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

DATE:	FRIDAY, NOVEMBER 18, 2005
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 9:30 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Gerald DeMello
Ms. Taryn Schuman
Mr. Tim Johns
Mr. Ron Agor

STAFF

Ms. Melanie Chinen, HP
Mr. Russell Tsuji, Land
Mr. Curt Cottrell, DOFAW
Ms. Sunny Greer, HP
Mr. Sam Lemmo, OCCL
Ms. Christen Mitchell, DOFAW

OTHERS

Ms. Linda Chow, Deputy Attorney General
Mr. William Wynhoff, Deputy Attorney General
Mr. Aki Sinoto, I-1
Mr. Isaac Morikwake, K-1
Mr. Marc Nishida, K-3
Mr. Wallace Klein, D-11
Mr. Stevan Bailey, D-14
Mr. Tim Lui-Kwan, I-1
Ms. Kapua Sproat, K-1
Mr. Robert Shaver, D-13
Mr. Robin Foster, D-8

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

Item I-1: Historic Preservation Case Regarding COUNT 1 Violation of Hawaii Revised Statutes ("HRS") §6E-43(a), §6E-43.6(a), and §6E-11, for failure to timely

notify the proper authorities of an inadvertent burial discovery, and for moving human remains without permission; COUNTS 2 – 18 Violation of Hawaii Administrative Rule ("HAR") §13-300-32, for the unauthorized physical examination of the remains of children, including infant remains, and the unauthorized physical examination of presumptively Native Hawaiian remains; COUNTS 19- 21 Violation of HAR §13-300-32, for the failure to examine human skeletal remains in a respectful manner with a recognition of the sensitivities associated with deceased human beings by Aki Sinoto Consulting; Akihito Sinoto, L.J. Moana Lee and Paul Titchenal and International Archeological Research Institute, Inc., J. Stephen Athens, Rona Ikehara-Quebral.

Chairperson Young announced to those present that the Board has received a written request from the attorney representing Aki Sinoto Consulting; Akihito Sinoto, L.J. Moana Lee and Paul Titchenal and International Archeological Research Institute, Inc., J. Stephen Athens, Rona Ikehara-Quebral for a contested case hearing on the subject matter.

Motion made at 9:32 a.m. by Member Johns and second by Member Agor to move 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.

The meeting was reconvened at 9:52 a.m.

Written testimony was received from Tim Lui-Kwan, Koolaupoko Hawaiian Civic Club, Malama Kukuiokane, Koolau Foundation, Native Hawaiian Legal Corporation and Linda Paik.

The Board advised staff to prepare the necessary paperwork to request the appointment of a hearings officer to assist the Board in determining whether there is a violation in this case.

Motion to defer
Unanimously approved to defer (Johns/Schuman).

Item J-1: Amendment to Issuance of Revocable Permit to Hawaii Yacht Club (HYC), a Hawaii non-profit corporation, for a limited number of parking stalls at the Ala Wai Small Boat Harbor TMK (1) 2-3-037: por 12, approved as Item J-1 on October 14, 2005.

Written testimony was received from Bruce Middleton, Tom Charters, Claudia Charters, Bart Calhoon and Larry Sanders.

Motion to withdraw.
Unanimously approved to withdraw (Johns/DeMello).

Item A-1: Minutes of October 28, 2005

Motion to defer (due to lack of quorum).
Unanimously approved to defer (Johns/DeMello).

Item C-3: Request for Approval to Adopt Hawaii Administrative Rules, Chapter 13-8, for the Design and Placement of Warning Signs on Improved Public Lands.

Curt Cottrell, Na Ala Hele Program Manager and the Chairperson's designee for the Act 82 Risk Assessment Working Group (RAWG) came forward to present the above agenda item. Mr. Cottrell pointed out Act 82 provided for the promulgation of Administrative Rules. He believes that although it has taken some to come up with these rules, he feels the end result will be much better. Mr. Cottrell pointed out a public hearing was held in which three people attended. One of the attendees at the public hearing was Robert Toyofuku, representing the Consumer Lawyers of Hawaii. At the meeting and through written testimony Mr. Toyofuku suggested some revisions to the proposed rules which staff incorporated into the rules presented today. Mr. Cottrell communicated the real changes in the rules were in regards to the definition of "caution", "warning" and "danger." Mr. Cottrell brought a sample of the size of the various signage which the rules would authorize. Mr. Cottrell recommended the Board approve the public hearing minutes and concur with the changes as described and adopts the proposed new Chapter 13-8, HAR, for the Design and Placement of Warning Signs on Improved Public Lands and directs staff to forward the proposed final HAR to the office of the Attorney General for approval as to form and the Governor and the Lieutenant Governor for filing.

Robert Toyofuku, representing the Consumer Lawyers of Hawaii thanked the division for taking into consideration the recommendations made by their group and incorporating those changes into the rules.

Unanimously approved as submitted (Johns/DeMello).

Item C-1: Request for Approval to Authorize the Chairperson to Amend Contract with Southwest Fence and Supply Company to Install Ungulate-Proof Perimeter Fence within the Helemano Drainage of the Koolau Mountains, Oahu.

Item C-2: Request for Approval to Enter into a Contract with Garcia & Associates to Develop a Cultural Resource Management Plan for Ahihi-Kinau Natural Area Reserve and Keoneoio (La Perouse Bay) on the Island of Maui, Hawaii.

Unanimously approved as submitted (Johns/DeMello).

Item D-13: Amend Prior Board Action of August 24, 2001, under Agenda Item D-29, Issuance of 150 Leases for Private Residential Noncommercial Piers Pursuant to the Kaneohe Bay Piers Amnesty Program; Issuance of Direct Lease to YWCA for Private Noncommercial Pier Purposes, Kaneohe, Oahu, TMK: (1) 4-5-104:49.

Russell Tsuji, Administrator of the Land Division recommended the Board approve the issuance of a direct lease to the YWCA but that the Board determine the lease rent to the YWCA based on the three options presented by staff (one-time payment of fair market rent, one-time payment of nominal rent or annual payments of nominal rent).

Bob Schaver, Senior Facilities Manager for the YWCA made it known their organization in a non-profit organization. He went on to say that the subject pier has been in existence for over eighty (80) years and is being used by the community as a community pier. He acknowledged the YWCA does not charge the community for use of the pier nor is it available to YWCA members only. Mr. Schaver announced that his organization has raised over $100,000 to fix the deteriorated pier and realizes that they would need to raise an additional $300,000. When asked by the Board which payment option he'd prefer, Mr. Schaver indicated a one-time payment of nominal rent, but he would entertain an option for a lower rent amount.

Mr. Tsuji reminded the Board of a previous policy they adopted in May 2005 in which the nominal rent amount was designed to cover administrative costs in monitoring the lease (i.e. sending bills out and making sure the lessee has insurance).

The Board amended Recommendation B

"B. Determine that the lease rent to the YWCA shall be:

[~~Fair market rent (one-time payment) for the time period July 13, 2001 to July 12, 2056, which is $75,700.~~

~~or~~]

Nominal rent (one-time payment) for the time period July 13, 2001 to July 12, 2056, which is [~~$10,610~~] <u>$480</u>;

[~~or~~

~~Nominal Rent (annual payment) for the time period July 13, 2001 to July 12, 2056, which is $480 per annum, with no rental reopenings provision~~.]"

Motion to approve amendments: Yes-Member Agor; No-Members Johns, DeMello and Schuman.

Motion fails.

The Board asked staff to bring this item back in December as the Board would like to see how the May 2005 policy is being applied to other non-profit organizations.

Motion to defer.
Unanimously approved to defer (Johns/Agor).

Item K-1: Request for Public Hearing and Small Business Impact Determination to Amend Title 13, Chapter 222, Hawaii Administrative Rules Related to the Definition of the Shoreline (Shoreline Certification Rules).

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) acknowledged he would like to change the definition of "shoreline" as contained in Hawaii Administrative Rules (HAR) Title 13, Chapter 222. He pointed out the definition in the HAR

differs from the definition under Chapter 205A-1, Hawaii Revised Statutes. Mr. Lemmo went over the proposed changes he is requesting. Mr. Lemmo recommended the Board approve the Department's request to process the subject amendment to Chapter 13-222, HAR, determine that the proposed rule amendment will not impact small business, authorize the forwarding of a request for public hearings to the Governor, upon executive approval, publish public hearing notices and upon executive approval, appoint a representative of the Board of Land and Natural Resources as public hearing master.

Isaac Moriwake and Kapua Sproat were present for this item.

Written testimony was received from Claudia Rohr.

Unanimously approved as submitted (Johns/Schuman).

Item K-3: Amendment to Condition #6 of Conservation District Use Permit KA-3160, TMK: 4-7-003:001and 4-7-007:029.

Mr. Lemmo explained previously the Board approved Conservation District Use Permit KA-3160 and included in the recommendation section was a provision requiring the applicant to provide documentation that the approval has been placed in recordable form as a part of the deed instrument. Mr. Lemmo indicated this provision is not typical included for government agencies and recommended the Board approve an amendment to remove condition #6 from CDUP KA-3160 subject to the conditions listed in staff's submittal.

Unanimously approved a submitted (Johns/DeMello).

Item K-2: Request for Public Hearing and Small Business Impact Determination: Petition to Amend Title 13, Chapter 5, Hawaii Administrative Rules (13-5, HAR) to Designate a Portion of the State Land Use conservation District into the Resource Subzone.

Mr. Lemmo noted the County of Kauai is requesting to create a resource subzone on the island of Kauai in Kealia. This action will require an amendment to the rules therefore a public hearing will need to be held. Once the area is designated a resource subzone the County will be able to commence completion of the Bike and Pedestrian Pathway. Mr. Lemmo recommended the Board approve the petitioner's request to process the subject petition to amend chapter 13-5, Hawaii Administrative Rules, determine that the proposed rule amendment will not impact or affect small business, authorize the forwarding of a request for public hearing to the Governor, upon executive approval, publish public hearing notice and upon executive approval, appoint a representative of the Board as public hearing master for the proposed rule amendment's public hearing.

Unanimously approved as submitted (Agor/Schuman).

Item D-11: Sale of Remnant to Harlan P. Klein and Julie S. Klein, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-4-16:23.

Mr. Tsuji appeared before the Board and recommended the consolidation of the subject remnant by the applicant and subject to the applicant fulfilling all of the requirements listed in the submittal

authorizes the sale of the subject remnant to Harlan P. Klein and Julie S. Klein covering the subject area.

Wallace Klein appearing on behalf of his son was present to answer any questions.

Unanimously approved as submitted (Johns/DeMello).

Item D-8: Grant of Term, Non-Exclusive Easement to Barham Trust for Seawall Purposes, Honolulu, Oahu, TMK: (1) 3-5-03:10 seaward.

Unanimously approved as submitted (Johns/DeMello).

Item D-14: Grant of Term, Non-Exclusive Easement for Boat Ramp Purposes and Sale of Reclaimed Lands to Stevan M. Bailey, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-7-30:17 seaward.

Mr. Tsuji let it be known this Board action is for the sale of reclaimed lands and a grant of term non-exclusive easement. Mr. Tsuji recommended the Board impose a $500 fine for the illegal encroachment, authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel, subject to the applicant fulfilling all of the requirements authorize the issuance of a term, non-exclusive easement to the applicant, find that the sale of the subject reclaimed land is not prejudicial to the best interest of the State, community or area and authorize the sale of the subject reclaimed land to Stevan M. Bailey covering the subject area under the terms and conditions listed in staff's submittal.

Stevan Bailey, the applicant appeared before the Board to appeal the $500 fine as the subject encroachment happened over fifty years ago when he was not the property owner. Mr. Bailey feels the owner of the property at the time the subject encroachment occurred should be responsible for the fine.

Unanimously approved as submitted (Johns/DeMello).

Item D-7: Forfeiture of General Lease No. S-4899, Ronald Lopes, Lessee, Maunalaha Homesites, Opu, Makiki, Oahu, TMK: (1) 2-5-24:32.

Mr. Tsuji made it known the forfeiture of the subject lease is due to the lessee failure to post the required liability insurance.

Carol Lopes, mother of Ronald Lopes testified before the Board. Mrs. Lopes indicated her son's policy was dropped by his current insurance company. She asked the Board for additional time to acquire the necessary insurance coverage to satisfy the terms of her son's lease. Mrs. Lopes noted that a possible reason for her son's insurance coverage to be dropped was due to the falling rocks in the area and the poor condition of the road.

Jocelyn Kaawa, President of the Maunalaha Community Association told the Board she would need more than sixty days to obtain the required liability insurance. Ms. Kaawa made the Board aware of the fact that there are others in Maunalaha that do not have insurance coverage and their community

association will be working with those residents to resolve the situation. Mr. Kaawa asked for an additional ninety days to obtain the required insurance coverage.

Mr. Lopes, Ronald's father spoke of the dangerous conditions that exist in the subject area due to past and possibly future rock falls.

The Board deferred action on this item for ninety (90) days.

Motion to defer.
Unanimously approved to defer (Johns/DeMello).

Item D-15: Forfeiture of Grant of Non-Exclusive Easement S-5195, George W. Playdon Jr., Kaluanui, Oahu, TMK: (1) 5-3-08:28 seaward.

Motion to defer.
Unanimously approved to defer (Johns/DeMello).

Item D-17: Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu.

The Board amended condition B as follows

"Approve the proposed monthly rent up to December 31, 2006 for Revocable Permits as listed in Exhibit A, provided however, the Land Board reserves the right at any time to review and reestablish new rental charges for any Revocable Permits to reflect market conditions or fair market rental for the rights and privileges granted by such Revocable Permit."

Unanimously approved as amended (Johns/DeMello).

Item D-1: After-the-Fact Consent to Sublease of General Lease No. S-3592, USA, Department of the Navy, Lessee and Sublessor, New Cingular Wireless PCS, LLC, Sublessee, Makaha Ridge, Waimea, Kauai, TMK: (4) 1-2-01:por. 06 and 10.

Item D-2: Amend Prior Board Action of December 12, 2003, Item D-38, Regarding the Holdover of Leases for Various Lessees, Kokee Campsite and Puu Ka Pele Park Lots, Waimea, Kauai, TMK: (4) 1-4-03, (4) 1-4-04 and (4) 1-4-02.

Item D-3: Consent to Assign General Lease No. S-4443, Hawaii Planing Mill, Ltd., Assignor, to I. Kitagawa and Company, Ltd., Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-58:01.

Item D-4: Amend Prior Board Action – Sale of Road Reservation to Big Island Country Club Estates, Limited Partnership, Puuanahulu, North Kona, Hawaii, TMK: (3) 7-1-05:31 & 32.

Item D-5: **Set Aside to the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement for Office, Base-Yard and Related Purposes, Kahului, Maui, TMK: (2) 3-7-12:07.**

Item D-6: **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) 1-1-02:05 portion.**

Item D-9: **Consent to Assign General Lease No. S-3760, Blake M. Tanaka, Personal Representative of The Estate of Kaname Tanaka, Deceased, Assignor, to Ladybug Plants, LLC, Assignee, Consent to Mortgage and Extension of Lease Term, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:43.**

Item D-10: **Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to the Waimanalo Forest Reserve and for the Mount Olomana State Monument, Kailua, Koolaupoko, Oahu, TMK: (1) 4-2-05:02.**

Item D-12: **Amend Prior Board Action of April 23, 2004 under Agenda Item D-2, for Grant of a Term Non-Exclusive Easement for Roof Overhang to Charles Stone, et al, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-01:30 seaward.**

Item D-16: **Amend Prior Board Action of August 13, 2004 under Agenda Item D-4, Consent to Assign Non-Exclusive Easement Bearing General Lease No. S-5340, Midway Resources, Inc., Assignor, to Sunset View Properties, LLC, Assignee, Pupukea, Koolauloa, Oahu, TMK: (1) 5-9-20:49 seaward.**

Unanimously approved as submitted (Johns/Schuman).

Item F-1: **Request for Approval to Hold Public Hearing To Adopt Chapter 13-60.6, Ewa Beach Fisheries Management Area, Oahu, Hawaii Administrative Rules.**

Item F-2: **Request Approval to Hold Public Hearing to Amend Hawaii Administrative Rules, Chapter 13-64, Kokee Public Fishing Area, Kauai.**

Written testimony was received from Lynn McCrory.

Item F-3: **Request Approval to Hold Public Meetings and a Public Hearing to Adopt Hawaii Administrative Rules, Chapter 13-65, Wailua Reservoir Public Fishing Area, Kauai.**

Written testimony was received from Lynn McCrory.

Unanimously approved as submitted (Johns/Schuman).

Item L-1: **Approval for Award of Construction Contract – Job. No. F00CF25A, Individual Wastewater System Improvements at Waianapanapa State Park, Hana, Maui, Hawaii.**

Item L-2: **Approval for Award of Construction Contract – Job No F00CF53A, Individual Wastewater System at Kalopa State Recreation Area, Hamakua, Hawaii.**

Item L-3: **Approval for Award of Construction Contract Job No. F00CF72A, Individual Wastewater System at Kaena Point State Park, Oahu, Hawaii and Job No. F00CF48A, Individual Wastewater System at Keaiwa Heiau State Recreation Area, Oahu, Hawaii.**

Item L-4: **Approval for Award of Construction Contract – Job No. J00C401A Kauai Forestry and Wildlife Baseyard ADA Barrier Removal Lihue, Kauai, Hawaii.**

Item L-5: **Approval for Award of Construction Contract – Job No. J00C106A Nike Site/Educational Center ADA Barrier Removal Mokuleia, Oahu, Hawaii.**

Unanimously approved as submitted (Johns/DeMello).

Item M-1: **Issuance of a Right-of-Entry to the Gas Company, LLC, for Environmental Studies and Related Work Adjacent to Pier 38, Kapalama, Honolulu Harbor, Oahu.**

Item M-2: **Amendment to Prior Land Board Action of 12/12/03, Item M-1 U.S. Federal Aviation Administration Hilo International Airport, Kona International Airport at Keahole and Kahului Airport.**

Item M-3: **Disposition of Surplus Highway Remnant Kalanianaole Highway, FAP No. F-072-1(39), Remnant R3 TMK: (1) 3-8-03:025.**

Item M-4: **Disposition of Surplus Highway Remnant Kalanianaole Highway, FAP No. F-072-1 (39), Remnant R4 TMK: (1) 3-8-03:49.**

Item M-5: **Disposition of Surplus Highway Remnant Kalanianaole Highway, FAP No. F-072-1(39), Remainder 119 TMK: (1) 3-8-03:23.**

Item M-6: **Disposition of Surplus Highway Remnant Lunalilo Freeway, FAP No. F-59(2), Remnant 29-A TMK: (1) 2-8-9:30 (Portion).**

Item M-7: **Disposition of Surplus Highway Remnant Kauai Belt Road, FAP No. F-056-1(2), Remnant R-2A TMK: (4) 4-9-5:Road (Portion).**

Item M-8: **Disposition of Surplus Highway Remnant Kauai Belt Road, FAP No. F-056-1(2), Remnant R-2B TMK: (4) 4-9-5:Road (Portion).**

The Board amended each of the above items to be subject to the review and approval by the Attorney General's Office.

Unanimously approved as amended (Johns/DeMello).

Item M-9: Amendment of Retail Concession Lease, Lease No. DOT-A-01-0003 DFS Group, L.P. Honolulu International Airport.

A representative from the Department of Transportation indicated the final version of the lease was negotiated by the Attorney General himself.

The Board amended the above items to be subject to the review and approval by the Attorney General's Office.

Unanimously approved as amended (Johns/DeMello).

There being no further business, Chairperson Young adjourned the meeting at 11:00 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