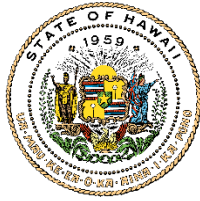
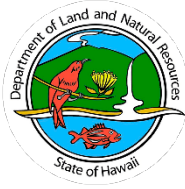


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

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

DATE: June 23, 2023
TIME: 9:15 AM
LOCATION: In person at 1151 Punchbowl St, Room 132
(Kalanimoku Building) online via ZOOM, livestream
via YouTube

NOTE: ITEMS D4 AND D5 WITHDRAWN

- ITEM M-1** Amendment to Prior Board Action of May 12, 2023, Item M-1, Issuance of a Revocable Permit for a Field Office and Parking for Passenger Loading Bridge Maintenance Project, Bowers + Kubota Consulting, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: Portion of 001.- **APPROVED**
- ITEM M-2** Issuance of a Revocable Permit for Storage of Materials and Aircraft Supplies, Chopper Doctor, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-072: Portion of 008. **APPROVED**
- ITEM M-3** Issuance of a Revocable Permit for Aircraft Parking, West Hawaii Wingers, Inc., Ellison Onizuka Kona International Airport at Keahole, Tax Map Key: (1) 7-3-043: Portion of 003. **APPROVED**
- ITEM D-1** Deny Lessee's Request for Consent to Mortgage and Security Agreement, General Lease No. S-5844, WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-1-001:012 and 2-1-005:013, 016, 017, 027, 032, and 046.

AMENDMENT:

The Board **approved the request for consent to mortgage** subject to the following conditions:

- (1) Compliance with the 14 consent items presented to the Board in writing at today's meeting (copy attached hereto as Exhibit A);
- (2) WHR shall provide a loan budget that shows and ensures that there are sufficient funds to:
 - a. Pay off the Wilmington loan/mortgage now in default and foreclosure and to satisfy the judgment; and
 - b. Pay the closing costs for the new Wells Fargo loan (the loan budget shall itemize all closing costs, loan and other fees and points, and any reserve required by the lender).

In addition to items (a) and (b) above, the loan budget shall be submitted to DLNR allowing for a reasonable time to review, and shall: (i) itemize all capital cash contributions of the owners/members of WHR and Ben Rafter to "backstop" the required funds to pay off and satisfy the foreclosure, Wilmington loan/mortgage and judgment; and (ii) be subject to the review and approval of the Chairperson and the Land Division Administrator;

- (3) The loan documents shall be submitted to DLNR allowing for a reasonable time to review, and shall be subject to the review and approval of the Land Division Administrator and the Chairperson; and
- (4) Approval by the Board of Item D-2 on today's agenda (request for consent to transfer management control of WHR LLC to Benjamin Rafter).

SEE EXHIBIT A ATTACHED EXHIBIT A

ITEM D-2 Deny Consent to Transfer Management Control of General Lease No. S-5844 from WHR LLC, Lessee, to Benjamin Rafter, Transferee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-001:012 and 2-1-005:013, 016, 017, 027, 032, 046.

The Board decided to; (1) Consent to the Transfer Management Control Subject to a Revised Operating Agreement showing Ben Rafter as a Managing Member and control of WHR that cannot be removed except by himself, which revised Operating Agreement shall be submitted to DLNR allowing for a reasonable time to review, and be Subject to the Review and Approval of the Land Administrator and Chairperson; and (2) the Form of the Consent shall be the most current standard from Consent approved by the Department of the Attorney General.

ITEM D-4 Pursuant to Act 90, Session Laws of Hawaii 2003 (Act 90), as mutually agreed upon between Department of Land and Natural Resources (DLNR) and Department of Agriculture (DOA), Approve the Set Aside to the DOA for Pasture Purposes (with Alternate Agriculture Use Allowed on 10% of the Land), General Lease No. S-4475, K. K. Ranch, Inc., Lessee, Covering Parcels 7-A and 7-B,

Government Land of Kalopa and Ka'oho 3, Hamakua, Hawaii, Tax Map Keys: (3) 4-4-014:002 & 011. **WITHDRAWN**

ITEM D-5 Pursuant to Act 90, Session Laws of Hawaii 2003 (Act 90), as mutually agreed upon between Department of Land and Natural Resources (DLNR) and Department of Agriculture (DOA),

1. Approve the Withdrawal of 7,000 Acres, more or less, from General Lease No. S-5374, Kapapala Ranch, Lessee; Grant of Term, Non-Exclusive Easement to Department of Agriculture for Water Pipeline Purposes over Area so Withdrawn; Authorize Department of Land and Natural Resources, Division of Forestry and Wildlife, to Conduct a Public Hearing to Set Aside the Withdrawn Area as an Extension of the Kapapala Forest Reserve, Kapapala, Kau, Hawaii, Tax Map Key: (3) 9-8-001:010 (pors.);
2. Set Aside of Remainder of Lands under General Lease No. S-5374, Kapapala Ranch, Lessee (Approximately 15,684.168 Acres, more or less), to Department of Agriculture for Agricultural Purposes Including Pasture, existing Single Family Residential and Employee Residential Use, and Eco-tourism Purposes, Kapapala, Kau, Hawaii, Tax Map Keys: (3) 9-8-001:009 and 010 (pors.);
3. Set Aside Lands under Revocable Permit Nos. S-7637 and S-7758, Kapapala Ranch, Permittee, to Department of Agriculture for Pasture Purposes; Ahulili and Kapapala, Kau, Hawaii, Tax Map Keys: (3) 9-6-011:002, 9-8-001:003, 006, 011, 012, and 013. **WITHDRAWN**

ITEM K-2 Conservation District Use Application (CDUA) OA-3913 by the Department of Land and Natural Resources, Land Division, for the Diamond Head Breakwater Safety Project seaward of Tax Map Key: (1) 3-1-041:005, Kaalawai, Honolulu, Oahu. **APPROVED**

ITEM F-2 Request for Approval to Hold Public Hearings to Adopt a New Chapter as Hawaii Administrative Rules, Title 13, Chapter 60.11, "Kīpahulu Community-Based Subsistence Fishing Area, Maui," (Kīpahulu CBSFA) to: Outline the Purpose of the Kīpahulu CBSFA and Its Subzones; Provide Definitions for Key Terms Throughout the Chapter; Establish and Delineate the Boundaries for the Kīpahulu CBSFA and the Kukui Bay Sanctuary and 'Opihi Rest Area Subzones; Prescribe the Permitted and Prohibited Activities Within the Kīpahulu CBSFA, Including Restrictions on Take and/or Possession of Akule, 'Ōmilu, Kala, Kole, Moi, 'Opihi, Ula (Spiny Lobsters) and Ula Pāpapa (Slipper Lobsters), 'Alakuma (7-11 Crab), and Native Limu Species, Restrictions on the Use of Gill Nets for Surround Net Fishing, Bag Nets, Throw Nets, and Fishing Poles, Lines, and Hooks, Prohibitions on Taking Marine Life With SCUBA gear, Night Diving, Taking 'Opihi Within the 'Opihi Rest Area Subzone, and Taking of Any Marine Life Within the Kukui Bay Sanctuary;

Recognize that native Hawaiian Traditional and Customary Rights Recognized by the Hawai'i State Constitution Shall Not Be Abridged; Carve Out an Exception for Vessels With Restricted Species or Gear in Active Transit Through the Kīpahulu CBSFA; Establish the Administrative and Criminal Penalties for Violations of This Chapter; and Recognize the State's Asset Forfeiture Authority

The proposed rule amendments can be reviewed in person, by appointment only, at the Division of Aquatic Resources (DAR) office on Oahu at 1151 Punchbowl St. Room 330, Honolulu, Hawai'i 96813 from 8:00 am to 3:30 pm, Monday through Friday, except Holidays. To schedule an appointment to review the proposed rules in person, email dlnr.aquatics@hawaii.gov.

The proposed rules, including a statement on the topic of the proposed rules, can be reviewed online at: <https://ltgov.hawaii.gov/the-office/administrative-rules/proposed-changes/>.

The proposed rules can also be viewed online at: <http://dlnr.hawaii.gov/dar/rules-and-public-notice/>. **APPROVED**

ITEM D-3

Prior Board Action dated January 14, 2022, Item D-2, *Quitclaim of State's Interests, if Any, in a 56 foot Wide Government Homestead Road and a 30-foot Wide Right-of-Way to Forest Reserve to the County of Hawaii, Honomu, South Hilo, Hawaii, Tax Map Key Nos.: (3) 2-8-010: Government Homestead Road and (3) 2-8-010: 011.*

The purpose of the amendment is to include citations to Sections 171-52 and -95(a)(5), Hawaii Revised Statutes (HRS), as authority for the Board to quitclaim the referenced 56 foot Wide Government Homestead Road and a 30-foot Wide Right-of-Way to Forest Reserve to the County as remnants, delete the citation to Section 171-64.7, HRS, which relating to Legislative Approval for fee simple conveyance of public land, and request the Board to find that the 56 foot Wide Government Homestead Road and a 30-foot Wide Right-of-Way to Forest Reserve are remnants.

The Board amended the staff submittal as follows:

- (a) **Amend recommendation 3.3.a. to insert the phrase "of the most" between "conditions" and "current".**
- (b) **Added a new recommendation 4 to read:**
 - 4. In the "AREA" section on page 1 of the prior action, correct the land area indicated for the 30-foot-wide right-of-way to the forest reserve from "1.148 acres, more or less," to "0.92 acre, more or less."**
- (c) **Added a new recommendation 5 to read:**

5. Under the REMARKS section on page 3 of the prior action, in the first line of the third paragraph, strike “ACCESS ROAD LOT 1.148 ACRES” and replace it with “FORMER 30-FOOT-WIDE GOVERNMENT PUBLIC ACCESS.”

APPROVED AS AMENDED

ITEM D-6 Amend Agenda Item D-5, Approved as Amended November 10, 2022: *Continuation of Revocable Permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.*

The purpose of this amendment is to request the Board approve an amount that the Permittee will be required to contribute to watershed management activities in addition to rent.

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

APPROVED AS AMENDED at the amount of \$139,463.00, subject to change.

ITEM E-1 Request Approval to Continue Revocable Permit SP0002 Issued to Hui Maka’āinana o Makana, for Management of a Reservation System for the Collection of Parking and Entry Fees, Shuttle Services and Resource Enhancement at Hā’ena State Park, Kaua’i, Hawai’i, Tax Map Keys: (4) 5-9-001:022 portion and (4) 5-9-008:001 portion. **APPROVED**

ITEM C-1 Annual Review of Grants from the Land Conservation Fund for Each Project that Has Been Pending for Over Five Years:

- (A) LLCP 2013-02, DLNR Division of State Parks, Ulupō Heiau Buffer, District of Ko’olaupoko, Island of O’ahu, Tax Map Key Number: (1) 4-2-103:038.
- (B) LLCP 2017-03, Hawaiian Islands Land Trust, Kepler Ke’anae Lo’i Conservation Easement, District of Ko’olaupoko, Island of Maui, Tax Map Key: (2) 1-1-003:041.
- (C) **(Information Only)** LLCP 2015-01, The Waipa Foundation, Kaluanono at Waipā, District of Halele’a, Island of Kaua’i, Tax Map Key: (4) 5-6-004:010. **APPROVED**

- ITEM F-1** Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Mr. James Morioka, Papahānaumokuākea Marine Debris Project (PMDP) for Access to State Waters to Survey and Remove Marine Debris and Disentangle Marine Life as Needed within the Waters of the Northwestern Hawaiian Islands. **APPROVED**
- ITEM F-3** Request for Approval to Authorize the Board of Land and Natural Resources (BLNR) Chairperson to Enter Into a Contract Between BLNR and Mālama Pūpūkea-Waimea for a Pūpūkea Marine Life Conservation District Carrying Capacity Study (\$269,990) with Fiscal Year 23 General Funds. **APPROVED**
- ITEM J-1** Approve Installation of an Existing Offshore Mooring Outside of an Established Offshore Mooring Area After-The-Fact, Kailua Bay, Kailua-Kona, Island of Hawaii, Hawaii, for Margaret E. Brown DBA Maggie B LLC **APPROVED**
- ITEM J-2** Rescind Prior Board Action of May 24, 2013, under Agenda Item J-2, Approval in Principle the Issuance of Direct Lease to Maui Dry Dock & Boat Storage, LLC for a Vessel Haul Out, Boat Storage, and Purposes of General Commercial Marine Services, Kahului Harbor, Wailuku, Maui, Tax Map Key: (2) 3-7-001:023 and 021 (por.); and
- Authorize the Sale of Lease at Public Auction for, Boat Storage, and General Marine Services Purposes, Kahului Harbor, Wailuku, Maui, Tax Map Key: (2) 3-7-001:023 and 021 (por.). **APPROVED**
- ITEM J-3** Renewal of Revocable Permits on the Islands of Oahu, Maui, Hawaii and Kauai, See **Exhibit E** for List of Revocable Permits; and
- Declare Project Exempt from Requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawaii Administrative Rules.
- AMEND KANEOHE YACHT CLUB RP: INCREASE RENT AS OF AUGUST 1, 2023. APPROVAL OF THE RP'S, STAFF TO EVALUATE OBJECTIVLY AND BE CONSISITANT REGARDING THE 501C'S AND TO BRING BACK TO THE BOARD IN 90-Days.**

(Non-Action Item)

ITEM K-1 Informational briefing on the State of Coastal Lands in Waikīkī consisting of 1) A point-in-time “virtual site visit” of Waikīkī conducted by the Office of Conservation and Coastal Lands; 2) A presentation by the Waikīkī Beach Special Improvement District (WBSIDA) on the history of public-private partnerships in Waikīkī; and 3) A presentation by Sea Engineering, Inc. on the Programmatic Environmental Impact Statement for the Waikīkī Beach Improvement and

Maintenance Program. Background materials are available online at
dlnr.hawaii.gov/occl/waikiki **DEFERRED**

DRAFT

Item D-1:

The Board **approved the request for consent to mortgage** subject to the following conditions:

EXHIBIT A: Compliance with the 14 consent items presented to the Board in writing.

6.23

CONSENT CONDITIONS TO INSURE DLNR AND STATE OF HAWAII IS FULLY
PROTECTED IN THE BEST INTEREST OF THE STATE

REQUEST: Consent to a new Wells Fargo Mortgage in Maximum Amount of \$50,000,000 to
Replace the Existing Wells Fargo Loan Based on the Loan Terms Previously Delivered to DLNR.

CONDITIONS: The following Mandatory Conditions Shall Be Required by DLNR to be Satisfied
and Approved by The AG Before The Consent Form is Signed by the Chairperson Relating to the
Wells Fargo Mortgage:

1. Consent Form. The State's Standard "Consent Form" shall be used and approved by the AG and will be in the form consistent with the State requirements and subject to the AG approving such form consistent with State applicable governance and requirements. (This satisfied Russell's mandate to insure the Consent form is approved by the AG)
2. Mortgage Form To Be Approved by AG. The Mortgage shall be approved by the AG and will be in the form as consistent with the Wells Fargo Terms already delivered to DLNR and shall be consistent with the State applicable governance and requirements, with no mezzanine loan rights (which was Russell's mandate and is agreeable by WHR). Also, Wells Fargo/Lender will not have the right of any mezzanine loans. (This satisfies Russell's mandate)
3. Payoff All Existing Loan Liens To Eliminate All Existing Loan Matters. WHR shall pay the \$64,002,872.35 which is from \$50,000,000 Wells Fargo Loan and \$14,000,000 from WHR payments for the balance due to the existing lender. Also, the existing mortgage and all matters shall be fully released and there shall be no other rights of the existing mortgagee, Rialto, or any other party to have ability to lien or secure any interest against the Lessee Ground Lease interests. (This satisfied Russell's mandate to insure no other liens)
4. All Litigation Released Upon New Mortgage Closing Approved by AG. AG shall approve the dismissals and releases of all litigation to ensure no risks of any litigation, which has already been approved in the Settlement Agreement that the AG may confirm as a condition of the Consent of BLNR. (This satisfied Russell's mandate to assure no litigation exists after the new Mortgage closing)
5. Sole Wells Fargo New Mortgage. The Wells Fargo Mortgage will be the only loan-security encumbrance on the Lease, and will not encumber the State's underlying fee interest. (This satisfied Russell's mandate)
6. Maximum Loan Being Consented To. The loan shall not exceed FIFTY MILLION DOLLARS (\$50,000,000). (This satisfied Russell's mandate and the loan was reduced to show good faith of ownership from the prior \$54,000,000)

EXHIBIT A

Item D-1:

The Board **approved the request for consent to mortgage** subject to the following conditions:

EXHIBIT A: Compliance with the 14 consent items presented to the Board in writing.

7. Fixed Interest Rate. The interest rate shall be a fixed interest rate for entire 5-year Term of the Loan, which is set on the Closing Date of the New Loan, and then is fixed for entire 5 years, based on the SOFR 5-year swap rate index plus 415 points (as expressly stated in the Wells Fargo Loan terms. (This satisfied Russell's mandate)
8. Amortized Payments With No Interest Only Payments. The Loan will not include interest only payments, but instead, the payments will based on fully amortized 30 years that includes both principal and interest payments each month, as provided in the Term Sheet. (This satisfied Russell's mandate to eliminate the interest only payments that was in the UBS loan)
9. Amortized Lower Loan Balance at End of 5 Year Loan. Estimated Loan Balance Upon Maturity: \$47,534,928. (This satisfied Russell's mandate to insure the loan is reduced each year)
10. \$15,000,000 Company Investment To Demonstrate the Commitment of Ownership Long Term. AG can confirm before closing the investment by \$15,000,000 to pay off the \$64,002,872.35 with the \$50,000,000 new Mortgage. (This satisfies Russell's concern that WHR won't invest the \$15,000,000. The AG can confirm this before closing.)
11. Benjamin Rafter is Assigned Manager of WHR. The AG can confirm in the final WHR Operating Agreement that Benjamin Rafter is the controlling manager of WHR, as set forth in the Operating Agreement of WHR. (This assures WHR has the most respected hospitality expert in Hawaii to be the manager of ownership during the loan)
12. Operating Agreement Approval. The Operating Agreement shall be subject to the review and approval of the AG as being consistent with the Consent granted herein. (This satisfied Russell's mandate)
13. Approval by AG of Loan Documents. Approval will be conditioned on Attorney General review and approval of the final Mortgage, Loan Agreement, Promissory Note, and Operating Agreement of WHR LLC for consistency with the foregoing conditions and the Wells Fargo terms, and State of Hawaii requirements.
14. Such Other Reasonable Conditions That AG and/or Russell and/or DLNR Mandates. Such other reasonable conditions as may be required by the AG in processing the legal documents of the new Mortgage. (This protects DLNR to insure that during the loan closing, DLNR may continue to review issues with the AG and Wells Fargo and WHR and implement additional reasonable conditions to protect the best interests of the State of Hawaii)