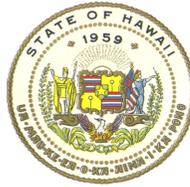


DAVID Y. IGE
GOVERNOR OF HAWAII



APPROVED AS SUBMITTED
AT ITS BOARD MEETING
HELD ON
JUNE 9, 2021

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

DATE: April 9, 2021 9:00 A.M.
LOCATION: Online via ZOOM, Livestream via YouTube

MEMBERS

Suzanne Case
Sam Gon
Chris Yuen
Kaiwi Yoon

Jimmy Gomes (9:30 AM)
Tommy Oi
Vernon Char

STAFF

Russell Tsuji-Land Division
Brian Kanenaka-DAR
Cathy Gewecke-DAR
Carty Chang-ENG
Tony Koyamatsu

Kevin Moore-Land Division
Naomi Ahu-DAR
Alan Downer-SHPD
Edwin Masuda-ENG

OTHERS

Dan Morris/AG
Abby Lareau/DOT AIR
Frank Violi, Jr./D1
Clare Apana/D3, I1
Paul Horikawa/I1
Noelani Ahi/I1
Jeff Clark/F1
Austen Drake/F1
Mark Lane/L2
Dan Nellis/L3
Bill Kappel/L3
Bill Wynthoff/AG

Thorne Abbott/D1
Jennifer Tomita-DOT HAR
Kailoa Kamaunu/D3, I1
Lehua Kamalu-F4
Lisa Rotunno-Hazuka/I1
Greg Richards/L1
Paul Alston/F1
Dan Byron/L2
Keoni Furse/L2
Dean Durkee/L3
Howard Green/L3

ITEM A-1

04.09.2021(1)/00:00:23

Chair Case called the meeting to order and noted that due to Covid-19 pandemic, the meeting is being held via Zoom and live-streamed on YouTube. Those who requested to provide oral and written testimony have done so in advance of the meeting and members of the public may watch the meeting live on YouTube. Noted that Member Oi was unable to join the meeting today.

*L Items will be heard as close to 10:30 am as possible.
Member Gomes will be joining the meeting at 10:00 am.
Lunch break will be taken approximately between 12:45 – 1:30 pm*

04.09.2021(1)/00:01:30

Member Gon read the standard contested case statement.

04.09.2021(1)/00:02:44

ITEM A-1 Approval of the February 26, 2021 Land Board Meeting Minutes.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Gon, Yuen) 6-Ayes (noting Member Gomes is not present)

04.09.2021(1)/00:03:14

ITEM A-2 Approval of the March 12, 2021 Land Board Meeting Minutes.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Char, Gon) 6-Ayes (noting Member Gomes is not present)

04.09.2021(1)/00:05:34

ITEM D-1 Issuance of Right-of-Entry Permit to Department of Transportation, Highways Division for Modification of Existing Driveways from Kalaniana'ole Highway Purposes on Lands Encumbered by Governor's Executive Order No. 2794, and General Lease S-6056, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-009: Portions of 279, 280 and 282.

Russell Tsuji, Land Division presented the submittal. Thorne Abbott and Frank Violi Jr. representing the applicant present to answer any questions.

Board Discussion

Are there plans to replace the wall after the fact? Abbott replied they do not, they plan to replace with native plants.

Public Testimony-None

Motion

Approved as submitted (Gon, Oi) 6-Ayes (noting Member Gomes is not present)

04.09.2021(1)/00:09:34

ITEM D-2 Issuance of Right-of-Entry Permit to Department of Transportation, Highways Division for Modification of Existing Driveways from Kalaniana'ole Highway Purposes on Lands Encumbered by Governor's Executive Order No. 2794, and General Lease S-6056, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-009: Portions of 279, 280 and 282.

Russell Tsuji, Land Division presented the submittal.

Board Discussion-None

Public Testimony-None

Motion

Approved as submitted (Gon, Char) 6-Ayes (noting Member Gomes is not present)

04.09.2021(1)/00:11:21

ITEM C-1 Request for Interest for Federal grant with the U.S. Fish and Wildlife Service, Wildlife and Sport Fish Restoration Program and the National Wildlife Refuge System, Division of Habitat and Resource Conservation through the Coastal Wetlands Planning, Protection, and Restoration Act National Coastal Wetland Conservation grant program and authorize the Chairperson to execute a contract with successful providers.

David Smith, Division of Forestry and Wildlife presented the submittal.

Board Discussion

Is this open to other projects throughout the State and not on State properties? Smith replied, yes.

Public Testimony-None

Motion

Approved as submitted (Gon, Char) 6-Ayes (noting Member Gomes is not present)

04.09.2021(1)/00:17:01

ITEM F-1 Request Approval to Add Funding and Extend Through September 30, 2022 an Existing Federally Funded Project Agreement between the Department of Land and Natural Resources (DLNR) and the Research Corporation of the University of Hawaii (RCUH) for

the Division of Aquatic Resources (DAR) Research Project Entitled “Investigation of Estuarine Habitats.”

ITEM F-2 Request Approval to Add Funding and Extend Through September 30, 2022 an Existing Federally Funded Project Agreement between the Department of Land and Natural Resources (DLNR) and the Research Corporation of the University of Hawaii (RCUH) for the Division of Aquatic Resources (DAR) Research Project Entitled “Statewide Marine Resources Assessment

ITEM F-3 Request Approval to Add Funding and Extend Through September 30, 2022 an Existing Federally Funded Project Agreement between the Department of Land and Natural Resources (DLNR) and the Research Corporation of the University of Hawaii (RCUH) for the Division of Aquatic Resources (DAR) Research Project Entitled “Hawaii Marine Recreational Fishing Survey.”

Brian Kanenaka, Division of Aquatics Resources presented Items F-1, F-2, and F-3.

Board Discussion

Are there any reports for these projects and results? Kanenaka replied yes, there are annual reports and provided information. What data is available for F-3? Kanenaka noted that there are reports done monthly and annually that can be found online. There was further discussion on the process.

Public Testimony

MOTION

Approved as submitted Item F-1, Item F-2, and Item F-3 (Gon, Oi) unanimous (noting Member Gomes has joined the meeting)

04.09.2021(1)/00:24:48

ITEM F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Mr. Nainoa Thompson, Polynesian Voyaging Society, for Access to State Waters to Conduct Sails for Navigators Using Non-Instrumental Navigation Activities

Cathy Gewecke, Division of Aquatic Resources presented the submittal with an amendment. Lehua Kamalu representing the applicant.

Board Discussion

Will they be leaving from Kauai? Gewecke replied, they will depart of Honolulu.

Public Testimony-None

Amendment:

Authorize additional anchoring and potential docking at Tern Island and/or East Island within the French Frigate Shoals (FFS) at different areas of the shoal system, such as La Perouse Pinnacle.

MOTION

Approved as amended (Gon, Oi) unanimous.

04.09.2021(1)/00:31:21

ITEM D-3 Approve the Repeal of Hawaii Administrative Rules (HAR) Section 13-1-18, Counsel for the Board in Contested Cases, upon Department's Satisfaction of the Requirements of Subsection 91-3(g), Hawaii Revised Statutes, as amended (HRS).

HAR Chapter 13-1, which includes Section 13-1-18 that is the subject of the request to repeal, can be reviewed online at: <https://dlnr.hawaii.gov/occl/files/2013/08/Ch-13-1.pdf>.

Russell Tsuji, Land Division presented the submittal.

Board Discussion

There were questions regarding legal representation for the Board. Tsuji replied that the Attorney's General Office to determine and trust them to follow their ethical rules. Deputy AG Wynhoff conveyed that this will be transparent to the Board and be represented the same way as before, the AG's will comply with their ethical duties.

Public Testimony

Kaniloa Kamaunu, passed on testifying now that it was discussed and made clear. Clare Apana shared her screen and asked further questions of the Board. Chair Case noted that this was not testimony but a question.

MOTION

Approved as submitted (Char, Oi) unanimous.

04.09.2021(1)/00:41:10

ITEM I-1 Issuance of an archaeological activities permit for calendar year 2021 to ARCHAEOLOGICALSERVICES HAWAII, LLC .

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.

Alan Downer, State Historic Preservation Division, presented the submittal.

Deputy AG Bill Wynhoff noted that there is a contested case regarding this matter.

Chair Case asked if there was testimony on the request for contested case, not on the merits of this item?

Public Testimony

Clare Apana asked for clarification. Deputy AG Bill Wynhoff noted he had conversations with Apana regarding the request on October 24, 2020. Chair Case asked Apana if she was requesting a contested case on this matter. Apana replied, yes and expanded on the reasons why.

Lisa Rotunno-Hazuka, feels they are not entitled to a contested case.

Noelani Ahia, feels the contested case is warranted.

Kaniloa Kamaunu, supports the contested case request.

Paul Horikawa, attorney for ASH, asked the Board to deny the contested case.

Cecily Riley supports the contested case.

04.09.2021(1)/00:01:18

Member Gon made a Motion to go into Executive Session, second by Member Char, the vote was unanimous.

04.09.2021(2)/00:00:23 Back in Session

04.09.2021(2)/00:00:23

MOTION

Approve Staff's recommendation to Deny contested case request (Yuen, Char) unanimous.

04.09.2021(2)/00:02:23

Alan Downer continued to the substance of the submittal.

Board Discussion

Is it Rotunno-Hazuka opinion that the consultant has met ASH's requirements? Rotunno-Hazauka replied yes.

Public Testimony

Kaniloa Kamaunu opposes the issuance of the permit.

Lisa Rotunno-Hazuka, testified in support.

Paul Horikawa supports the submittal.

Clare Apana opposes the issuance of the permit.

Deputy AG Bill Wynhoff asked that Apana's documents that she screened shared be entered into the record.

Cecily Riley testified in opposition of the submittal.

MOTION

Member Gomes moved to approve as submitted with Reservations, Member Yuen seconded the motion. 5-Ayes, 1 with Reservations (Gomes), 1-Abstain (Yoon)

04.09.2021(2)/00:46:16

ITEM L-1 Dam Safety Enforcement Action on Keaiwa Reservoir (HA-0049) for Failure to Comply with Notice of Deficiency, February 18, 2020 Dam Owner: Edmund C. Olson Trust No. II

(Edmund C. Olson, Trustee) Location: Middle & Lower Moaula Camp, Pahala, Hawaii
County Tax Map Key: (3) 9-6-007:001, (3) 9-6-007:002.

Chair Case read the contested case statement and asked if they were requesting a contested case?
Jeff Clark. replied no.

Chang, Engineering Division presented the submittal. Edwin Masuda (ENG. Staff), Greg Richards, Jeff Clark, Paul Alston, and Austen Drake representing the Owner are present. Chang noted that they will rescind \$10,000, from the fine, as the Dam owner has been proactive and hired a Consultant.,

Board Discussion

There are no administrative fines noted. Chang said they will consider it in the future. Matsuda confirmed that the Owner is correct under normal operations as they have it, this reservoir is not expected to fail. There was further discussion on the reservoir and the future of reservoirs.

Public Testimony

Jeff Clark provided background history of the dam and explained due to the pandemic they were delayed in being in compliance and asked for flexibility in complying.

Austin Drake (SFM Consultant) noted that the Dam does not pose any danger being drained.

Member Yuen made a Motion to reduce fines, Second by Char: Further Board discussion.

1. Reduce fine for failure to produce technical studies in time to \$1,000.00.
2. Reduce fine for failure to put in the Water-Gauge on time ton \$500.00.

**The Board voted: 3-Ayes (Yuen Char, Oi), 3- Nay (Case, Gomes, Yoon) 1-Abstain (Gon)
Does not pass.**

Member Yuen amended his Motion to reduce fines, Second by Gon.

Amendment:

1. *The Edmund C. Olson Trust No. II is fined \$5,000 for failing to submit technical studies by DLNR deadline of 6/30/2020 and owner proposed deadline of 8/30/2020, pursuant to HRS §179D-6(b)(17).*
2. *The Edmund C. Olson Trust No. II is fined \$2,500 for failing to install a water level monitoring system on the reservoir by DLNR deadline of 5/30/2020 and owner proposed deadline of mid-January 2021, pursuant to HRS §179D-6(b)(17).*
3. *The Edmund C. Olson Trust No. II shall pay all fines (total \$7,500) within sixty (60) days of the date of the Board's action.*
4. *In the event the Edmund C. Olson Trust No. II fails to comply with the Board order to pay fines within the time allotted, the owner shall be fined an additional \$5,000 per day until the ordered fine amount is paid.*

MOTION

Approved as amended (Yuen, Gon) 4-Ayes 2-Nays (Case, Gomes)

04.09.2021(2)/01:45:53 Break

04.09.2021(2)/01:50:22 Back in Session

04.09.2021(2)/01:51:12

ITEM L-2 Dam Safety Enforcement Action on Ukumehame Reservoirs (MA-0140) for Failure to Comply with Notice of Deficiency, February 18, 2020 Dam Owner: West Maui Investors, LLC (Faraz Daneshgar) Location: Waikapu, Maui County Tax Map Key: (2) 4-8-002:066, (2) 4-8-002:015, (2) 4-8-002:017, (2) 4-8-002:027, (2) 4-8-002:064, (2) 4-8-002:118.

Carty Chang, Engineering presented the submittal. Edwin Masuda (ENG), Dan Byron, Mark Lane and Keoni Fursse (representing the Owner present).

Chair Case read the contested case statement and asked if they were requesting a contested case? Mark Lane requested a contested case. Chair Case conveyed that the request must be made in writing within 10-days.

04.09.2021(2)/02:00:12

ITEM L- 3 Dam Safety Enforcement Action on Wahiawa Dam (OA-0017) for Failure to Comply with Notice of Deficiency, Issued February 18, 2020 Dam Owners: Dole Food Company Hawaii Mr. Daniel X. Nellis, General Manager Sustainable Hawaii, Inc. Mr. Howard Green, Manager Location: Wahiawa, Hawaii Tax Map Key: 7-1-012:014, 7-3-007:001, 7-3-013:003, 7-3-012:002.

Chair Case read the contested case statement and asked if they were requesting a contested case? Nellis & Howard replied that they did not want to request a contested case at this time.

Carty Chang, Engineering Division presented the submittal. Edwin Masuda (ENG), Tony Koyamatsu (ENG), Dean Durkee, Greg Richards, and Bill Kappel (Consultants), Dan Nellis, , Howard Green, Lisa. Bail.

Board Discussion

There was a lengthy discussion regarding the future of the dam and what needs to be done in the now.

Public Testimony

Dean Durkee, Greg Richards, and Bill Kappel (Consultants), Dan Nellis, , Howard Green, Lisa. Bail, all engaged in the lengthy discussion regarding the dam.

04.09.2021(2)/03:48:30

Member Char made a Motion to go into Executive session. Member Gon second the Motion, unanimous.

04.09.2021(2)/03:54:03 Back in session

There was further discussion regarding the dam safety application, time frames and spillway.

Amendment:

1. *The height of the Wahiawa dam is amended from 100-feet to 88-feet, maximum impoundment from 7,761 acre-feet to 9,200 acre-feet and 2,590 million gallons to 3,000 million gallons.*
2. *The Dole Food Company Hawaii is in violation of HAR §13-190.1-4(c) for its dam spillway not having the capacity to safely pass the PMF inflow design flood and is fined \$20,000 for failing to submit a Dam Safety Permit application to address the safety deficiencies with the spillway by the DLNR deadline of 3/1/2021.*
3. *Dole Food Company Hawaii shall pay all fines within sixty (60) days of the date of the Board's action or be fined an additional \$5,000 per day until the ordered fine amount is paid.*
4. *The dam Owners, Dole Food Company Hawaii and Sustainable Hawaii, Inc., have one hundred eighty (180) calendar days of the date of the Board's action to- submit a detailed explanation (i.e., justification) reconciling the difference between the 2017 R.M. Towill model peak inflow PMF result and the 2008 US Army Corps of Engineers (ACOE) peak inflow PMF result. If necessary, the Owners will submit an updated H&H study, confirming the peak flows during both frequency floods and a PMF event.*
5. *The dam Owners, Dole Food Company Hawaii and Sustainable Hawaii, Inc., have two hundred seventy (270) calendar days of the date of the Board's action to submit a plan to address the spillway safety deficiencies with a conceptual design for the spillway remediation, as applicable. The DLNR dam safety program shall provide formal comments to the Owners on the conceptual design.*
6. *The dam Owners, Dole Food Company Hawaii and Sustainable Hawaii, Inc., have six (6) months from the date the DLNR Dam Safety Program provides formal comments to the Owners on the conceptual design to submit a Dam Safety Permit Application package (HAR §13-190.1-20) to bring the Wahiawa Dam into compliance with HAR §13-190.1-4.*

MOTION

Approved as amended (Yuen, Gomes) unanimous.

04.09.2021(2)/04:06:28

Chair Case deferred Items J-1 and M-6

04.09.2021(2)/04:07:02

ITEM M-1 Issuance of a Revocable Permit for Aircraft Parking, David Blancett-Maddock, Ellison Onizuka Kona International Airport, Tax Max Key: (3) 7-3-43: Portion of 003.

ITEM M-2 Issuance of a Revocable Permit for Aircraft Parking, Michael J. Lauro, Ellison Onizuka Kona International Airport, Tax Max Key: (3) 7-3-43: Portion of 003.

ITEM M-3 Issuance of a Revocable Permit for Ramp Space for Equipment Storage, Trans Executive Airlines of Hawaii, Inc., Ellison Onizuka Kona International Airport, Tax Max Key: (3) 7-3-43: Portion of 03.

Abby Lareau, .DOT-Airports, present to answer any questions for Items M-1, M-2, and M-3.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted Items M-1, M-2, and M-3. (Gomes, Yuen) unanimous.

04.09.2021(2)/04:07:59

ITEM M-4 Issuance of a Month-To-Month Revocable Permit to Marine Spill Response Corporation, for Storage of their Vessel and Emergency Oil Spill Response Equipment, situated at Kaunalapau Harbor, Lanai, Tax Map Key: (2) 4-9-002: Portion of 001

Jennifer Tomita, DOT-Harbors, present to answer any question.

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gomes, Oi) unanimous.

04.09.2021(2)/04:08:23

ITEM M-5 Request for Acquisition of Lands to the Department of Transportation, Highways Division, for Highway Purposes, Relating to Mamalahoa Highway, Federal Aid Project No. ER-15(22), Emergency Earthquake Rockfall Repairs, Various Locations, Unit 4, at Kaupulehu, North Kona, Island of Hawaii, State of Hawaii, Tax Map Key Nos. (3) 7-2-002: Portion of 011 and (3) 7-2-002: Portion of 015.

DOT-HWYS (No Representative)

Board Discussion-None

Public Testimony-None

MOTION

Approved as submitted (Gon, Yuen) unanimous.

04.09.2021(2)/04:08:55

There being no further business, Chair Case, adjourned the meeting. Recording(s) of the meeting and written testimonies received by the requested deadline can be found on-line with the submittal and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully Submitted:

Darlene Ferreira

Darlene S. Ferreira
Land Board Secretary

Approved for Submittal:

Suzanne D. Case

Suzanne D. Case, Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources