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

DATE:	FRIDAY, MARCH 23, 2007
TIME:	9:00AM
PLACE:	KALANIMOKU BUILDING LAND BOARD CONFERENCE ROOM 132 1151 PUNCHBOWL STRET HONOLULU, HI 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:06 a.m. The following were in attendance:

MEMBERS

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

STAFF

Mr. Sam Lemmo, OCCL
Mr. Russell Tsuji, LAND DIV.
Mr. Dan Polhemus, AR
Mr. Curt Cottrell
Mr. Colin Lau, AG
Mr. Wayne Haight, AR

OTHERS

Mr. Tim Lui-Kwan, Hokulia Attorney
Mr. Neal Anthony Simms, President, Kona Blue Water Farms
Mr. John Henderson, NOAA
Mr. Greg Mooers, Consultant
Mr. Steven Tom
Dr. Jason Baker, NOAA

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

Item A-1 Minutes of March 9, 2007.

Mr. Russell Tsuji representing the Land Division had some changes to Item D-7.
Mr. Colin Lau representing the Attorney General's office had some changes.

Unanimously approved as amended (Pacheco/Johns)

Item C-1 **Request for Approval and Acceptance of: quitclaim Deeds to State for the Old Cart Road (OCR) and the Stepping Stone Trail (SST) and to include these Two Trails and a Pedestrian Connector into the Na Ala Hele Program; Authorize the Chairperson of the Department to approve a Memorandum of Agreement Between Na Ala Hele Program and Hokulia for the Management of the OCR and SST; The Application for Perpetual, Non-Exclusive Easements (18) Crossing the SST (Site No. 21664) for Roadway and Utility (SST-1, SST-2, SST-3, SST-5 and SST-7), Golf Cartpath (SST-4, SST-9 and SST-11), Utility (SST-6, SST-8, SST-10, AND Golf Cartpath & Utility (SST-13) Purposes; and for Perpetual, Non-Exclusive Easements (21) Crossing the Old Government Road (Site No. 10290) for roadway (R-1 through R-9), golf cart pathway (G-1 through G-3), pedestrian pathways (P-1 and P-2) and utility (U-1 through U-7) crossing Honuaino 3rd and 4th Hokukano 1st, Hokukano 2nd, Kanaueue 1st and 2nd, District of North Kona, and Halekii, Keekee 1st and 2nd, Ilikahi, Kanakau 1st and 2nd, Kalukalu 1st and 2nd, and 3rd, Onouli 1st, District of South Kona, Island and County of Hawaii.**

Mr. Curt Cottrell representing Mr. Paul Conry administrator for Division of Forestry and Wildlife reported a request for approval of the Quitclaim Deed of the Old Cart Road (OCR) and the Stepping Stone Trail (SST) and include these two trails in the Na Ala Hele Program. There is a Pedestrian Connector easement which they need to link the two trails. Staff is recommending authorizing the Chairperson to approve staff to enter into a second Memorandum of Agreement (MOA) between DLNR and Hokulia on the management and maintenance of these two trails and easements. Staff would like the Board to consider, under the recommendation:

1. Authorize the acceptance of Quitclaim Deed for both the SST and OCR, and grant of easement for the Pedestrian Connector. The Landowner shall grant and record these deeds for the SST and OCR and grant a perpetual pedestrian easement for the Pedestrian Connector to the State in a form suitable for the Attorney General.
2. Designate the SST, the OCR and the Pedestrian Connector under the Na Ala Hele Administrative Rules and authorize the Chairperson to authorize into a MOA between the State and Hokulia to further document and manage these trails.
3. Approve 21 easements crossing the Old Government Road and 18 easements crossing the SST as specified.
4. Authorize the Chairperson to execute other terms and conditions that best serve the interest of the State.

Member Edlao asked is the Landowner required to preserve the historic and cultural aspects?

Mr. Tim Lui-Kwan attorney representing Hokulia replied the settlement agreement includes preservation sites and would need DLNR permission to work on it.

Member Johns asked: is this the first time the public is made aware of the settlement agreement?

Mr. Lui-Kwan stated there was a hearing before a judge and it went before the court.

Mr. Cottrell added Hokulia is DLNR Advisory Trail Council and approved the designation of the two trails and easements. The Big Island Trail Council has been part of the public disclosure and supports it.

Unanimously approved as submitted (Pacheco/Johns)

Item C-2 Memorandum of understanding between the Division of Forestry and Wildlife and the United States Department of the Interior, National Park Service and mutual aid firefighting agreement between the Division of forestry and Wildlife and the United States Army Garrison, Hawaii

Unanimously approved as submitted (Johns/Schuman)

Item D-2 Reconsideration of Rent under General Lease No. S-5513 to Hospice of Hilo, Lessee, for Hospice and Allied Purposes, South Hilo, Hawaii, TMK: (3) 2-3-32:11.

Mr. Russell Tsuji, Land Division administrator, asked the annual rent be reduced to $480 effective Sept. 1, 2007 – Aug. 31, 2017.

Unanimously approved as submitted (Pacheco/Johns)

Item D-1 Reconsideration of Rent under General Lease No. S-5522 to The Storybook Theatre of Hawaii, Lessee, for Youth Cultural and Educational Purposes, Waimea, Kauai, TMK: (4) 1-9-5:41

Unanimously approved as submitted (Agor/Pacheco)

Item K-1 Modifications to Conservation District Use Permit No. HA-3118 Related to an existing offshore aquaculture project located approximately 1/2 mile offshore of the Natural Energy Laboratory of Hawaii at Ulualoha Point, North Kona, Hawaii , by Kona Blue Water Farms, LLC.

Mr. Sam Lemmo representing the Office of Conservation and Coastal Lands (OCCL), reported Kona Blue Water Farms (KBWF) has a general lease to operate an aquaculture business, a 90 acre open ocean fish farm at 2600 feet offshore of North Kona, Hawaii. The Board approved the permit in August 2003. KBWF reports the following issues and modifications:

- A problem with skin flukes. Treatment of fish and cages.
- Problems with mooring lines. Request to install additional mooring lines.
- Removal of two surface net pens/cages and replace with two submerged.
- Change in harvesting and growth of fish. Increase from 360 tons to 600 tons.

A benthic sampling was recently received at OCCL from KBWF. Staff will assess the results and forward it to Dept. of Aquatic Resources (DAR) to provide input.
Staff recommends KBWF review and comply with conditions of the permit at all times. Condition five: request no non-Hawaiian species be raised in the Kona Blue Water Farm. No recreational fishing still needs discussion. These amendments shall be reflected in a revised Management Plan which will be filed with the CDUP in the future.

Member Johns asked with the new conditions and monitoring are you comfortable with the impacts to the increased number of fish?

Mr. Lemmo replied staff checked with Dept. of Health on the water quality and the KPWF is in full compliance of the permit. DAR has concerns with benthic monitoring and coral reef impact.

Mr. Colin Lau of the Attorney General's office asked is the increase a staff recommendation?

Mr. Lemmo replied in the affirmative.

Mr. Neal Anthony Simms president of Kona Blue Water Farms reported the frequency and origins of benthic monitoring. It was his original understanding with DAR, KBWF would handle the in shore monitoring of coral reefs. But Clean Water Branch wanted monitoring under the farm. KBWF is monitoring on a quarterly basis and the information is available. Condition No. 6 – No recreational fishing within the lease area. It is not a KBWF request. The community is satisfied with the condition. It involves opelu fishing and bottom fishing on the outskirts of the area and not in the cages. Mr. Simms is fine with deleting condition 6. It is addressed adequately in the original permit and management plan.

Mr. Lemmo stated it is a non-exclusive lease.

Unanimously approved as amended (Pacheco/Edlao)
With deletion of Condition No. 6.

Item K-3 CDUA HA-3386 for the consolidation and resubdivision of three lots into three at Puakea and Kukuipahu, North Kohala, Hawai`i, TMK (3) 5-6-01:108, 109, & 110

Mr. Sam Lemmo administrator of OCCL reported Lansing & Miller are applicants and Mr. Greg Moers, consultant. Amend the landowner who is Miller & Bailey. In the submittal on page 2, 5th paragraph, 2nd sentence [Other than this, there are no known cultural practices that use these parcels, not any known cultural, archaeological, or historical sites on the parcels.] should be deleted. There are 2 lots in a Split Zone Conservation District which the applicant wants to make into 3 lots. The applicant proposed to include a restrictive covenant on the 2 lots to prohibit any construction in the Conservation District.

Chairman Young stated the 3 parcels with mixed land use in the original configuration could allow construction on each of the lots. The subsequent consolidation of subdivision will result in the same number of parcels and the same number of improvements.

Mr. Steven Tom explained staff reported on page 5, paragraph 6, in bold type *The proposal thus has the potential to increase the intensity of land use.* Based on this proposal it will increase the intensity of the land use. The whole purpose of the subdivision consolidation and subsequent subdivision is to increase land use in the future. Although the specific purpose would not increase intensity at this time, but would be the first step. Referring to page 4, item number 7 *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.* The consolidation subdivision would not increase the intensity of land use would be incorrect because the purpose of the landowner is allowing a covenant on their deed restriction is in response of the intensity of use. If you allow the consolidation of the subdivision because of the increase of land use then there needs to be a better trade off. Mr. Tom thinks the trade off the landowner is suggesting is close, but not quite sufficient. The report should state there should be homes in the conservation district. And increase it further to ensure not just homes, but other facilities such as a resort, restaurants, etc. to expand the covenant and register the covenant with another entity like the State, County or Hawaii Island Land Trust.

Chairman Young explained there are 2 lots in the Conservation District and 1 in Ag. With this consolidation and re-subdivision, yes there will be 3 lots, but there are no changes to the area in conservation. And, with the prohibition of building in the Conservation District he understands your concern. The applicant is still subject to a permit process.

Mr. Lemmo responded there will be no hotels, but in terms of applying the covenant to other entities it would be filed with the BOC and a CDUA would be filed and recorded and noted as an encumbrance.

Mr. Greg Moers clarified the purpose of this consolidation of subdivision is not to increase its use. There are 3 existing lots consolidated and created by Parker Ranch who did not want to apply for a Conservation District Use Permit. The current landowner wants to create normal shape lots. There will be 3 homes constructed on the 3 lots, but not within the Conservation District. The deed restriction has to meet the approval of the Attorney General and would be recorded on the deed to the property so it cannot be passed on. Any use of the Conservation District would have to obtain a permit and then go before the Land Board in the future which is not the applicant's intention. The approval of this condition is an indication the landowner has given up the right to apply for a permit.

Member Johns stated the only difference here is instead of a house built in the land locked Ag. parcel it is good to be close to the Conservation District. With the restrictions a house can't be built in the Conservation District.

Mr. Lemmo responded the reason why the applicant is consolidating the lots is to make them more marketable.

Unanimously approved as amended (Pacheco/Johns)
Amend name of landowner to Miller & Bailey and delete page 2, 5th paragraph, 2nd sentence.

Item K-4 Conservation District Use Application OA-3391 for the Hawaii Pacific University Hale Kou Force Main located at Kaneohe, Oahu, by Hawaii Pacific University – TMKs: (1) 4-5-035:001 & 010; (1)4-5-042:002, 011, 015, & 016

Mr. Sam Lemmo reported Hawaii Pacific University (HPU) has an individual wastewater system and wishes to hook up with the County sewer system. There is a long distance to reach the County system and it will need to go through other properties. HPU plans to use micro-tunneling and has gone through the normal CDU process. They've sent letters of permission to affected landowners. Also, processed an Environmental Assessment and a FONSI was issued on 2/23/07. HPU requests the Board's approval.

Member Johns inquired of their master plan.

Mr. Lemmo replied HPU is working on it. There was a condition number 5 to complete the Master Plan and they had one, but it was never fully realized. They will make sure it conforms to the current CPU.

Unanimously approved as submitted (Johns/Schuman)

Item K-2 **Enforcement Case No. HA-05-25 regarding the Unauthorized Grading of 13,4500 square feet and 2,000 cubic yards of geological features from the 1960 Kapoho Lava Flow at the Kopoho Beach Lots Subdivision, Puna District, Hawaii, by Douglas Shaver - TMK: (3) 1-4-002:047**

Mr. Sam Lemmo reported this is a Settlement Agreement to pay a fine. On page 6, 8th paragraph, item number 1, last sentence [Mr. Shaver is fined $2,000.00] should be deleted. Also on the same page, 9th paragraph, item number 2 remove [an additional]. In lieu of paying the $2,000.00 fine, Mr. Shaver will restore the property and pay the administrative costs total of $2,224.07.

Unanimously approved as amended (Pacheco/Johns)
Remove statement of fine amount and pay administrative costs.

Item F-6 **Request for authorization/approval to issue ONE (1) NORTHWESTERN HAWAIIAN ISLANDS (NWHI) research permit to DR. JASON BAKER, of NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), NATIONAL MARINE FISHERIES SERVICE (NMFS), valid from April 1, 2007 to September 30, 2007, to access the waters surrounding MOKUMANAMANA ISLAND, NIHOA ISLAND, FRENCH FRIGATE SHOALS, LAYSAN ISLAND, LISIANSKI ISLAND, and PEARL AND HERMES ATOLL in order to monitor the SIX MAJOR SUBPOPULATIONS OF HAWAIIAN MONK SEAL**

Mr. Dan Polhemus, Administrator of Division of Aquatic Resources, reported this permit will allow researchers to access and set-up field camp on Laysan Island to continue a 23 year research of the monk seal.

Mr. Wayne Haight, Permit Coordinator for the NWHI and DAR's representative handed out the 2006 and 2007 monk seal permits. It shows some terrestrial components, marine components, etc.

Member Johns was concerned with the potential impacts.

Mr. Haight replied they are working on a GIS to monitor this.

Member Pacheco asked: does the Department have a way to prioritize permits?

Mr. Haight replied the review process is sent out to the experts at the Office of Hawaiian Affairs and Kaho'olawe Island Reserve Commission using an evaluation form ranked from 1to 5 which gives a statistical ranking.

Member Johns asked is there a criteria hierarchy for management?

Mr. Polhemus replied with core management, yes. Staff determines what types of information is most useful. All permits are addressed with the questions "Can this research be done only here and would it be applicable to the management of the monument? What application does it have with management of the Monument?" It is part of the application and review process.

Member Young stated Kure is not listed. There might be a problem with the Sunshine Law. Is Kure Atoll early of late in your process? We will have to address this issue at an April Meeting supplement to a permit. In the future list as North West Hawaiian Islands or Papahanaumokuakea.

Dr. Jason Baker of NOAA replied the camps will be established in the middle of May. All camps will happen at the same time with a few days between.

Unanimously approved as submitted (Pacheco/Johns)

Item F-1 **Request for approval to amend/extend a DLNR/UH Contract (NO. 47471-HAWAII FISH AGGREGATING DEVICE SYSTEM) to provide additional federal funds ($330,000) for the period of July 1, 2007 through June 30, 2008**

Item F-2 **Request for approval to amend/extend a DLNR/UH Contract (NO. 55137 – EVALUATING THE EFFECTIVENESS OF RESTRICTED FISHING AREAS FOR IMPROVING THE BOTTOMFISH FISHERY) to provide additional funding ($398,000) for the period of July 1, 2007 through June 30, 2008**

Item F-3 **Request for a no-cost extension of contract NO. 53939 with the UNIVERSITY OF HAWAII (UH) for the HAWAII FISHERIES DISASTER RELIEF PROGRAM—COOPERATIVE RESEARCH, DEVELOPMENT AND OUTREACH from July 1, 2007 through June 30, 2008**

Item F-4 **Request for approval to add funding and extend through FY08 seven (7) project agreements with the RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII for the following projects: CORAL REEF INITIATIVE (CONTRACT NO. 49090), COASTAL STOCK ENHANCEMENT (CONTRACT NO. 49820), STREAM/ESTUARINE STUDIES (CONTRACT NO. 51059), MARINE POPULATION SURVEY (CONTRACT NO. 51058), ULUA TAGGING (CONTRACT NO. 52851), FINFISH BROODSTOCK AND LARVAE CULTURE (CONTRACT NO. 52994), and HAWAII MARINE RECREATIONAL FISHING SURVEY (CONTRACT NO. 48518)**

Item F-5 **Request for approval to enter into a DLNR/BISHOP MUSEUM contract for an INVERTEBRATE SURVEY OF NINE NORTH SHORE OAHU STREAMS FOR $141,500 to be conducted from May 1, 2007 through June 30, 2008**

Unanimously approved as submitted (John/Pacheco)

Item L-1 **Approval for Award of Construction Contract – Job No.B44XM72A, Kihei Boat Ramp Improvements, Kihei, Maui, Hawaii**

Item M-1 **Issuance of fuel facility lease Bradley Pacific Aviation, Inc. at Kahului Airport, Kahului, Maui**

Unanimously approved as submitted (Johns/Schuman)

Item D-4 **Request Approval to Enter into a Use and Occupancy Agreement with the City and County of Honolulu for Retaining Wall Purposes and Authorize a Construction and Management Right-of-Entry, Honolulu, Oahu, TMK: (1) 2-5-19:portion 5.**

Mr. Russell Tsuji representing Division of Land reported pursuant to the City's request, the Land Board amended Staff's Submittal by replacing "retaining wall" with "retaining wall, including drainage and erosion control improvements" on the (a) Title of Submittal on page 1; (b) Character of use on page 2; (c) Remarks section on page 3; and (d) Recommendation 3 on page 3.

This amendment is intended to make clear that the City will own, and have the duty to repair and maintain into perpetuity, the retaining wall and the drainage and erosion control improvements.

Unanimously approved as amended (Johns/Schuman)

Item D-3 **Amend Prior Board Action of August 26, 2005 (Agenda Item D-5), Acceptance of Federal Excess Land same being the Keahole Lighthouse Site, and Add same to the Operation of General Lease No. S-5619, Keahole Point, Kalaoa 1st-4th, North Kona, Hawaii, TMK: (3) 7-3-43:5**

Item D-5 **Grant of Perpetual, Non-Exclusive Easement to the City and county of Honolulu for Drainage Purposes, Maunalua, Honolulu, Oahu, TMK: (1) 3-9-027:007 seaward.**

Item D-6 **After-the-fact Approval of Lease of Federal Property with the Secretary of the Army on behalf of the Department of Education, for Public School Purposes, Waianae-Uka, Wahiawa, Oahu, TMK: (1) 7-7-01:1 (Portion)**

Unanimously approved as submitted (Johns, Edlao)

Adjourned 10:10 a.m.

Respectfully submitted,

Adaline Cummings
BLNR Secretary

Approved as submitted:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources