

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

DATE: FRIDAY, MAY 24, 2019
TIME: **9:15 A.M.**
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 96813

MEMBERS

Suzanne Case
Tommy Oi

Jimmy Gomes
Stan Roehrig

STAFF

Russell Tsuji- Land
Maria Caravale-DAR
David Smith-DOFAW

Ian Hirokawa-Land
Cathy Geweke-DAR
Carty Chang-Engineering

OTHERS

Ross Smith/DOT-Air
Reid Yoshida/D1
Nathaniel Tin-Wong/D-1
"Shorty" Clarence Kaona/D1
Bobby Watari/D1
Sierra Boro Harada/D1
Uiilani Tanagawa – Lum/D1
Lehua AhSam/F3, F4
Lani Yamasaki/F5
Wayne Tanaka/D1
Greg Kugle/J1
Andrew Cary/J1

Davis Yogi/DOT-HAR
Joanne Kaona/D1
Wayne Tanaka/D1
Chris Kobayashi/D1
Kaisen Carillo/D1
Kapua Sproat/D1
Kalei Nuuhiwa/F1
Chuck Shaker/F5
Russell Brainer/F2
Fred Liu/J1
Amy Luerson/J1

190524_126/00:00:16

Chair Case called the meeting to order at 9:18 a.m. and read the standard contested case statement.

190524_126/00:00:25

ITEM A-1 Approval of Meeting Minutes for February 22, 2019.

ITEM A-1

Board Discussion

Roehrig noted that Item D-4 was missing a sentence that Member Yuen made regarding access in writing.

ITEM A-2 Approval of Meeting Minutes for March 8, 2019.

ITEM A-3 Approval of Meeting Minutes for May 10, 2019.

Public Testimony-None

MOTION

**Item A-1, Approved as amended (Oi, Gon) unanimous.
Item A-2 & Item A-3 approved as submitted (Gon, Oi)**

190524_126/00:03:23

ITEM D-1 Grant of Term, Non-Exclusive Easement to Wai'oli Valley Taro Hui, Inc. for Surface Water Diversion and Irrigation Purposes, Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001 (portion).

Ian Hirokawa, Land Division, passed out additional photo's. Explained how the diversion had been damaged by last year's flood. The County is repairing the irrigation ditch and the Hui will help maintain the ditch.

Board Discussion

Comment was made that it is gratifying to be able to use a pre-contact a'uwai system. There was a robust discussion how the taro farmers can get a permanent easement in perpetuity and how the HAR Statue 171-58 can be used by the farmers. They need immediate action and cannot wait for the Legislature.

Public Testimony

Reid Yoshida, President of Hui, informed that the Hui consists of 3-4 generations of taro farmers in this area. Provided information on what happened after the flood and how the water was blocked, and the community came together and worked to get their loi's rebuilt.

Joanne & Shorty Clarence Kaona, highlighted their written testimony.

Nathaniel Tin-Wong, supports the Hui.

Wayne Tanaka, OHA- Strongly Support. Easement is a good start. Read his written Testimony. Case thanked him for all the research that they did.

Chris Kobayashi, 3rd generation kalo farmer. 30 years ago, made a commitment to farm her father's land. Quality of taro is not as good due to the silt that was brought by the flood last year.

Bobby Watari, supports the submittal.

Kaisen Carillo-next generation, came to Oahu to work when he was old enough and then went back to Kauai. In support of the easement

Sierra Boro Harada, next generation took over the farm when her grandfather got sick. In support of the easement.

Kapua Sproat, in Professional capacity in Hawaiian Law. Worked in partnership with the Hui this semester. Will continue to help move forward on the water lease.

Uiilani Tanagawa – Lum, Environmental law, worked with Hui, frustrating to see the struggles between government and process to get access. Longstanding understanding of the Kalo farmers.

Amendment:

Add in the Recommendation Section the Issuance of an Immediate Management and Construction Right-of-Entry to the Waioli Valley Taro Hui, Inc.

MOTION

Motion to approve as amended to add Immediate Right-of-Entry (Oi, Gomes) unanimous.

10:40 a.m.: Break

10:44 a.m.: Back in session

190524_127/00:01:07

ITEM F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Dr. Pualani Kanaka'ole Kanahale, University of Hawai'i at Hilo, Kipuka Native Hawaiian Student Center for Access to and State Waters surrounding Mokumanamana and Nihoa islands to Conduct 2019 Summer Solstice Cultural Research Activities.

Maria Carnevale, Co-Manager PMNM, Division of Aquatics Resources provided background, Representative here to answer questions

Board Discussion

Kahuliwa, has gone 5 times, over the 6 years, they have studied the star patterns, during summer solstice and fall equinox. Sun/Star chants are being connected. Discovered chants and transferring knowledge to the next generation. The Board requested a PowerPoint presentation.

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) unanimous.

190524_127/00:09:12

ITEM F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Russell E. Brainard, National Oceanic and Atmospheric Administration, Pacific Island Fisheries Center, for Access to State Waters surrounding French Frigate Shoals, Lisianski Island, Pearl and Hermes Atoll, and Kure Atoll, to Conduct Activities for the Pacific Reef Assessment and Monitoring Program.

Maria Carnevale, Co-Manager PMNM, DAR, presented the submittal. Representative is present to answer any questions.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gomes, Gon) unanimous.

190524_127/00:10:20

ITEM F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Ms. Keomailani Case, Nā Kālai Wa'a for Access to and State Waters surrounding Mokumanamana to Conduct Training Sails on the Makali'i and Cultural Research Activities.

ITEM F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Special Ocean Use Permit to Ms. Keomailani Case, Nā Kālai Wa'a, for Access to and State Waters surrounding Mokumanamana to Conduct Photographic Activities.

Maria Carnevale, Co-Manager PMNM, DAR, presented Items F-4 & F-5 together. It is the same group doing two different types of research.

Board Discussion-None

Public Testimony

Lehua AhSam, CAP Stone project. Testing the skills of the student navigators.

Bob Matsuda, proud of the young people coming.

MOTION

Approved as submitted (Gon, Oi) unanimous.

190524_127/00:13:57

ITEM F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to William Middleton, Liquid Robotics, Inc. for Access to State Waters surrounding Mokumanamana and Nīhoa islands to Deploy an Unmanned Autonomous Wave Glider for Oceanographic Research.

Maria Carnevale, Co-Manager PMNM, DAR, presented the submittal.

Board Discussion

Invited the Applicant's to share their project.

Public Testimony

Applicant Representatives, Lani Yamasaki & Chuck Shaver explained how the Wave Glider works.

MOTION

Approved as submitted (Roehrig, Oi) unanimous.

190524_127/00:21:57

ITEM M-10 Issuance of a Revocable Permit to Hawaiian Cement to replace existing Revocable Permit No. H-13-2738 situated at Pier 7, Kalaeloa, Barbers Point Harbor, Oahu, Hawai'i, Tax Map Key: (1) 9-1-014: Portion of 024. Governor's Executive Order No. 38533.

Davis Yogi-DOT-Harbors, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gomes, Oi) unanimous.

190524_127/00:26:47

ITEM M-11 Issuance of a Construction Right-of-Entry to Hawaiian Electric Company, Inc., to install an Upgraded Replacement Underground and Associated Facilities for the completion of Matson Terminals, Inc., Improvements and Capital Improvements Projects within the Sand Island Container Facility, Honolulu Harbor, Oahu, Hawai'i, Tax Map Key: (1) 1-5-041: Portion of 200.

Davis Yogi-DOT-Harbors, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gomes, Gon) unanimous.

190524_127/00:27:25

ITEM M-12 Issuance of a Construction Right-of Entry and Revocable Permit to Matson Navigation Company, Inc. for Submerged Lands at Pier 7, Honolulu Harbor, Oahu, Hawai'i, Tax Map Key (1) 2-1-1:001, Portion of 058.

Davis Yogi-DOT-Harbors, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gomes, Oi) unanimous.

190524_127/00:28:46

ITEM M-13 Issuance of Revocable Permit to JFC International Inc., to replace existing Revocable Permit No. H-02-2330 situated at Pier 33, Honolulu Harbor, Oahu, Hawai'i, Tax Map Key: (1) 1-5-035: Portion of 009.

Davis Yogi-DOT-Harbors, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) unanimous.

190524_127/00:30:15

ITEM D-7 Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Utility Purposes, Cancellation of Revocable Permit No. S-7605; Waimanalo, Koolaupoko, O'ahu; Tax Map Key: (1) 4-1-013: portions of 022.

Russell Tsuji, Land Division, present to answer any questions. Did not have anything to add to the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Oi, Gon) unanimous.

190524_127/00:31:13

ITEM J-1 Denial of Administrative Hearing Requested by Kama'aina Care Inc., regarding Non-Renewal of Kāne'ōhe Bay Waters Commercial Use Permit No. CO038251.

Ed Underwood, Division of Boating and Ocean Recreation presented the submittal. Representatives from Kama'aina Care Inc., are present.

Applicant:

Greg Krugle, Counsel, and Ray Sanborn, President for Kama'aina Care Inc. Sanborn provided history of the program at Heeia State Park. The kayak tours provide revenue to maintain the park and a lot of the money goes back into the park. Interpretation of the Regional rules.

Greg Krugle noted it wasn't till recently there was a discussion whether Kama'aina Care, needed a commercial permit for its bay activities. In 2017 a determination was made that they needed a permit. In March 2018, DOBOR issued a permit, there were many discussions regarding the pricing of their activities. In February 2019 they received a letter from DOBOR, stating their commercial permit would not be renewed. We did not agree with their determination for not renewing. He went on to explain their position and the impacts and are seeking an administrative hearing.

Krugle confirmed that they did not re-apply for a permit when they asked. They do not see their tours as commercial, but as educational. They want a dual process.

Board Discussion

Roehrig' s concern was the impact this would have on the children's programs. The discussion continued regarding the merits of making money for 501C's.

Krugle noted that they have been working with Kaneohe Base Council and try to find different ways to comply.

There continued to be a robust discussion on compliance and finding solutions that everyone can live with.

Roehrig suggested to defer and mediate.

Public Testimony

Amy Luerson, Neighborhood Board, supports Staff Submittal.

Mahelani Siphor read the Aha Moku letter that was submitted. Supports Staff submittal.

Clifford Liu, resident testified that the he has seen and spoken to tourists coming off of the kayaks and a lot of them have coral in their goodie bags. Supports Staff submittal.

Andrew Cary, Water Front Manager for Kama'aina Care. Provided information between the difference of the kid's programs and the commercial activities.

Motion to go into Executive session was made by Member Gon and seconded by Member Gomes.

Before going into Executive Session Chair Case asked to hear Item M-14.

ITEM M-14 Litigation of *O. Thronas, Inc. v. Board of Land and Natural Resources, State of Hawaii*, Civil No. 19-1-0029, Circuit Court of the Fifth Circuit.

The Board may go into executive session closed to the public pursuant to Section 92-4 and 92-5(a)(4), Hawaii Revised Statutes, to consult with the Board's attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

NON-ACTION ITEM

The Board may go into Executive Session pursuant to Section 92-5(a) (4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

David Day, Deputy Attorney General, Lead Council for *O. Thronas, Inc. v. Board of Land and Natural Resources*, requested to have this matter heard in Executive Session.

Member Gomes made the Motion to go into Executive Session, and Member Gon, seconded the Motion

12:40 pm: Executive Session

1:45 pm: Back in Session

190524_128/00:00:16

Chair Case asked the Board Members if they had any further question regarding Item J-1?

Member Oi had questions for Underwood regarding the violation of the commercial permit. Underwood conveyed that when Kama'aina Care created the DBA, that is when it became an issue.

Amanda Weston, Deputy Attorney General, recognizes what the HAR says, but the Administrative Rules do not supersede the Kaneohe Master Plan which limits commercial activity.

MOTION

Approved as submitted (Oi, Gomes) Roehrig Opposed. Passes

190524_128/00:15:52

- ITEM M-1** Issuance of a Revocable Permit for an Executive Lounge, IASS Hawaii, LLC, Central Concourse, Daniel K. Inouye International Airport, Honolulu, Hawai'i, Tax Map Key: (1) 1-1-003: 050 (Portion).
- ITEM M-2** Issuance of a Revocable Permit for Space to Stockpile Material for Honolulu Rapid Transit Project, Shimmick/Traylor/Granite, JV, Daniel K. Inouye International Airport, Honolulu, Hawai'i, Tax Map Key: (1) 1-1-003: 218 (Portion).
- ITEM M-3** Issuance of a Revocable Permit for Construction Material Storage and Equipment Staging, Watts Constructors, LLC, Daniel K. Inouye International Airport, Honolulu, Hawai'i, Tax Map Key: (1) 1-1-014:097 (Portion).
- ITEM M-4** Issuance of a Revocable Permit for a Training Room and Administrative Space for Flight School Operation, Barbers Point Aviation Services, LLC, Kalaeloa Airport, Hawai'i, Tax Map Key: (1) 9-1-013: Portion of 103.
- ITEM M-5** Issuance of a Revocable Permit for a T-Hangar for Storage and Maintenance of Aircraft, GV Air, Inc., Kalaeloa Airport, Hawai'i, Tax Map Key: (1) 9-1-013: Portion of 032.
- ITEM M-6** Issuance of a Revocable Permit for Customer Vehicle Parking, Air Service Hawaii, Inc., Ellison Onizuka Kona International Airport at Keāhole, Island and State of Hawai'i, Tax Map Key: (3) 7-3-043: Portion of 040.
- ITEM M-7** Issuance of a Revocable Permit for Aircraft Parking, Andrew Cole, Hilo International Airport, Island and State of Hawai'i, Tax Map Key: (3) 2-1-012: Portion of 090.
- ITEM M-8** Issuance of a Revocable Permit for Ramp Space for the Parking of Ground Service Equipment for Use in Air Cargo Operations, Hawaiian Airlines, Inc., Hilo International Airport, Island and State of Hawai'i, Tax Map Key: (3) 2-1-012: Portion of 090.
- ITEM M-9** Issuance of a Revocable Permit for Vehicle Parking, Fedex Ground Package System, Inc., Moloka'i Airport, Hawai'i, Tax Map Key: (2) 5-2-04: Portion of 8.

Ross Smith, DOT-Airports, present to answer question regarding Items M-1 through M-9.

Board Discussion

Gomes, **Item M-1**, Executive Lounge, IASS Hawaii, LLC, who is this for?

Smith replied it is an organization that requested a lounge for their clientele who are mostly from Asia and if you carry a certain level of their credit card, you can have access.

Public Testimony- None

MOTION

Approved as submitted Item M-1 through M-9 (Gomes, Roehrig) unanimous.

190524_128/00:17:21

ITEM L-1 Authorization to Enter into a Memorandum of Agreement with the U.S. Fish and Wildlife Service (USFWS) for the Transfer of Act 12, SLH 2018 Funding Appropriated for Disaster and Flood Relief for April 2018 Storms for the Repair and/or Relocation of the Damaged Intake Structure for USFWS's Water Diversion System, Hanalei, Kauai, Hawai'i.

Dickey Lee, Engineering, presented the submittal.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gomes, Oi) unanimous.

190524_128/00:18:35

ITEM C-1 Acceptance of Hearing Officer's report on a public hearing for two proposed additions to the forest reserve system on the Island of O'ahu.

Approval and recommendation to the Governor regarding issuance of an executive order for addition of Tax Map Keys (1) 6-3-001:003, (1) 6-4-004:011, (1) 7-1-002:011, and (1) 7-2-001:003, comprising approximately 2,881.626 acres, to the 'Ewa Forest Reserve (Helemano section), Pa'ala'auka, Waialua, and Wahiawa, O'ahu.

Approval and recommendation to the Governor regarding issuance of an executive order for addition of Tax Map Key (1) 3-4-015:034, comprising approximately 25,731 square feet, to the Honolulu Watershed Forest Reserve, Waimao, Palolo, O'ahu.

Marigold Zoll, Division of Forestry and Wildlife presented the submittal.

Board Discussion

Gomes asked what happened to the 2004 contract, that left \$169,000 on the table? Zoll replied, the work was never done. Engineering has indicated they can execute a contract with the entity, the work was never completed due to a rock fall.

Public Testimony-None

MOTION

Approved as submitted (Gon, Gomes) unanimous.

190524_128/00:18:35

The Chair asked if there were any questions for the remaining items for Land Division?

ITEM D-2 Approve a One-Year Holdover, General Lease No. 3837, Floral Resources/Hawaii, Inc., Lessee, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-2-044:004.

ITEM D-3 Issuance of a Right-of-Entry Permit to the Maui Film Festival, Inc. for the 2019 Maui Film Festival at Wailea Beach, Maui; Tax Map Key: (2) 2-1-023: seaward of 007.

ITEM D-4 Issuance of a Right-of-Entry Permit to MC&A, Inc. for Beach Events for Dell Chairman's Club; Wailea Beach, Honua'ula, Maui, Tax Map Key: (2) 2-1-023: seaward of 007.

ITEM D-5 Issuance of Right-of-Entry Permit to Waikiki Beach Activities, Ltd. over Portions of Duke Kahanamoku Beach for Stage and Gathering Area Purposes from June 27 to 29, 2019 in relation to the United States Conference of Mayors to be held on the Abutting Private Property, Waikiki, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037: Portions of 021.

ITEM D-6 Amend Prior Board Action of December 9, 2010, Item D-6, *Cancel Governor's Executive Order (GEO) Nos. 1330, 1786, and 1795, and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Ala Wai Small Boat Harbor, Beach Control and Related Purposes, Kewalo and Kalia, Waikiki, Honolulu, Oahu, Tax Map Keys: (1) 2-1-58: Various, (1) 2-3-37: Various, (1) 2-6-01, 02, 04, 05, 10: Various, and (1) 3-1-30, 31, 32: Various.*

The purpose of the amendment is to add Governor's Executive Order (GEO) Nos. 2170 and 2575 which were missed in the prior Board action.

ITEM D-8 Issuance of Right-of-Entry Permit to the Marriott International, Inc., dba: Kauai Marriott Resort & Beach Club, for Kauai Lifeguard Beach Bash Event Over Unencumbered State Lands at Kalapaki Beach, Kalapaki, Lihue, Kauai, Tax Map Key: (4) 3-5-002: seaward of 002.

Russell Tsuji, Land Division was present to answer question for Items D-2, D-3, D-4, D-5, D-6 and D-8.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted, Item D-2, D-3, D-4, D-5, D-6 and D-8 (Oi, Gomes) unanimous.

There being no further business, Chairperson Case adjourned the meeting at 5:13 pm. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,

Darlene S. Ferreira
Land Board Secretary

Approved for submittal:

Suzanne D. Case
Chairperson
Department of Land & Natural Resources