

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

DATE: FRIDAY, JUNE 22, 2007  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Interim Chairperson Allan Smith called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

MEMBERS

Mr. Allan Smith	Mr. Rob Pacheco
Ms. Taryn Schuman	Mr. Jerry Edlao
Mr. Ron Agor	Mr. Samuel Gon III
Mr. Tim Johns	

STAFF

Mr. Russell Tsuji, LD	Mr. Paul Conry, DOFAW
Mr. Dan Quinn, SP	Mr. Ed Underwood, DOBOR
Mr. Tim Lee, HP	

OTHERS

Mr. Dave Hudson, Item D-11	Mr. Don Horner, Item D-11
Mr. John Dooley, DOT Harbors	Mr. Ross Smith, DOT Airports
Mr. Vince Kanemoto, AG Office	Ms. Dawn Chang, Item D-1
Mr. Errol Kane II, Item D-7	Mr. Clyde Aikau, Item D-7
Mr. Bob Hampton, Item D-7	Mr. Errol Kane I, Item D-7
Ms. Lane Hornfeck, Item D-7	Mr. Gerhard Seibert, Item D-7
Ms. Alea Bordeaux, Item D-7	Mr. Jack Hendrickshon, Item C-1
Mr. Michael Sedino, Item C-2	Ms. Lorna Nishimitsu, Item D-2
Mr. Noa Napoleon, Item D-7	

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

**Item A-1 Minutes of June 22, 2007**

Recused: Member Agor and Schuman. Member Gon missed the last 20 minutes, but has listened to the tape.

**Unanimously approved as amended (Johns, Agor)**

**Item A-2 Minutes of June 8, 2007**

Recused: Member Johns

**Unanimously approved as amended (Gon, Edlao)**

**Member Gon stated Mr. Dale Baynard should be Mr. Dale Bonar. On page 11 the organization Mr. Wayne Kaho'oleipanoki represents is Ilioulaokalani.**

**Item D-11 Authority to Procure an Appraisal in connection with the Possible Sale of State Land to The Salvation Army, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-17:88 por.**

Mr. Russell Tsuji, Administrator for Land Division reported on a 15 acre project where The Salvation Army (TSA) received a grant from the Ray and Joan Kroc Foundation totaling \$80 million dollars and plans a large community center. This appraisal estimates a price on fair market value and helps TSA evaluate their options. One is an exchange with the Department of Hawaiian Home Lands (DHHL) which these lands are targeted for and who will lease to TSA. To comply with the grant TSA must acquire a fee. Time is an issue to acquire the land first. Major Dave Hudson of TSA and Mr. Don Horner of First Hawaiian Bank (FHB) are here.

Major Dave Hudson, Divisional Commander of The Salvation Army in Hawaii, reported supports conducting an appraisal in submittal. He clarified TSA has possession of the money and is not coming from the Kroc Foundation. The Kroc Centers are unique in serving the under served in the community. Two swimming pools are planned and will benefit the Leeward Coast. TSA needs the land to be fee simple at fair market value. An appraisal will determine which direction TSA will take.

Member Edlao asked how much time needed to get fee simple? Mr. Hudson replied the ground breaking is July 2008, but for fundraising efforts the sooner the better. Member Johns asked we had approved giving this to DHHL in '04? Mr. Tsuji replied that's correct. DHHL is doing a master plan which is getting the sub-division map submitted and approved.

**Unanimously approved as submitted (Johns, Schuman)**

**Item D-1 Grant of Perpetual, Non-Exclusive Easements to Sandwich Isles Communications, Inc., for Submarine Fiber-Optic Telecommunication Cable and Terrestrial Landing Sites Purposes, Statewide, and Issuance of a Construction Right-of-Entry Permit Covering said Submerged Land and Terrestrial Landing (Fast Land) Sites, Statewide, and Additional State Fast Land, at Kekaha, Kauai, and Makana, Maui, Tax Map Keys: (4) 1-2-12: Por. 38, and (2) 4-5-21: Por. 15, Respectively**

Mr. Russell Tsuji of Land Division reported project will be for a DHHL development and requested for gratis rent. AGs looked at it and staff found it appropriate. There is a provision the easement will be for gratis, but in the event Sandwich Isles have others tap into the cable the Board will re-evaluate the rent. Present to speak are Chairman Micah Kane of DHHL and Dawn Chang of Sandwich Isles Communications. Member Johns asked what happened some years back when others came before the Board and talked about a DLNR master plan on how these were going to play out? Do you remember that? Mr. Tsuji replied he was not around. Member Johns stated we want these to be consistent with a Statewide Strategic Master Plan. Mr. Tsuji replied he was not aware of that.

Ms. Dawn Chang of Sandwich Isles Communications, Inc., answered Member Johns. If it is an issue of the cable landings it was about 5 years ago. Stated Office of Planning put together a team and Sam Lemmo was part of it. At that time, the land owners and industry decided there would be no master plan. Cables are placed at existing corridors or near Hawaiian Home Lands if there are none. There is no master plan in regard to landing sites. Member Johns asked discussions about the master planning, weren't these corridors also developing criteria? This proposal seems to be consistent with the general criteria on how it is done. Ms. Chang replied yes, that's correct. They will use horizontal directional drilling which has the least impact.

Mr. Tsuji stated OHA responded and did not have objections.

**Unanimously approved as submitted (Johns, Gon)**

**Item D-7 Enforcement of Violation of Unencumbered Public Lands, Unauthorized Surfboard Instruction by Pure Hawaiian, Hot Spots, Hilton Hawaiian Village, LLC. And Waikiki Beach Activities, Ltd., at Duke Kahanamoku Beach, Oahu, Tax Map Key (1) 2-3-037:021**

Mr. Russell Tsuji of Land Division reported unauthorized surf instruction at the Duke Kahanamoku Beach. The board submittal is relatively self-explanatory. The bottom line is there was surf instruction activity going on at the beach. This is one where we have a concession agreement. Initially, it was issued in 2005 to Clyde Aikau who subsequently had some trouble and went into bankruptcy. The court held an auction. Hilton Hawaiian Village stepped in and acquired the concession. His staff heard some complaints of alleged unauthorized surf instruction going on at the beach and they did some

investigation of site inspections, but many of the times when staff came back to the office and presented to him the report it didn't have sufficient evidence. Staff didn't know how surf instructors were transacting business. All staff had was a photograph of people on the beach. They didn't know if they were doing it gratis. Mr. Tsuji stated he would have a problem of citing someone teaching their own son or grandson how to surf on the beach. At that time, we did not have any evidence of how the money was being moved around. It started to intensify, the complaints, in 2007.

Mr. Tsuji started personally looking into this matter and started writing letters to Hilton asking some questions. He was surprised by some of the responses. In particular, he thought the surf instruction at Duke Kahanamoku Beach was in connection with the concession agreement that Hilton had acquired. Hilton came back and said they were not exercising their right to provide surf instruction under the concession agreement, instead do these referral type services to Pure Hawaiian which is a Clyde Aikau entity and Hot Spots which is an Errol Kane Jr. entity. We had various letters going back and forth which are attached to the exhibits. Based on the information provided him, Mr. Tsuji felt these were unauthorized surf instruction, told them to stop and they did. His perception was Hilton was not aware they had violated unencumbered land rules. However, upon receiving the responses, especially one in particular from Waikiki Beach Activities (WBA). Mr. Tsuji now thinks his prior perception on unintentional violation may have been incorrect. When Mr. Tsuji read WBA's testimony he was taken a back by its attitude. And the attitude Mr. Tsuji would characterize as "hey, I've been doing this for 18 years and you didn't come after me and you can't come after me now;" and Mr. Tsuji doesn't believe that to be correct or the law. Mr. Tsuji recommended initially, a fine of \$150 each and did not ask for administrative fees. He referred to the motor bike enforcement issue last month which involved damage to State's natural resources; but did not involve a commercial entity making a profit. Mr. Tsuji stated he sees this (commercial surf instruction) as entities profiting from the exploitation of the State's natural resources. Especially with the attitude "I've been doing this for 18 years and it's too late to come after me now;" unfortunately that is not the law. The State is not bound by any statute of limitations. The State never ever authorized WBA, Kane or Aikau (except when Aikau held the concession contract) to perform these activities on the beach, especially making substantial sums of money. Mr. Tsuji also commented on Hilton's response. Initially, Mr. Seibert of Hilton wrote him acknowledging that Hilton shared in the profits from the commercial surf instruction, and that's how Mr. Tsuji drafted the submittal acknowledging they (Hilton) are sharing the profits from the surf schools. Ultimately for testimony at this meeting, Hilton recently wrote saying it was a technical error and said they weren't making any money. Mr. Tsuji added even if that was true he referred to exhibit C which advertises room and surf. Member Johns asked the referral arrangement, how did that work? Did they get any money from that? Mr. Tsuji replied yes they were (getting money from the referral arrangement). Now, Hilton is saying they weren't, but initially they said they were. WBA and Hilton took a percentage of the fee. Then Mr. Seibert came back with a second letter saying it was a technical error. Hilton really didn't make the money, but WBA did for the referral. The referral is an issue because the concession agreement has no assignment or subletting. He expressed to Hilton's counsel if you are going to do surf instruction it must be Hilton

employees. The money should go into a Hilton bank account. A referral is not a Hilton operation. If Hilton operated within the concession agreement then Mr. Tsuji would not be bringing this matter against Hilton or anyone else if it was all a Hilton operation. Member Johns asked was there a percentage? Mr. Tsuji replied the concession is a flat rent. Member Johns asked Mr. Tsuji said initial recommendation. (Regarding the fine amount.) Are you changing it? Mr. Tsuji replied he would not object if this Board felt a higher fine is appropriate and recommended a stiffer fine.

Mr. Pacheco asked about the relationship between the Division of Boating and Ocean Recreation (DOBOR) blue card permit and the concession contract. These instructors have the blue cards where is it legal for them to instruct surfing? Mr. Tsuji replied the Concession Agreement is a land based agreement. The certifications that DOBOR issues certify you're qualified to be a surf instructor. But DOBOR's position is they can go in the ocean for surf instruction there. (DOBOR is saying surf instruct in the ocean.) Member Johns asked is there no designated surf instructing area that they are limited to by issuance of the blue card? Instructors can go anywhere in the ocean? Mr. Tsuji replied that's correct. Blue card is not the right to go on the land or the beach to do the surf instruction it's so you can do the surf instruction in the ocean. He referred to submittal on what Hilton is proposing which stated what these two individuals who have blue cards would be doing their surf instructing and transacting business totally on Hilton's private property and not on the beach. Member Johns explained if they wanted to do it (surf instruct) on the beach it would be within an agreement that's been granted or some right granted by the State. Mr. Tsuji replied that's right. Member Johns asked they can transit the beach? Mr. Tsuji replied yes they can transit the beach. Hilton's plan is to have all business activity on Hilton's premises. Member Johns clarified the problem here is using the public beach for the transaction of business or giving surf instruction.

Mr. Tsuji also reported not only boards lined up on the beach during surf instruction, but there were moored surfboards and floating bikes out in the ocean without a mooring permit from DOBOR. Member Johns asked wouldn't that be using submerged lands? Mr. Tsuji replied yes. He told them to stop it and they did. Member Edlao asked is this one violation, several violations? Mr. Tsuji replied Hilton acknowledged this has been occurring for a long time. His land division staff is not trained investigators and thus, do not know how to ask questions like an investigator. After working with Hilton's counsel his impression was it was inadvertent. Member Edlao asked you're bringing up three violations? Mr. Tsuji replied yes it is three violations. Member Johns stated cannot bring in new violations without it listed in the submittal. (Referring to the mooring issue.) Mr. Tsuji replied he didn't make an issue on the other things because when he informed them it was inappropriate Hilton took care of it. Member Johns asked there are four parties? Mr. Tsuji replied yes, two surf instructors, WBA which is the manager of the beach concession on Hilton premises and Hilton. He explained how the four parties were involved. Member Pacheco asked about the June 20<sup>th</sup> letter on page 3. Which refers to a third party vendor is responsible for complying all rules and regulations? Mr. Tsuji replied he does not agree with that and gave the example of bar owners and clients. Hilton is encouraging their guests to participate in this activity and could be profiting indirectly. WBA definitely is profiting directly. Member Pacheco asked with those surf

instructors on the beach Hilton is subcontracting out? Mr. Tsuji stated Hilton is saying they are not exercising their rights and said they are a regular private land owner. Member Edlao asked if there is a fine, but no administrative costs? Mr. Tsuji replied he is open for amendment to the fines. Staff has spent numerous hours on this item.

Mr. Errol Kane, II, owner of Hawaii Hot Spots Tours, reported being at Duke Kahanamoku Beach for 9 years has a blue card certification and gave more background. He related how one individual made complaints against his business, filed false reports with DLNR, stalked and threatened him, his family and business. Mr. Kane was granted a restraining order against this individual for three years. Also this individual logged complaints against his father's job as a law enforcement office at DLNR. The judge granting the restraining order noted this individual was obsessed with Mr. Kane's business.

In a meeting with Peter Young, DLNR Chairperson on May 9, 2006, the tent issue and surfboard advertisement was brought to Mr. Kane's attention and he made the corrections. It has always been Mr. Kane's intention to operate within the rules and regulations of DLNR. He met on September 5, 2006 with his attorney, and Charlene Unoki, Robert Ing and Steve Molman of Land Division. It was understood if there was no canopy erected and the business performed on Hilton property, Land Division had no problem with Hawaii Hot Spots conducting the surf school on the beach. Hawaii Hot Spots have always instructed on DOBOR land and never had a violation. Hilton took over the permit by bidding \$205,000 and continued monthly rent to the State. All financial transactions were done on private property. The violations are unfounded and he feels he shouldn't pay a fine. Mr. Kane asked for a permit to teach safety demonstration on the beach. Member Edlao asked him you acknowledge you are teaching on the beach? Mr. Kane replied he would like a land use permit. Member Edlao asked you acknowledged previously your company was teaching without a permit and need a permit now? Mr. Kane replied yes.

Mr. Clyde Aikau of Pure Hawaiian Aikau Surf School reported Land Division has never cited him until now. It has been almost a year and no letter to cite him for the umbrella on the beach and no due process. He recommends citing the bridal, modeling and car companies that come in with their umbrellas without a permit. These complaints are coming from one individual. He asked the Board to grant him a tiny spot on the beach to continue surf instruction. Plus, there are no life guards on Duke Kahanamoku Beach. His company has saved numerous lives over the years.

Member Edlao asked do you acknowledge requiring a DLNR permit? Mr. Aikau replied yes. Member Edlao asked Hilton/WBA has the permit. Were you under the impression you were under Hilton? Mr. Aikau replied absolutely no. His arrangement with Hilton is totally separate from the permit. Member Edlao asked you knew you were instructing without a permit on the beach and now is requesting one? Mr. Aikau replied he never knew he was breaking the law. He was never told he was doing something illegal. If he had a citation he would stop. Hilton/WBA instructed him not to do any more instructing on the beach.

Member Pacheco asked how long has he been doing the surf school? Mr. Aikau replied for 30 years. Member Pacheco asked of all those years were you using the sand to instruct? Mr. Aikau replied he had the concession from the Land Board for 26-27 years. Member Pacheco asked did the concession allow for instruction on the sand? Wet or dry sand? Mr. Aikau replied yes, both. The contract, at that time, allowed him to instruct anywhere on Duke Kahanamoku Beach for 27 years.

Member Edlao asked Mr. Aikau you continued to operate without a permit and was grandfathered in or felt you were covered under the Hilton permit? Mr. Aikau replied he cannot assume that. Mr. Tsuji replied the holder of the concession agreement allows holder to teach on the beach as long as it doesn't interfere with public use and subject to Chair's review. That right is why the concession agreement went so high at auction. You need a concession agreement for surf instruction on the beach. Member Pacheco asked the real issue is the company under the umbrella of Hilton/WBA was allowed because they were subletting and because they had the right to use the beach? Mr. Tsuji replied it was not done under the concession agreement. If they had it would be a Hilton operation and Mr. Aikau would be employed by Hilton as their surf instructor which that option is available. But for various reasons Hilton decided not. Instead, chose not to exercise any of the surf instruction under the concession agreement, but are doing other beach activities.

Mr. Johns stated Hilton is doing it with the wrong people. The surf instructors are violating because they don't have a permit. He asked normally when there is an enforcement action whether CDU there would be in the record a notice of violation and then issue a fine after that? Pointed out attachments and nothing noted after May. Do we need a notice of violation to impose a fine? Mr. Tsuji replied no. Notice of violation for easements, but as far as land management, no. The submittal is the notice. Member Johns asked following up to Mr. Aikau's statement, you don't need to establish you told them they were breaking a law for the Board to impose the fine? Mr. Tsuji referred to Maui bike rider incident. Mr. Pacheco asked any other permitted surf instructors are using the beach would be illegal? Mr. Tsuji replied he could speak for Duke Kahanmoku Beach because it is Land Division. Mr. Aikau added there is a problem determining jurisdiction over the beach, State or County.

Member Agor asked would it be against the concessionaire agreement with Hilton referring to an entity and allowing that entity to do business on the premise that Hilton is permitted? Mr. Tsuji replied right. Member Agor stated he thinks that would be a violation of the concessionaire agreement. Mr. Tsuji replied it would not be if it was a Hilton operation, but what they are doing is with private entities not with Hilton. He has explained it to counsel and for whatever reason, Hilton decided not to do it (commercial surf instruction) under Hilton's operation (or under the concession contract). As a result, Mr. Tsuji told them it (the surf instruction) has to be done on private property.

Mr. Bob Hampton of Waikiki Beach Activities (WBA) clarified they hold a State Activity Desk License and are not concessionaires. The two surf schools get their business through the Activities Desk. He described what happened to Mr. Aikau's

business that caused the bankruptcy. Member Johns asked who was Mr. Aikau paying his \$18,000/month rent to? Mr. Hampton replied to DLNR. He explained the process of selling coupons to guests and recommending the two surf schools. Member Johns asked how do you get paid? Mr. Hampton explained an example of how guests pay them \$100 for a surf lesson. WBA takes 38% because of insurance and the balance goes to the surf school. Member Johns asked why do you need insurance if you don't do these activities? Mr. Hampton replied every activity they sell has to be given a certificate of insurance and show they are licensed. WBA demands from each surf school their current blue card and operating stickers because WBA is audited every year. WBA went with these two surf schools because both comply with everything. What changed was when Hilton took over the concession they decided not to do surf lessons, but WBA had a huge demand for lessons. Mr. Hampton asked Hilton if they had any objections if they sold surf lessons to these two organizations. Hilton said no they had no objections. Member Edlao asked are you an independent activity desk? Member Johns asked and where is your office? Mr. Hampton replied absolutely. WBA has no relationship to Hilton. WBA rents a space at Hilton and at the end of the month all vendors calculate their sales, report that as gross sales and from that rent is calculated. Member Pacheco asked are you the exclusive activity desk for these surf companies? Mr. Hampton replied no, there are other activity desks. Member Pacheco related a similar situation with hiking trails. Mr. Hampton explained in his insurance guide, if WBA gets fined and found guilty aiding and abetting an unlawful exercise they will discontinue the ability to sell surf lessons which could affect other activity desks by preventing them from selling surf lessons or anything to do with exposure. He reported activity desks are concerned with a State Act – Recreational Immunity Law which is a 1. Need to get a waiver, 2. Explain all the dangers and 3. Give proper instruction for use. WBA looked up the proper instruction for surfing and that is on dry land. Member Johns stated it doesn't say dry land, State property. Mr. Hampton replied this is all new to him. In August 15, 2006 the issue of dry land surf instruction came up and he relayed correspondence to DLNR because WBA needed to know. May 3, 2007, his manager was told can't sell on the beach and all surf activity was stopped on the beach. He received a letter on June 22, 2007 from Land Division stating he is guilty of aiding and abetting an unlawful exercise. How can that be when he still never got an answer from his original letter? Mr. Hampton expressed if an activity desk is fined the repercussions will be dramatic.

Mr. Errol Kane I of DOCARE Enforcement Division referred to Member Edlao's question about permits. When applicants go to DOBOR or Land Division to ask for a permit they are told they don't issue permits. How do you expect them to have a permit? Member Johns asked him to clarify his position. Mr. Kane clarified he is here on his own time and explained he has been enforcing the law at Waikiki Beach for 19 years. He explained no one in Waikiki has a permit to teach and the best way to teach surf safety on the grass or beach.

Member Edlao asked did you know it was a DLNR beach? Mr. Kane replied yes, of course he knew. Member Edlao then asked knowing that did you think a permit was needed? Mr. Kane replied yes he did. He told his son to go down to get a permit when he started his business. His son met with Steve Molman and Land Division where they

had no problem. His son met with Ed Underwood because his son's business was using DOBOR land at the time which Land Division was enforcing and they didn't know where Land Division property begins and ends. They made sure everything was covered and followed all the laws. They even went to Land Division for a permit and were told they don't issue permits. Mr. Tsuji explained the permit is the concession agreement which gives the surf instructors the right to instruct on the beach. You may come back in 2 or 3 years when this comes up for bid. Mr. Kane expressed other hotels have surf instruction without permits. Mr. Tsuji replied Land Division is handling the enforcement in this case. Member Johns asked aren't other activity desks using the same surf instructors? Mr. Tsuji indicated that he has no evidence of that. He only has the evidence in Mr. Seibert's letter.

Member Johns asked were you aware of Mr. Hampton's request for clarity? Mr. Tsuji replied no, he was not aware of it until a few days ago when Mr. Molman advised Mr. Tsuji that he had forgotten about Mr. Hampton's prior request. Mr. Tsuji has never spoken with Mr. Hampton. Mr. Molman explained to Mr. Tsuji that at the time of the Hampton's request he didn't say where they were operating or how the money was going to be collected and split.

Ms. Lane Hornfeck, Attorney with Starn, O'Toole, Marcus and Fisher, reported she is Hilton's counsel. Member Agor stated the problem stems from the fact that you have the license to teach surfing and you aren't exercising that right. There are a lot of people who want to teach surfing. And he thinks the fact that activity is dormant under your jurisdiction. Mr. Gerhard Seibert, area Vice President of the Hilton Hawaiian Village reported that is possible, but he doesn't know. Under the license Hilton acquired, it gives them the right to sell and conduct surf lessons on the beach which they have not exercised. They use their activity desks to sell activities. Member Pacheco asked if another surf company wanted to come in would Hilton allow it? What kind of arrangement would it be? Mr. Seibert replied there is no arrangement with either school. These schools are conductor of certain leisure activities and through WBA, tell guests what schools are available. Member Pacheco asked are there any other surf schools operating on your property? And prevents others from coming in? Mr. Seibert replied not to his knowledge and he didn't know about prevention. He wouldn't know because he doesn't do enforcement on State property. Member Edlao asked do you feel these two surf instructors are working under the Hilton concession permit? Mr. Seibert replied no. Hilton's concession permit for the portion for surf instruction was never activated. Member Edlao asked when WBA came to you did you think to ask where the surf instruction will be held? Member Johns asked wouldn't you find it interesting that Hilton has a concession to allow surf instruction to occur on a certain area of the beach, you have a relationship with an activities desk selling coupons for surf instruction, and there is surf instruction in the area you hold the concession on. Wouldn't you say Hilton's involved in this? Mr. Seibert replied no, he does not view it that way because through Hilton's activities desk guest bought certain activities. He would hope those activities were operating within the parameters of their licenses and laws. Member Pacheco asked Hilton has the exclusive contract for that area and you're allowing these companies to come in and do a permitted activity you have the right to do, but you're allowing these

two surf companies to do it. He can't imagine Hilton allowing someone else to come in to rent their beach equipment? Mr. Seibert replied no not quite. Member Pacheco referred to the Hilton advertised package. Mr. Seibert explained WBA handles all activities.

Member Pacheco asked under the concession agreement you can't sublet? Mr. Tsuji replied there are no sublet and no assignment. He had a discussion with Hilton council and there is a management agreement with WBA. All instructors or sales are employees wearing the Hilton logo and there would be a Hilton bank account where all moneys are deposited. It is not like the WBA bank account where they need to authorize to deposit and expend expenses. Member Pacheco asked then it could be contracted out if it was represented as a Hilton product? Mr. Tsuji replied right if it was a Hilton operation within the parameters of that management agreement. Member Pacheco assumed and asked that the reason Hilton is not doing that is because they have the deep pockets and their exposure and liability with this is much greater because of liability. Is that right? Ms. Hornfeck asked if it's possible to make an arrangement with the Board where surf instructors will wear the logo shirts. Hilton would be willing to work it out. She expressed Hilton is concerned with any violations of the concession agreement whether subletting or assignment issue. Mr. Tsuji replied it is not only the logo shirts it's everything in the management agreement sent to him for review which went into detail with money collected in the Hilton account. Not a WBA account where expenses are paid out of that account. If it was under a Hilton operation, no problem, but your client decided not to go that route. Ms. Hornfeck replied Hilton is willing to work out an arrangement. In answer to Member Agor because of anti-assignment in the contract that is why Hilton did not exercise it. Mr. Tsuji replied the concession agreement is set in stone. Cannot legally amend it therefore must work within that agreement. Ms. Hornfeck replied right.

Member Pacheco made a motion to adjourn for executive session.

**10:43am: Adjourned for Executive Session to discuss its legal rights, duties, privileges, and obligations relating to this matter with our attorney. (Pacheco, Gon)**

**11:34 am: Reconvened**

Ms. Alea Bordeaux representing Kaiser's for All Coalition reported the forming of this group in 2002. She came today because the Land Board is going to fine these surf schools \$150 each for being there illegally. She believes the real problem is Hilton has breached their concessionaire contract. Although Hilton says they've done this historically in the past, but at the time they were dealing with Clyde Aikau and Hilton was not the concessionaire. Mr. Aikau was the concessionaire. Now that Hilton has it this past doesn't come into play. Her group is concerned with how Hilton got the contract and then breached it. By referring these surf schools it is a breach of contract. If it's not listed in the contract you can't do it and also there is no subletting and assignment. The contract says you cannot change it, but Hilton decided to go according to how they will handle the contract. The fine states \$150, but this has happened since

2006 and the fine should be in the thousands of dollars. She is concerned because one of the surf school owner's father is a DOCARE officer and raises ethical questions. All of this is a subversion of public rights. Hilton is trying to expand and will still refer these schools which is illegal. She came today to make the Board aware that entities interests are subverted. To be in business you follow that contract, but Hilton has breached it. Member Pacheco asked is Kaiser a non-profit or ad hoc group of people? She replied Kaiser is an Ad Hoc group of people concerned with that area and related history of issues.

Member Pacheco asked Ed Underwood of DOBOR did his division at any time give warning to the surf schools they could loose their permit by using the beach? Mr. Underwood replied about a month and a half ago Mike Jones DOBOR Assistant Manager and Mr. Underwood went to the beach and spoke with Mr. Errol Kane and the Manager for WBA. They informed them they cannot conduct commercial activity on the beach. Once you put the boards down on the beach and start instructing that is deemed commercial activity. That can't be done without a permit because stated in the Hawaii State Administrative Rules one must have a permit to do this type of activity. Member Pacheco asked did the activity stop? Mr. Underwood replied it came to their attention it was still on-going. Staff earlier this week sent a cease and desist letter stating stop this kind of activity because you could jeopardize your operator permits.

Member Pacheco asked Mr. Hampton through WBA you rent beach gear and you're able to do this under the umbrella of Hilton's concessionaire contract? Mr. Hampton replied everything from inflatables and that type, yes. WBA has two responsibilities as a concession stand on Hilton property. Guests will rent a float which they take to the beach or pool. Under Hilton's concession agreement WBA has employees dedicated to that agreement who are paid by Hilton through the income that comes from there. All WBA does is manage them and it's the same with the life guards at the pool who are WBA employees. Hilton reimburses him for the total cost of that lifeguard and they wear the Hilton uniforms and are directed by Hilton. The surf schools are totally through his activity desk.

Member Schuman made the motion to support staff's recommendation. Member John's second.

Chairperson Smith informed Pure Hawaiian, Hot Spots, Hilton Hawaiian Village, LLC., and Waikiki Beach Activities, Ltd., that if any of them wanted to contest the finding of violation or fine they must 1) orally request a contested case before the end of the board meeting and 2) to submit a written request for contested case within ten (10) days of the board meeting.

**Unanimously approved as submitted (Schuman, Johns)  
All voted yes except Member Pacheco.**

**Item C-1      Renewal of Special Use Permit to Mid Pacific Communications, Inc. for Use of a Telecommunications Site on Lands within Lihu'e-Koloa Forest Reserve, Kawaihao District, Kaua'i Tax Map Key: (4) 4-2 001:por.2.**

Mr. Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW), reported the Board previously approved, but because of inclement weather was not able to complete and requested to extend the permit for an additional year. DOFAW is in favor of it and to continue the \$750/month rent set by Land Division 2 years ago. Complete it, if agreeable, can pursue a land license. Submittal asks the Board to authorize a renewal of the special use permit through July 13, 2008 then authorize Division to pursue issuance of a land license for use of the telecom site via a request for proposal process following completion of permit tee's research which would happen April 2008. Mr. Jack Hendrickson of Mid Pacific Communications is here.

Member Gon asked of Mr. Hendrickson. With the last permit there were a lot of special conditions indicated and Mr. Gon had noted the summit area of native forest and concerns with inadvertent introduction of non-native species. There was special condition of consultation with DOFAW and Kauai Invasive Species Committee. Did you have an opportunity to make the consultation? Mr. Hendrickson explained meeting with Mr. Ken Woods and discussed what the issues were in that area. They made a list of the process. Whenever a helicopter goes up there they made sure no plant material was on it. The skids of the helicopter were inspected before take off and they make sure it lands on concrete and not on grass. The ohia have been killed by pigs. There were lots of goats and pigs there and much of the soil was uprooted. The sedge grass is typical of this area. The process they took was no landing on any soil or if any suspicion of plant material to hose off helicopter skids and their shoes. Ken Woods says this was all that was necessary. Member Gon replied his consultation relieved his concerns.

Member Johns asked is this on State land not on LP land within the forest reserve? Who is the owner? Mr. Conry replied its State Forest Reserve.

**Unanimously approved as submitted (Agor, Gon)**

**Item C-2      Request for Approval of Draft Timber Land License No. 2007-H-01 to Hawaii Island Hardwoods, LLC, and Delegate the Chairperson Authority to Finalize and Issue the License.**

Mr. Paul Conry reported staff is working with the applicant and Attorney General's office. The license is the next step is taking one of the divisions of the department to support lumber industry in the State. Staff has had various projects to start up the veneer and chip components of the industry. This is the 3<sup>rd</sup> crucial step to establish a saw mill and explained the Waiakea Timber Management administrative history has been laid out. One is for a 5 year term with a provision for renewal of an additional 5 year term. He explained the provisions on the stumpage negotiated. The stumpage prices the State

realizes from this equal or exceeds departmental prices set for each species which was set from a previous Board action. The division anticipates timber revenues will exceed 2.5 million over 5 years from this license. Hawaii Island Hardwoods (HIH) will commence harvesting operations within 28 days from issuance of the license. HIH will be responsible for maintaining the roads they are using in the area. HIH will be restricted from shipping logs out of State and instead promote local processing.

Member Johns asked do we need a public hearing on the island? Mr. Conry replied it was covered by the Waiakea Timber Management. Member Johns asked what happened to Tradewinds? Mr. Conry replied Tradewinds hasn't received their air quality permit yet. They are current with their payments to the State. They are beginning site preparations, but haven't started major construction. July 2008 is when construction will be completed and if not that is when stumpage payments in addition will start. Chairperson Smith asked there will be two saw mills? Mr. Conry replied there are two operations, a saw mill and a veneer plant. Member Pacheco asked what is the mechanism for bringing the funds back to DOFAW? Mr. Conry replied all proceeds from the stumpage go to a special fund. It doesn't lapse or go into the General Fund. It is a recurring fund which DOFAW can use for reforestation. Member Pacheco asked is the off road trail in the same area and if it is will it hinder operations? Michael Sedino reported it will occur on some existing roads in the Waiakea Timber Management Unit. When active timber operations occur on that road timber will take precedence over ATV and would last about a few months on portions of the road. Member Pacheco asked Na Ala Hele would supervise and close it or would it be the timber people? Mr. Conry replied Na Ala Hele. Member Pacheco asked would some of those moneys be earmarked for Na Ala Hele or has it been discussed? Mr. Conry replied no, it hasn't been discussed, but there are funding sources for Na Ala Hele. He isn't sure if it was worked out.

**Unanimously approved as submitted (Pacheco, Johns)**

**Item D-2 Grant of Perpetual, Non-Exclusive Easement to Joseph Skaggs for Access and Utility Purposes, Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-2-02: por.01**

Mr. Russell Tsuji of Land Division reported no changes to the Board submittal. Member Gon asked the attorney did you have any problems with the staff's recommendation? Ms. Lorna Nishimitsu replied her client has no objections. She had one correction to staff's findings regarding a grading violation. There was a grading violation for another property in Kekaha. The property they are seeking an easement has had no grading. Chairperson Smith asked is this property adjacent? Ms. Nakamitsu replied no it is not adjacent. It's by the hunter check-in station. Her client received a notice of violation and he has been resolving it through her and with the County of Public Works.

**Unanimously approved as submitted (Agor, Gon)**

**Item D-9 Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Guy and Anchor Purposes and Issuance of Construction Right-of-Entry, Waimanalo, Oahu, Tax Map Key: 4-1-26:13**

**Item D-10 Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Telecommunication and Electrical Transmission Lines and Issuance of Construction Right-of-Entry, Hauula, Oahu, Tax Map Key: 5-4-01:25**

Member Johns recused himself.

Mr. Russell Tsuji of Land Division reported the applicant and attorneys are present.

**Unanimously approved as submitted (Schuman, Edlao)**

**Item M-1 Direct Issuance of a Revocable Permit to Tesoro Hawaii Corporation for Non-Exclusive Pipeline Easements and Related Facilities at Honolulu Harbor, Oahu**

Mr. John Dooley of Department of Transportation (DOT), Harbors Division reported.

**Unanimously approved as submitted (Johns Pacheco)**

**Item M-2 Amendment No. 1 to Lease No. DOT-A-03-0001 Traveler Services Concession Lease Lenlyn Limited, Honolulu International Airport**

Mr. Ross Smith, Property and Land Acquisition Manager of DOT, Airport Division reported.

**Unanimously approved as submitted (Johns, Pacheco)**

**Item D-3 Consent to Assign General Lease No. S-3977, R.K.U. Enterprises Inc., Assignor, to P.I.K.A. Inc., Assignee, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-5:7.**

**Item D-4 Cancellation of Revocable Permit No. S-7174 to J.J. Andrade Slaughterhouse, Inc., and Issuance of Month-to-Month Revocable Permit to Jill J. Andrade dba R.J. Ranch for Pasture Purposes; Kawela and Papaki, Hamakua, Hawaii, TMK: 3rd/4-6-02:07.**

- Item D-5** Land Conveyances Between the State of Hawaii and the County of Hawaii for the Purpose of Realigning a Common Property Boundary and Amend Governor's Executive Order No. 3951 Affected by such Realignment, Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-2-15: 33 (County Parcel) and 76 (State Parcel)
- Item D-6** Set Aside to County of Maui for Community Center Purposes, Nahiku Homesteads, Nahiku, Koolau, Tax Map Key: (2) 1-2-002:023.
- Item D-8** Consent to Assign General Lease No. S-4907, Applicant Robertajeon Leilani Keinath, Assignor, to Robertajeon Leilani Keinath, Ernest Keolaokalani Keinath and Florencio Alboa Carreira, Assignees, Maunalaha Homesites, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24:08.

Mr. Russell Tsuji of Land Division reported a change to D-6 where the County be issued right-of-entry.

Member Pacheco asked about testimony on D-4. What is the process? Is it an overall plan or Na Ala Hele? Mr. Tsuji replied for a public right of access, Na Ala Hele.

**Unanimously approved as submitted Item D-3, 4, 5 and 8 (Johns, Pacheco)**

**Item D-6, unanimously approved as amended (Johns, Pacheco)**

**The Board added a recommendation No. 2: That the County be issued an immediate management right-of-entry.**

- Item E-1** Request for Approval to Enter Into an Agreement with the Office of Hawaiian Affairs for the Repair and Maintenance of the Royal Mausoleum at Mauna'ala (Oahu)

Mr. Dan Quinn, Administrator for State Parks, reported the Legislature procreated \$180,000 to be expended by OHA to help with the effort. The first task State Parks is working on is the mauka rock wall of the Royal Mausoleum grounds which needs to be deconstructed and reconstructed.

**Unanimously approved as submitted (Johns, Edlao)**

- Item I-1** Request for Approval to Enter into a Grant in Aid Capital Improvement Project Contract for Kawaihāo Church Multipurpose Community Facility and Authorize the Chairperson to Negotiate and Execute the Contract

Mr. Tim Lee of Historic Preservation reported on item.

**Unanimously approved as submitted (Johns, Gon)**

**Item L-1 Appointment of Kona Soil and Water Conservation District Director**

Mr. Tsuji of Land Division reported no changes.

**Unanimously approved as submitted (Johns, Pacheco)**

**Item D-7 Enforcement of Violation of Unencumbered Public Lands, Unauthorized Surfboard Instruction by Pure Hawaiian, Hot Spots, Hilton Hawaiian Village, LLC. And Waikiki Beach Activities, Ltd., at Duke Kahanamoku Beach, Oahu, Tax Map Key (1) 2-3-037:021**

Mr. Noa Napoleon testified on this item and understood it was acted upon. He requested to a contested case hearing. He asked if he may explain why? Chairperson Smith replied you don't have to. You may just file and the Board/staff will decide if you have standing or not which is your right to do so. He added to the testimony he turned in explaining how the four entities were using the beach. During the course of complaints, warnings were issued not to use the beach, and right after these four entities returned to the beach. They have not complied with Mr. Napoleon's knowledge. The \$150 fine is not appropriate because these entities are still there today. He suggests revoking the Hilton permit because they are in violation of a number of prohibitions. It is not in good faith and in contempt of the law. He thinks the fine should be \$500 per day per offense. Mr. Napoleon believes Hilton tried to grandfather in the two surf schools. He wanted to contest the decision acted on today. He referred to Hilton's breach of contract. Mr. Napoleon explained he was confronted by a DOCARE officer who told him he could not come into the room to testify because of a restraining order. Member Johns informed Mr. Napoleon that the substance of your testimony though was also presented by another member of the public. The Board members heard most if not almost all of that testimony before they acted and there was also written testimony submitted. AG noted Mr. Napoleon was referring to the testimony by the Kaiser's for All Public Access group. He has the right to testify now. Member Johns explained he has the right to request a contested case and it would be determined whether he had standing. Mr. Napoleon asked would he need to consult immediately? Member Johns replied yes you have 10 days to fill out a form in writing. You get a form and fill it out.

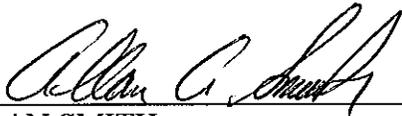
There being no further business, Interim Chairperson Smith adjourned the meeting at 12:25 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



ALLAN SMITH  
Interim Chairperson  
Department of Land and Natural Resources