

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

Approved at its  
Board Meeting  
Held on  
April 26, 2024  
*Athena K. Iokapa*

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

<https://files.hawaii.gov/dlnr/meeting/audio/Audio-LNR-230623-1.m4a>  
<https://files.hawaii.gov/dlnr/meeting/audio/Audio-LNR-230623-2.m4a>

**MEMBERS**

Dawn Chang  
Vernon Char  
Kaiwi Yoon  
Riley Smith

Doreen Canto  
Aimee Barnes (Zoom)  
Karen Ono

**NOTE: ITEMS D5 AND D6 WITHDRAWN**

**06.23.2023(1)/00:07:52**

**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.

**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.

**ITEM M-3** Issuance of a Revocable Permit for Aircraft Parking, West Hawaii Wings, Inc., Ellison Onizuka Kona International Airport at Keahole, Tax Map Key: (1) 7-3-043: Portion of 003.

**06.23.2023(1)/00:07:52**

**MOTION**

**Approve as submitted Items M-1, M-2, and M-3 (Smith, Ono) unanimously.**

**06.23.2023(1)/00:09:39**

**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:*

- (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**

**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).*

**06.23.2023(1)/03:43:26**

**MOTION**

**Approved as amended (Smith, Ono) unanimously.**

**06.23.2023(1)/03:48:26**

**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.

**06.23.2023(2)/00:00:01 Continuation of Item K-2**

*Amendment:*

*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.*

**06.23.2023(2)/03:50:26**

**MOTION**

**Approved as amended (Char, Smith) unanimously.**

**06.23.2023(1)/03:53:16**

**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.

**06.23.2023(2)/00:00:01 Continuation of Item K-2**

*Amendment:*

The Board of Land and Natural Resources APPROVE Conservation District Use Application OA-3913 for the Diamond Head Breakwater Safety Project located at Kaalawai, Honolulu, O'ahu, makai of Tax Map Key: (1) 3-1-041:005 subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulation of the federal, state, and county governments, and applicable parts of this chapter.
2. The permittee, its successors, and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.
3. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable.
4. The permittee shall comply with all applicable Department of Health rules.
5. Before proceeding with any work authorized by the department or the board, the applicant shall submit four copies of the construction plans and specifications to the chairperson or

- authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the applicant. Plan approval does not constitute approval required from other agencies.
6. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed.
  7. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit.
  8. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege.
  9. In issuing the permit, the department and board have relied on the information and data that the applicant has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and/or the department may, in addition, institute appropriate legal proceedings.
  10. Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided.
  11. Where any interference, nuisance, or harm may be caused, or hazard established by the authorized activities/uses, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard.
  12. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department.
  13. Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices.
  14. The permittee acknowledges that the approved work shall not hamper, impede, otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law.
  15. The permittee shall take measures to ensure that the public is adequately informed of the project activities/work at least two weeks before it is initiated and the need to avoid the project area during the operation.
  16. All mitigation measures set forth in the application materials, and all required permits within the Conservation District for this project are hereby incorporated as conditions of this permit.
  17. The permittee shall utilize Best Management Practices as noted in **Exhibit 10** (US Fish and Wildlife Services BMPs) for the proposed project.
  18. The permittee shall implement standard Best Management Practices (BMPs), including the ability to contain and clean up fuel; fluid or oil spills immediately for activities/uses. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity, or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance.
  19. The activity/use shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area.
  20. When the Chairperson is notified by the permittee or the public that an individual activity deviates from the scope of the activity/uses, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the permittee to undertake corrective measures to address the condition affecting these resources. The permittee must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect.
  21. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State Department of Land and Natural Resources that an individual

- activity/use or activities conducted under this permit is adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the permittee to undertake corrective measures to address the condition affecting these resources. The applicant(s) must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect; and,
22. No contamination of the marine or coastal environment (trash or debris) shall result from project-related authorized activities/uses.
  23. Other terms and conditions as prescribed by the chairperson; and
  24. Failure to comply with any of these conditions shall render this permit void under the chapter, as determined by the chairperson or the board.

**06.23.2023(2)/00:23:09**

**MOTION**

**Approved as amended (Char, Smith) 6-Ayes, 1-Abstain (Yoon)**

**06.23.2023(2)/00:25:38 Recess**

**06.23.2023(2)/00:35:20**

**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](mailto: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/>

**06.23.2023(2)/01:28:20**

**MOTION**

**Approved as submitted (Canto, Smith) unanimously.**

**06.23.2023(2)/01:32:44** (Member Barnes left the meeting)

**ITEM D-3** Amend 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.

*Amendment:*

*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."*

**06.23.2023(2)/01:34:44**

**MOTION**

**Approved as amended (Ono, Smith) unanimously.**

**06.23.2023(2)/01:36:18**

**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.

*Amendment:*

*The amount of \$139,463.00, or subject to change.*

**06.23.2023(2)/01:54:15**

**MOTION**

**Approved as amended (Canto, Char) unanimously.**

**06.23.2023(2)/01:56:47 Recess**

**06.23.2023(2)/02:04:08**

**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.

**06.23.2023(2)/02:10:47**

**MOTION**

**Approved as submitted (Ono, Smith) unanimously.**

**06.23.2023(2)/02:11:27**

**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.

**06.23.2023(2)/02:13:36**

**MOTION**

**Approved as submitted (Canto, Smith) unanimously.**

**06.23.2023(2)/02:13:36**

**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.

**06.23.2023(2)/02:17:40** (Member Yoon has left the meeting)

**MOTION**

**Approved as submitted (Smith, Canto) 5-Ayes** (Smith, Ono, Char, Chang, Canto)

**06.23.2023(2)/02:18:34**

**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.

**06.23.2023(2)/02:22:30**

**MOTION**

**Approved as submitted (Char, Canto) unanimously.**

**06.23.2023(2)/02:23:00**

**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.

**06.23.2023(2)/02:24:19**

**MOTION**

**Approved as submitted (Smith, Ono) unanimously.**

**06.23.2023(2)/02:24:34**

**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.)

**06.23.2023(2)/02:26:02**

**MOTION**

**Approved as submitted (Canto, Ono) unanimously.**

**06.23.2023(2)/02:26:06**

**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.

*Amendment:*



*Amend Kaneohe Yacht Club RP: increase rent as of August 1, 2023. Approval of the RP's, Staff to evaluate objectively and be consistent regarding the 501c's and to bring back to the board in 90-days.*

**06.23.2023(2)/03:14:06**

**MOTION**

**Approved as amended (Smith, Ono) unanimously.**

**Item K-1 to be deferred.**

There being no further business, Chair Chang, 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 S. Ferreira*

---

Darlene S. Ferreira  
Land Board Secretary

Approved for Submittal:



---

Dawn N.S. Chang, Chairperson  
Board of Land and Natural Resources  
Department of Land and Natural Resources