously approved as submitted (Edlao, Johns)

Item D-9 **Forfeiture of General Lease No. S-4890, Millicent U. Crawford, Lessee, Maunalaha Homesites, Opu, Makiki, Oahu, TMK: (1) 2-5-24:07. (ODLO/Al)**

Land Division Administrator, Mr. Russell Tsuji related that Ms. Crawford was going to have a relative take over the lease of the property.

Ms. Crawford requested if she could have until the end of the month to pay the rent and insurance. The tax office stated they will not charge her the real property tax because no one is on the property. She wants to pass the property on to her relatives.

Mr. Tsuji suggested deferring to March, but these legislations have a lot of restrictions with who can take over.

Chairman Young recommended withdrawing this and bringing it back lat

Unanimously approved as submitted (Johns, Edlao)

Item D-1 **Consent to hire a consultant to design and implement a central database system to receive data from heterogeneous systems from multiple state agencies in order to comply with the reporting requirements of Section 5, Act 178, Session Laws of Hawaii 2006 (SLH 2006). (INFORMATION SYSTEMS/Arthur)**

Item D-2 **Amend Prior Board Action of February 10, 2006 (Item D-1), Set Aside to the Division of Forestry and Wildlife for addition to Puu Ka Pele Forest Reserve at Waimea, Kauai, Tax Map Keys: (4) 1-5-1:1 and (4) 1-5-3:9, 13, 16, 20, 22 and 27; and Game Reserve Purposes at Waimea, Kauai, Tax Map Keys: (4) 1-5-1:2 and (4) 1-5-3:7, 8, 10, 15, 17, 19, 21, 24, and 40.**

Authorize the Division of Forestry and Wildlife to conduct a public hearing to add these lands into the Forest Reserve System. (ADMINISTRATION/Russell)

Item D-5 **Grant of Term, Non-Exclusive Easement to William T. Sturgis,**

Trustee of the William T. Sturgis Family Trust Dated February 12, 1980 for Seawall Purposes, Lahaina, Maui, TMK: (2) 4-5-03:seaward of 28. (MDLO/Daniel)

Item D-6 **Grant of Term, Non-Exclusive Easement to Thomas R. Brayton and Christine D. Brayton for Seawall Purposes, Lahaina, Maui, TMK: (2) 4-6-003:seaward of 05. (MDLO/Daniel)**

Item D-10 **Issuance of Quitclaim Deed to Goon Moon Lum, and Evelyn Sau Lan Wong Lum, Honolulu, Oahu; TMK: (1) 3-1-046:049. (ODLO/Barry)**

Unanimously approved as submitted (Johns, Edlao)

Item J-1 **Request for Renewal of Revocable Permits on the Islands of Oahu, Maui, and Hawaii.**

Item L-1 **Approval for Award of Construction Contract – Job No. F00CF54A, Individual Wastewater System Improvements At Wailua River State Park Opaekaa Falls, Wailua, Kauai, Hawaii**

Item L-2 **Approval for Award of Construction Contract – Job No. B00D45A, Individual Wastewater System Improvements At Maalaea Small Boat Harbor Maalaea, Maui, Hawaii.**

Unanimously approved as submitted (Johns, Edlao)

Item C-1 **Request for Approval of the Design and Placement of Warning Signs on Improved Public Land. (Pursuant to Act 82, Session Laws Hawaii, 2003)**

Paul Conry, Administrator of Forestry and Wildlife reported a change to the Sunshine law. After discussion with the Attorney General we will go ahead and approve the signs, but not approve the placement on those particular trails because they weren't noted in the title. Therefore, we are asking the board to approve the signs. The changes are page 2 the amendments to the submittal would be item 3, 2nd paragraph line 2 would remove the phrase "**and approval**." We ask the board to provide us with some feed back on the actual form we would be using in the future. We're not asking for approval.

Chairman Young asked if the board will need to approve the placement of every sign on every trail?

Mr. Conry stated we are proposing to use it in the maps. Which will be the form and the process the board will use. Does this discussion meet the board's needs for information and presentation? If that is agreeable then that will be the process we will use. We will

be back for the next board meeting and bring back the actual board submittal that lists the actual trails and the action specifically and have the maps attached for submittal.

Then Chairman Young queried is that required by statute where the board authorizes the specific placement of the signs as well?

Mr. Conry acknowledged, yes. The act does specifically state the board approves the placement. He agreed it would be cumbersome for us to go to every trail, but agreed the maps would suffice to full fill the intent of the trail.

Curt Cottrel, Na Ala Hele Program Manager added it's a cumbersome act for staff. The reason the AG is so interested and supportive of this is once you approve the design and approves the placement then we determine the way the placement works for you. We have 137 locations statewide that need signs. This triggers the presumptive conclusion that the signs are adequate. Should the sign say flash flood and the person is injured or killed by a flash flood we have immunity because the signs have been deemed adequate through this rigorous process and by the board. So what it means is the user has a responsibility. Government has done everything it could do to warn them. The user now has a choice and the user makes a choice and something happens. It's not government's fault. That is why this is a potent act for State Parks, Na Ala Hele and City and County of Honolulu, who is now interested, too. Once we get this through we are paving the way for them.

Member Johns asked has there been discussion with Bob (Robert Toyofuku, representative of Consumer Lawyers of Hawaii)? Is the act being complied with through this process as you described?

Mr. Cottrel replied Bob was really helpful with the rules. He doesn't have his comments on the map portion, but Bob wanted to give a consistent template placement. In terms of the plaintiff's methods it's just the design and placement. We are trying to agree on the placement. Where they are he didn't know. Bob didn't say anything negative.

Chairman Young stated there are three things we need to recommend on page two, number one, remove the words **"in approval",** we want to substitute the signed copy of the rules for exhibit 1 and we provided that. And on page six for the recommendations to strike in it's entirety a recommendation. What we are asking as a board is to approve the design of the signs to the entrance to sites specific hazard and site specific management signs.

Unanimously approved as submitted (Johns, Edlao)

Item C-2 Issuance of Revocable Permit No. FW-2007-01 to Palani Ranch Company, Inc., Kailua-Kona, North Kona, Hawaii, TMK (3)-7-4-002:007 and (3)-7-4-001: por. 003.

Unanimously approved as submitted (Pacheco, Johns)

Respectfully submitted,

Adaline Cummings

Adaline Cummings

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources