

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

DATE: FRIDAY, NOVEMBER 16, 2007  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:13 a.m. The following were in attendance:

**MEMBERS**

Ms. Laura Thielen	Mr. Ron Agor
Mr. Tim Johns	Mr. Rob Pacheco
Dr. Sam Gon	Mr. Jerry Edlao

**STAFF**

Mr. Morris Atta, LD	Ms. Charlene Unoki, LD
Mr. Russell Tsuji, Land Deputy	Mr. Paul Conry, DOFAW
Mr. Dan Quinn, SP	Mr. Glenn Toguchi, SP
Mr. Dan Polhemus, DAR	Mr. Sam Lemmo, OCCL
Mr. Gavin Chun, LD	Ms. Tiger Mills, OCCL

**OTHERS**

Ms. Linda Chow, Deputy Attorney General	Ms. Linda Chinn, Item D-6
Ms. Dawn Chang, Item D-2	Ms. Kat Brady, Item D-7
Ms. Shannon Wood, Item D-7	Mr. Henry Curtis, Item D-7
Mr. David Leonard, Item D-7	Mr. Michael, Formby, DOT
Mr. Glenn Abe, DOT	Mr. Raymond Iwamoto, M-1
Mr. Michael Lau, Deputy Attorney General	Mr. Gerald Sumida, Item M-1
Mr. John Strum, Item M-1	Mr. Christopher Seine, Item M-1
Mr. Eric Knudsen, Item D-3	Mr. Jerry Ornellas, Item D-3
Mr. Les Milnes, Item D-3	Mr. Alfredo Lee, Item D-3
Mr. Earl Yamamoto, Dept. of Agriculture	Mr. Bill Cowern, Item D-3
Mr. Chris Buddenhagen, Item D-3	Ms. Sandy Pfund, DOT-Harbors
Mr. Charlie Loomis, Item C-2	Mr. Trae Menard, Item C-2

Mr. Chris Racine, Item D-1

Ms. Laverne Higa, Item D-12

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

**Item A-1 Minutes of October 26, 2007**

Delete “Briefing and” in Agenda. Should be Minutes.

**Unanimously approved as amended. (Johns, Edlao)**  
**(Although the Board approved the minutes the Office of the AG requested more information be added.)**

**Item D-8 Direct Sale of 15 acres of State Land to The Salvation Army, and Amend Prior Action of September 24, 2004, under Agenda Item D-14, Honouliuli, Ewa, Oahu, TMK: (1) 9-1-17: Portion of 71**

Russell Tsuji announced that he has accepted a new position within DLNR (its Deputy Director), and he introduced Morris Atta as the Acting Land Division Administrator. Mr. Tsuji asked the Board to approve the sale of 15 acres in Kapolei that is part of a site that is planned to go over to DHHL (Department of Hawaiian Homes Land). By its October 26, 2007 letter, the Department of Hawaiian Home Lands acknowledged The Salvation Army’s request for the 15 acres and indicated that it supported the request.

Consequently, the Department of Hawaiian Home Lands requested the 15 acres be excluded from the total land area the Board approved for conveyance to the Department of Hawaiian Home Lands at its September 24, 2004 meeting under agenda item D-14. The sale of the 15 acres will be to The Salvation Army (TSA) for the Ray & Joan Kroc Community Center. A couple months ago, staff came to the Board for permission to procure an appraiser to determine the fair market value of the 15 acre site. The fair market value of the 15-acre site was appraised at 1.245 million, and the value was shared with TSA. TSA evaluated its finances and business plan, has made an offer to purchase the 15 acre site for 1.5 million dollars pursuant to certain terms and conditions articulated in the written staff submittal and attached as Exhibit C to the submittal.

Member Gon asked a representative from TSA whether he was fully aware of all the recommendations and stipulations contained in the staff’s submittal and whether TSA was in agreement with that. Mr. Hudson answered affirmatively.

**Unanimously approved as submitted. (Johns, Agor)**

**Item D-6 Withdrawal from Governor’s Executive Order No. 3718 to Department of Land and Natural Resources, Land Division, Waiakea, South Hilo, Island of Hawaii, Tax Map Key: (3) 2-1-12:071 por.**

Morris Atta, Acting Land Division Administrator, reported that this is a request by the Department to remove from Executive Order the Foreign Trade Zone in Hilo for use in a

joint development with DHHL (Department of Hawaiian Homes Land) and DLNR. The request was based on a conceptual plan devised by the consultants to maximize the development potential for these two sites. Staff concluded that due to the irregular configuration that the withdrawal of the approximately 3 acres from the Hilo Trade Zone was the best configuration to maximize development potential of the lots. There were concerns raised by the Foreign Trade Zone which were incorporated into the submittal. Staff will work with DBEDT (Department of Business, Economic Development & Tourism) to resolve these issues where all three agencies can benefit from this development.

Linda Chinn, Land Manager at DHHL, supports the recommendation and will work through the DBEDT questions.

**Unanimously approved as submitted. (Pacheco, Gon)**

**Item D-2 Amend Prior Action of June 22, 2007, Agenda 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 Makena, Maui, Tax Map Keys: (4) 1-2-12: Portion 38, and (2) 2-1-07: Portion 72, Respectively**

Morris Atta, representing Land Division, reminded the Board had previously issued exclusive easements to Sandwich Isles Communications for Kekaha area lands for fiber-optic telecommunication cable easement. After reviewing the situation, the applicant found it would be best to move the cable onto State owned property. The current location is county owned land and Sandwich Isles requested to amend the prior Board action to allow for the re-location of the landing site. Mr. Atta was informed by staff that there may be issues of possible compensation if State lands are involved and that we may have to take other action if the term exceeds the current term of the easement. Staff will allow the movement of the location of the landing site.

Dawn Chang, agent for Sandwich Isles, acknowledged this was part of the original EA and CDUP. She explained Sandwich Isles had a construction right-of-entry from DLNR for this site. But, as a result of their survey for the landing, it became apparent that for safety reasons they needed to move the manhole back where the preferable site would be within the DLNR's triangular portion of land as opposed to the DOT's right-of-way. All the regulatory permits have been obtained and Sandwich Isles got county approval for this. Sandwich Isles completed all archeological work for the site as well. And, with respect to the compensation, they came before the Board for the easement for the submerged lands and at that time because the service was to Department of Hawaiian Home Lands (DHHL) there was a waiver of that consideration. There was also a condition that should, in the future, the lines be used to service customers other than

DHHL, the Department will review the waiver of consideration. Sandwich Isles accepted those terms.

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

**Item D-7 Denial of Standing for Life of the Land's Motion for a Contested Case Hearing related to the proposed direct lease from State of Hawaii, Department of Transportation to Imperium Renewables Hawaii LLC at Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, TMK (1) 9-1-14: por. 24**

**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.**

Member Tim Johns recused himself from this item and the related Item M-1.

Morris Atta, of Land Division, noted this came from a prior Board meeting where there was a submittal request to issue a lease to Imperium Renewables and at that time Life of the Land requested a contested case hearing. Subsequent to that there was a review, before it went to the Office of the Attorney General, and the recommendation is to deny standing for the reasons given in the submittal.

Kat Brady, Assistant Executive Director of Life of the Land, testified constitutional issues are involved. Competing interests for the land must be put out for bid and they think that process should be followed.

Shannon Wood, President of the Windward Ahupua'a Alliance, disclosed their organization has partnered with Life of the Land. She requested to vote down the denial of standing motion. Department of Agriculture, Department of Business, Economic Development and Tourism (DBEDT) and Department of Health (DOT) - Environmental Health were unaware this was on the agenda two weeks ago. They would have preferred to be notified that this item was working its way through the system.

Henry Curtis, Executive Director of Life of the Land (LOL), acknowledged the Board has a long standing practice of not giving contested case hearings on land leases. Life of the Land asked for one because climate change will be a major issue. The rush for bio-fuels as the solution will be seen as a major disaster and will result in increased sea level. This Board has the authority to look into issues on its own and cited Hawaii Administrative Rules 13-1-11. He agreed that LOL does not have a statutory right to a contested case hearing and cited staff's reasons why they don't have standing which he felt were not relevant. The world organizations protested Hawaiian Electric Company's (HECO) proposed use of palm oil resulting in its withdrawal of the proposal because of those problems. Mr. Curtis pointed out that Imperium Renewables stated the use of palm oil was not in their environmental assessment, but in fact it is. Imperium has a contract to

supply palm oil to various local companies. This Board and the PUC (Public Utilities Commission) will be the first to discuss these issues. He suggested having expert witnesses come in to cross examine each others witnesses to see who is credible or not credible rather than rushing in and endorsing it (this item).

Written testimony was distributed by David Leonard.

David Leonard, Chief Operating Officer of Imperium Renewables, clarified they are currently the nations largest producer of biodiesel. He revealed Imperium signed a contract with HECO and that there is an NRDC HECO policy which focuses on a preference for local feed stock when it becomes available. He presented his testimony to the Board. Imperium has been in dialogue through these public forums through the environmental assessment process. Life of the Land submitted over 120 comments and Imperium responded to each and every one of those.

Member Gon inquired to concisely explain what the recommendations of the RSPO were on the biodiversity aspects.

Mr. Leonard explained one issue addresses burning and to look at the green house gas and life cycle analysis between palm, soy or canola. A big concern is even if the biodiesel is environmentally positive in terms of the tail pipe emissions' having less CO<sub>2</sub>, the focus is to look at the entire life cycle, what is creating the green house gas. RSPO has a limitation on burning which prohibits, with a very limited exception the creation of land to grow palm. World Wildlife Fund is an active member of the RSPO.

Member Edlao asked as part of sustainable agriculture, shouldn't it also be socially acceptable to the people who are being displaced, the natives of the land. Is it part of the requirements of the RSPO?

Mr. Leonard asserted those issues are specifically addressed by the RSPO. He asserted that Imperium would not buy palm oil that has caused displacement of indigenous people. They would consider that palm oil unacceptable to Imperium and they would not make biodiesel from it.

Member Gon inquired whether there is a clear timetable for the transition from imported palm oil to locally grown sources.

Mr. Leonard stated Imperium is currently working with the Hawaii Agricultural Research Center here on Oahu and also talking to some groups on the Big Island who are doing both jatropha and African oil palms. It depends on the crop. The jatropha seed pods will take less than two years. African oil palm takes five to eight years.

**9:47 am Adjourned for Executive Session pursuant to HRS §92-5(a)(4) to discuss its legal rights, duties, privileges, and obligations relating to this matter with the deputy attorney. (Pacheco, Agor)**

**10:03 am Reconvened.**

**Unanimously approved as submitted. (Pacheco, Edlao)**

**Item M-1 Issuance of Direct Lease to Imperium Renewables Hawaii LLC at Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu Tax Map Key: 1st Division, 9-1-14; Portions of 24**

Written testimony was received from Theodore E. Liu of DBEDT, David Leonard of Imperium Hawaii, Raymond Iwamoto of Schlack Ito Lockwood Piper & Elkind, Lisa Gibson of HI Science & Technology Council, The Maui Group of the Sierra Club of Hawaii, William Anonsen of Maritime Consultants of the Pacific, Gerald Sumida of Carlsmith Ball LLP, and Life of the Land.

Mike Formby, Deputy Director of Department of Transportation – Pearl Harbor (DOT), introduced Mike Lau from the Attorney General’s Office and Glenn Abe from the Property Management Branch of DOT. Glenn Abe reminded the Board this item was deferred and he presented it.

Member Pacheco asked whether the lease states a specific feedstock or is it in general. Is there any mention about moving towards available local feedstock?

Mr. Abe replied feedstock in general. The character of use DOT is using is for the operation of a bio-manufacturing facility. Available local feedstock is mentioned in the submittal as part of the remarks, but it is not part of the lease. DOT has not made a provision for that.

Member Edlao asked any reason why.

Mr. Abe replied no reason on that. Initially, palm oil is going to be used. The long term intent is to use locally grown feed stock, but there is no timetable for the move to local feedstocks.

Member Edlao stated Imperium should get a timetable with the following - when the company is going to use the palm oil initially, how long, and what they’re going to do. He asked does Imperium have a business plan. Mr. Abe affirmed.

David Leonard, representing Imperium Renewables, cited its Washington plant’s use of canola oil, amount produced and its use of some local feedstock.

Member Edlao inquired he understands Imperium is not using any local feed stock at all, but eventually your company will move into it. He reiterated his questions regarding timetable and use.

Mr. Leonard elaborated the Hawaii plan currently has three choices: soy, canola or palm. Because the world vegetable oil commodity market is ever changing he can’t predict what it’ll be like when the plant is up and running in 2009. Imperium recently purchased

a jatropha oil extraction machine for HARC (Hawaii Agriculture Research Center) and is talking to the local agriculture community to help them start the industry because they want to buy local feedstocks as soon as possible. In the HECO contract there is a local preference for local feedstocks therefore there is an incentive in the business terms of the contract. As for the time frame regarding jatropha, Senator Akaka recently gave a grant to the Hawaii County Economic Development Council of \$677,000 specifically for the development of jatropha to George Okiyama, the Executive Director of the Hawaii County Economic Development Council. Mr. Okiyama has connections with several farmers on the Big Island who have a nursery that will plant much larger plots of jatropha. Mr. Leonard cited its Washington State example of providing canola oil to Imperium and for the Seattle City & County bus system's use of the biofuel. OTS (Oahu Transportation Service) is interested. Imperium has a track record of using local feedstocks in Washington State. Also, Imperium is paying a premium to that state through the bus contract which would be similar in Hawaii.

Member Pacheco asked as an industry in general and you're at 80%, 90% or 100% of locally grown feedstock is that 10 year, 15 year, 20 year vision for your business plan. What is the forecast in your best case scenario?

Mr. Leonard explained he is being careful because they had filed for an IPO and they are in a quiet period. What he can say is what is currently published in their PUC filings and public information. Imperium has a small plant in Seattle that produces 5 million gallons a year and has been up and running for a couple years. They converted that to a research facility and they are focused on the second and third generation feed stocks. Imperium is currently handling algae at that facility. Soy is not a particularly good feed stock because it does less than 100 gallons per acre per year. Canola is better. Jatropha is a little bit better, especially in Hawaii where we might have multiple growing seasons. Palm is 6, 7 or 8 hundred. Imperium helped UH Hilo, School of Agriculture where they gave a grant to Dean Steiner to bring in some hybrids from Costa Rica which could do 1000 gallons per acre per year of African oil palms. There are people at UH who are working on algae as a feed stock for biodiesel. Algae can produce 10 times that (of palm). To predict how soon we might have significant amounts of local feed stock depends on what actually works here. Imperium is not sure how well jatropha will do here. Algae is still in experimental stages.

Mr. Leonard assured the Board, Imperium's intention is to go to the second and third generation feed stocks as soon as possible where they are not competing for food grade oils. He reiterated the use of algae, of working with the RSPO on buying sustainably grown palm, and putting that in their contracts. He emphasized they are a biodiesel company that can use any of a dozen or more feedstocks. Not only palm, which they aren't using currently.

Member Pacheco apologized about these questions because the Board didn't have this information ahead of time. He asked knowing the uncertainties of what is available in the market place why decide to start from such a large facility? Was there an option to start with a smaller facility and wrap up?

Mr. Leonard described within the energy industry for this to work it needs to be scaled up. Their big industrial customers like the military, Royal Caribbean Cruises and HECO are up at this scale. The current biodiesel production is way, way down. These customers need the comfort level to switch to these fuels and that is why Imperium is scaling up. Imperium is doing 100 million gallons a year which is 6500 barrels per day in the petroleum industry index. Chevron refinery does 59,000 barrels per day. Tesoro Hawaii does 93,500 barrels per day. Multiply that by 42 they are doing 2.2 billion gallons per year of petroleum products. Imperium is doing less than 5% of the two Hawaii refineries even though 100 million gallons sounds a lot Hawaii is one of the most petroleum dependent states in the country. One reason they are here is to try to help move the State to a more self-sufficient and sustainable energy situation. Compared to what petroleum is right now, even with their relatively large plant Imperium is just getting started.

Member Agor inquired whether Imperium would accept the Board helping it along with making the decision of when they are going to transfer to local products by placing a stipulation of 10 years. At that time Imperium can report to the Board and show their progress. If they can't, but is making progress, then the Board will consider extending that to help this along.

Mr. Leonard reported Imperium handled a similar issue at the last legislative session and at the AG's Office, but the U.S. Constitution has a dormant commerce clause which limits one state from preferring its own production and supplies over another. Looking at the HECO NRDC feed stock procurement policy, under which Imperium is contractually obligated, Imperium has an incentive to use local Hawaii feed stocks as soon as possible, to get out of palm and into the local feed stock. He deferred to the deputy AG.

Discussion regarding time frame as determined by the local agriculture community and the type of feedstock.

Chair Thielen asked does Imperium's business plan state what contributions they'd be making to local research on the different generations of local feed stock because the research is being done in other places and it may not be applicable here.

Mr. Leonard replied even though Imperium has plants in other parts of the country it is the reason why they are working with the Hawaii Agriculture Research Center (HARC). Imperium just completed a trip to bring in jatropha seed from other countries to see what works here.

Chair Thielen inquired whether one way of trying to get at second generation of local grown feed stocks is having a time commitment of when you would get there. Another way is having a dollar commitment to local research or a percentage of revenues.

Mr. Leonard conveyed Imperium is currently working with HARC putting together a working group of agricultural researchers in the State, some of the landowners and some

consumers of biodiesel. Imperium has put in \$20,000 and is committed to \$100,000 the first year. Other members (of the group) are bringing in more, but are pooling their money to get a grant to give HARC a significant amount of money. Mr. Leonard met with George Yokoyama who received a Federal grant from Senator Akaka's office and Imperium is trying to bring them into the group. This working group will have something for the local agriculture to start the research with and to make sure the jatropha from India will do well in Hawaii and it will be a viable feedstock here.

Member Gon explained this Board is cognizant of a variety of things revolving around this issue from global to local levels. Imperium is being put to the fire so that the Board can ensure that we have local sustainability from global petroleum resources to local energy resources and the best way for the Board to do that is to pose some constraints on a timetable. The Board is thinking of a third of the 35 year lease, roughly a decade, to see some progress in regards to future generations and local aspects. The question is if the Board imposes these kinds of recommendations to this lease to give Imperium an incentive to accelerate to the greatest extent possible the different projects that Mr. Leonard mentioned.

Mr. Raymond Iwamoto, attorney for Imperium Renewables, testified to the Board that he is convinced this is a company dedicated to do what is environmentally clean, is proper and is beneficial to Hawaii. He referred to Imperium's use of sustainable palm oil and commitment to using locally grown product as soon as it becomes available. Mr. Iwamoto thinks this Board should take that commitment, but not make it a legal requirement because Imperium will need financing to build this facility. He elaborated on the costs of this facility and compared it to Imperium's Grace Harbor plant. It will cost 97 million. Imperium's lease will go to the banks and if it says Imperium has to use a product or feedstock within so many years the banks may not finance them because there is no assurance that Hawaii is going to grow that feedstock within that period of time. No financing, no facility. He is concerned with the time limit.

Mr. Iwamoto warned not to debate about palm oil because that is happening in the world right now and he doesn't think it's the Board's function. He believes that the Roundtable (RSPO), created by the World Wildlife Fund, is the top organization and Imperium will adhere to their standards. If the Board wants to state anything in the lease that they will adhere to by the Roundtable standards Imperium can live with that.

Chair Thielen empathized in order to get financing Imperium needs to get a 35 year lease to show the company's ability to go through the construction and to gain the revenue to pay back the financing on their development. She understands Mr. Iwamoto's concern on having a time limit particularly when that second or third generation may not be in place and Imperium may not control the ability to put that in place.

But another question is what kind of commitment the company would make to local research to hasten the development of that second and third generation of feed stock here. She heard a contribution of around \$100,000, but at the same time 97 million to build the plant which is large.

Mr. Leonard explained in addition to financial commitment, Imperium is contributing their resources. People specific to algae or jatropha will support local agriculture research to expedite the availability of local feedstocks. Imperium spoke to HARC, UH and other agriculture groups for a year now. It is important to Imperium's long term survival to have sustainably grown, competitively priced feedstock that is acceptable to all of their stock holders which is central to their business motto.

Chair Thielen appreciated that, but she asked could you quantify that commitment for us.

Mr. Leonard responded he could come back with a much larger number, but stating it in the meeting today is beyond the authority he has. This first (working) group will have their first meeting in early December and they will have a chair picked out. This hasn't been publicly announced and it puts Mr. Leonard in an awkward situation. He doesn't want to announce something prematurely because another company may not be comfortable with him doing that.

Member Edlao stated that contractually Imperium is obligated to HECO to move to local feed stock. The Board is asking Mr. Leonard for something similar in a condition.

Mr. Iwamoto replied when that local feedstock is available on a cost effective market driven basis, the answer will be yes.

Mr. Leonard clarified the HECO contract allows Imperium to buy local feedstock. He reiterated a preference to buy local feedstocks as soon as possible and Imperium is able to jump start local agriculture with that local preference. This is currently being considered at the PUC. LOL is intervening at the PUC.

Mr. Henry Curtis, Executive Director of Life of the Land (LOL), affirmed they have filed a motion to intervene before the Public Utilities Commission (PUC) on the proposed HECO/Imperium docket. He reported it has 89 redacted sections. LOL received a motion objecting to their intervention from HECO. He referred to Hawaii Revised Statutes 171-14, "except as otherwise specifically provided all dispositions of public land shall be made at public auction." There are three exemptions in Hawaii Revised Statutes:

1) HRS §171-95(c) – "that if a renewable energy company is giving all of its supply to a utility or all of its supply for thermal energy than that can be exempted from the auction process." Imperium has proposed a 35 year lease and a 3 year contract with HECO renewable for 3 years for part of their output and did not qualify under §171-95(c).

2) HRS §171-59(b)1 – if the Board finds that the proposed use is in the public interest and if it encourages competition within a maritime related industry; or under HRS §171-59(a)(1) if the Board finds that the proposal is in the public interest and if it involves locally grown agriculture. They don't qualify under both exemptions. HRS 171-14 requires that "it has to be put out for auction." Mr. Curtis cited Superferry example.

When Life of the Land raised feedstock issues with Imperium, Imperium said either it is beyond the call of the EA or they will rely on RSPO standards. Mr. Curtis made the Board aware that RSPO doesn't have any standards and that they don't have any enforcement mechanism. Imperium has dealings with WILMAR who is under international investigation. A local price preference is true. At the HECO NRDC in Hilo, questions were raised by this deal on jatropha because there are competing interests on the Big Island. An S1 filing with the Securities and Exchange Commission was filed this past May. The big issue is enforcement because there is no mechanism to determine if (feedstock) is sustainable or not. Mr. Curtis recommends deferring, opening to auction, and opening to a greater Board discussion on what sustainable biofuels mean.

Chair Thielen understands Mr. Curtis is a huge advocate for renewable energy. She asked is the concern the palm oil or is the concern any biofuels?

Mr. Curtis reported in the dockets before the PUC, LOL have argued for botach, sea water air conditioning, wave energy, solar, wind and a small amount of biofuels like waste oils because waste oils dumped in landfills create more green house gases then converting them to biofuels for use in vehicles. His organization supports additional research to look at local production of local crops as long as all impacts are addressed. Mr. Curtis explained it's hard to measure what comes off of a farm. Hawaii is working toward a better life cycle analysis for green house gas emissions from agriculture. All biofuels raise concern.

Kat Brady is concerned with enough land to grow enough feedstock to meet Hawaii energy needs. She supports sustainable agriculture, but bemoans the use of agricultural land for energy feedstock when it should be used for food. She is concerned with the impacts of local feedstock and the displacement of people. Ms. Brady agrees with Mr. Curtis on the problem of sustainable palm oil.

Gerald Sumida of Carlsmith Ball representing U.S. Biodiesel Group reported submitting a letter to the Board. He explained they are competitors in Hawaii. U.S. Biodiesel requested Kalaeloa land for loading ships, but DOT stated there was none available. Statutes indicate a preference for public auction of lands where there are two or more parties interested in the same land. He clarified U.S. Biodiesel is not against Imperium. Mr. Sumida stated in a section of the Hawaii Revised Statutes, "In essence that the DOT for Harbor lands may in under certain circumstances issue a direct lease if its found to be in the public interest, for maritime and certain other uses" which this will fall under. U.S. Biodiesel Group's request was made in early October 2007.

John Strum, program manager for Energy, Aerospace, and Projects for Enterprise Honolulu, explained they are a non-profit and are one of the advocates of sustainability for Hawaii food and fuel. They did the State's road map in these areas. He reported the Legislature discussed what is the timetable that people should use feedstocks and these points came up: 1) No crop has been decided on. 2) No landowners themselves have made a business case saying they can grow it. 3) Don't have the work force. 4) Lost

water uses with the land that is left. In 10 years, Hawaii has doubled it's per acre for food giving us more land for mixed use. The model today is both food and fuel.

Mr. Strum gave background on Grays Harbor and the amount of petroleum oil coming (to Hawaii) from Indonesia. He related how Imperium is willing to start this (biofuel industry) and that it's up to staff to help agriculture. This facility will address Hawaii's dependence on imported food and fuel. He recommends using Imperium because of the sustainability and commitment.

Christopher Seine owns Surf.com explained he is concerned with the emotional pitch on this item asking to tear up the rules. 1) By acknowledging Imperium has no financial ability to do this without the State lease. 2) Imperium is making promises, but they are not willing to put it down in writing. Mr. Seine has been through internet business IPOs and alerted to the possibility of a foreign owner taking over who will only be interested in the bottom line. He suggested that the Board set the terms for the lease of a biofuels company then put it out to bid for those companies who want to do business in Hawaii taking into consideration those things that are unique and sacred to Hawaii as well as the economy, and Federal mandates. The Board's responsibility is the land and the people.

Michael Lau, Deputy Attorney General, referred to Mr. Curtis's argument whether the refinery qualifies under 171-59. It is maritime related use and qualifies given the petroleum refinery example. Regarding Mr. Sumida's argument if there are two competitors they must go to auction, that is not what the Statute says. It says "if its maritime related use and it encourages competition then we can directly negotiate." It's important to understand that the encouraging competition aspect was meant to get around the auction process not go into an auction process. U.S. Biodiesel came in so late that staff could not even consider them a competitor.

Mr. Formby representing DOT – Harbors advised the Board that today's proposal is not a new business model. The requirement is the company be public utility by nature. Harbors have always decided who gets these scarce harbor lands and wants to make sure the proper companies get those lands. Biodiesel is a competitive alternative fuel product. Imperium approached DOT early on and he described the steps before U.S. Biodiesel decided to compete. DOT doesn't stop when someone new wants that property. DOT Planning works 20, 25 years in advance. It's this provision of the Statute that empowers DOT Harbors to directly negotiate with the industry that they feel belongs at the Harbors. DOT has not excluded U.S. Biodiesel and he disclosed the parcel reserved for them.

Mr. Lau clarified it is maritime related use as broadened by the Legislature.

Member Pacheco inquired what would trigger DOT to do a RFP as oppose to a direct lease.

Mr. Formby explained the situation is US Biodiesel could be pushed out if they go to public auction. He explained DOT's ability to plan their harbors and he presented their engineer's forecasts. Mr. Formby detailed the history and process with Imperium.

Member Edlao asked for examples of conditions that will best serve the State of Hawaii.

Mr. Formby advocated this Board ask Imperium to commit to using their best efforts to switch to locally grown sustainable crops within a certain period of time. Not a formal commitment, but that they use their best efforts and that they come back to the Board in 5 years, 10 years to brief you on what efforts they have made to do that. Like a progress report (informational briefing).

Discussion on Terms of Conditions and Remarks in submittal.

Mr. Abe clarified it is a 1 year waiver of rental.

Member Pacheco inquired how does this come back to the Board on a lease.

Mr. Abe replied if the lessee defaults and DOT has grounds to terminate they will come before the Board. Or, if there are changes. It's by law that DOT comes before the Board.

Mr. Leonard made the commitment that Imperium will donate 3-1/2 million dollars to local agriculture research feedstock during the term of the lease. Also a periodic accounting and reporting of Imperium's use of local feedstocks which will be part of the lease. He committed a minimum goal of 10% feedstock in the first decade.

There was discussion on acceptable conditions.

Chair Thielen stated two proposals to add two new conditions to the recommendation. 1. The Lessee shall use commercial and reasonable best efforts as new crops become available to move to second and third generation non-food feedstocks like jatropha and algae, or other locally available feedstocks with the goal of using 10% of locally grown feedstock in the first decade. 2. The Lessee shall work with the government and private sector in Hawaii to develop local feedstocks in Hawaii and contribute a minimum of 3.5 million during the term of the lease to fund these efforts with no less than \$100,000 per year.

Mr. Leonard added with the understanding that the State will match these funds to the extent they are able. Imperium would like to have some sense of a partnership with the State.

Chair Thielen explained when the legislature comes before them for a lease; they will impose that condition on them, too. Mr. Leonard agreed.

Discussion on amount of contributions whether all on last year or annually.

Mr. Formby declared based upon the representations of Imperium we consent to put those conditions in the lease.

Member Edlao suggested these conditions from page 6:

1. As new crops become available and the Lessee is able to move to second and third generation non-food feedstocks like jatropha and algae as well as local feedstock.
2. The Lessee shall work with both the government and the private sector in Hawaii to assist in creating Hawaii sources of feedstock supply.

He asked would that be acceptable.

Mr. Leonard affirmed it is if the first condition was on a best efforts basis. Otherwise conceptually it is acceptable. The second condition is acceptable and he would like to add 3.5 million dollars during the term of the lease with the understanding that the State will work to match those funds to help HARC and other local agricultural R&D centers.

Member Gon reminded the Board the applicant was ruling to entertain a 10% minimum local use within the first decade as the target.

Mr. Iwamoto approved Member Edlao's conditions and "commercially reasonable best efforts."

Chair Thielen stated she heard two proposals to add two new conditions to the recommendation. 1. The Lessee shall use commercially reasonable best efforts as new crops become available to move to second and third generation non-food feedstocks like jatropha and algae, or other locally available feedstocks with the goal of using 10% of locally grown feedstock in the first decade. 2. The Lessee shall work with the government and private sector in Hawaii to develop local feedstocks in Hawaii and contribute a minimum of 3.5 million during the term of the lease to fund it at a rate of no less than \$100,000 per year.

**The Board:**

**Amendment to Staff Recommendation:**

**Two proposals to add two new conditions to the recommendation. 1. The Lessee shall use commercially reasonable best efforts as new crops become available to move to second and third generation non-food feedstocks like jatropha and algae, or other locally available feedstocks with the goal of using 10% of locally grown feedstock in the first decade. 2. The Lessee shall work with the government and private sector in Hawaii to develop local feedstocks in Hawaii and contribute a minimum of 3.5 million during the term of the lease to fund local research efforts at a rate of no less than \$100,000 per year.**

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

**11:40am – Convened for recess.**

**11:45am – Reconvened.**

**Item D-3 Issuance of Revocable Permit to Green Energy Team LLC, Wailua, Lihue, Kauai, Tax Map Key: (4) 3-9-02: 20**

Written testimony was received from Representative Roland D. Sagum, Paul Conry of DOFAW, Chairperson Sandra Lee Kunimoto of DOA, Beth Tokioka of County of Kauai Office of Economic Development, Gilbert Peter Kea for Garden Island Resource Conservation & Development, Alan Takemoto of Hawaii Farm Bureau, Flint Hughes with USDA Forest Service, William Sanchez – permit holder.

Mr. Morris Atta, representing Land Division, spoke on submittal background. The reason an RP (revocable permit) was requested instead of a lease was because Green Energy approached the Department for a long term lease to grow albizia and eucalyptus trees. Hawaii Revised Statutes §171-95 did not allow for renewable energy producers that did not produce energy on site. The direct leasing option was not available. There is a pending request for a change in the Statute. It was agreed that an RP would be sought in the interim until such changes occurred. This matter raised a lot of controversy in regards to competing interests. One correction should be made on the submittal. The original says 2, 181 acres then it was changed to 2,160 acres on the assumption that two smaller RPs would not be included and those were needed. After further discussion since the submittal was prepared, it was thought it should include all the RPs especially if it may affect the overall size of this project. For discussion purposes all 7 permit holders are included.

Member Agor reported on the meeting where the applicant made his co-existence proposal to the farmers which are to have the existing lessees keep their RP and grow the trees for Green Energy. Member Agor toured the area and found there are challenges to co-existing. The cattlemen and the tree farmers would have to step up their management to make this work. The farmers met and didn't agree on the co-existence, but the applicant will present his side. Member Agor believes there is a finite amount of land and he asked the Board to help guide him with this plan of co-existence.

A proposal packet was distributed by Eric Knudsen.

Eric Knudsen, representing Green Energy, LLC, announced he has a short presentation. He introduced representatives from the Kauai utility, KIUC; an independent CPA; and phone testimony from State Representative Roland Sagum. Mr. Knudsen presented his proposal packet which includes the co-existence plan.

Member Johns asked the EA does not cover impacts which involve change in use of public RP lands that are being farmed or ranched.

Mr. Atta acknowledged the EA is for the facility.

Member Johns queried are we clear about the exemption in light of recent case law.

Linda Chow, Deputy Attorney General replied she is sure that the exemption was given prior to the new case law coming down. She doesn't think that whether or not we used the exemption should be moved upon even though it was the most recent case.

Member Johns questioned the EA covering that would address the social and economic impacts of displacing existing farmers if they were displaced.

Mr. Atta assumed that.

There was discussion regarding the transfer to ADC (Agribusiness Development Corporation).

Member Johns inquired whether the discussion in the EA was done before control of albizia in terms of it being a very aggressive alien species, what are your control mechanisms to prevent it from spreading as it already has on the island.

Mr. Knudsen responded Green Energy wants to manage the albizia and work on the surrounding parcels with Forestry to eradicate over a 10 year time plan, but it takes time. There has been no successful eradication of albizia on Kauai that he is aware of. His company did an EA which includes the feedstock and the footprint.

Member Johns asked what happens if the legislation is not successful.

Mr. Knudsen replied his company is comfortable with a monthly arrangement. Green Energy has a 3 year cycle with the trees and they can take them in an accelerated time frame.

Member Agor inquired why this particular 2000 acres. Mr. Knudsen explained the location of his company's facility needs to be close to its feedstock and cited transportation issues. His company did not initially target the lands in question. Land Division identified this parcel.

Member Agor asked is there an urgency to secure the 2000 acres in terms of the time frame.

Mr. Knudsen answered absolutely, to move forward and plant the trees in the first quarter of the section of the parcel.

Jerry Ornellas, President of the East Kauai Water Users Cooperative, testified they are a non-profit water cooperative started in 2000. They received a revocable permit to operate the former East Kauai Irrigation System from the Department of Land & Natural Resources (DLNR) who has jurisdiction over the system. This entity (Green Energy) signed an agreement with KIUC and does not have the resources to fulfill their commitment. They are now coming before you asking for prime agricultural land. The applicant, the farmers and the East Kauai Water Users Cooperative are the three parties involved. When they entered into the agreement with the Department the plan was to

derive revenues off of these Kalepa lands. If it was fully planted out the revenues would be \$120,000 a year. He presented the Kalepa Agricultural Master Plan which was commissioned by DLNR since February 2003. It has no provision for production of biomass on these State Lands. These are the best agricultural lands on East Kauai and if they are taken out the Cooperative will not survive. When the Coop entered into this agreement assuming they would have these lands as a source of revenue. He suggested transferring these lands to the ADC and proceed in an orderly planned manner. He asked the Board to take everything into consideration and to reject the proposal.

Member Johns asked what was wrong with the coop approach. Is there anyway that there could be dual use of the property?

Mr. Ornellas replied albizia trees are invasive and will grow anywhere without any help. It is a huge problem for farmers and ranchers. He asked why put it on the best publicly owned agriculture lands on East Kauai?

Member Johns inquired some of the RPs cover unirrigated lands, right.

Mr. Ornellas responded most of the lands requested can be irrigated. The lessees have had meetings with the Bureau of Reclamation. The intention is to follow the long range plan (Master Plan).

Member Johns queried if there was a proposal to grow albizia could it be incorporated into that master plan.

Mr. Ornellas replied he can't answer that he is not an expert on forestry or biomass.

Member Agor stated he doesn't have a problem of growing albizia, but staff asked the applicant to find another species. The problem is Forestry has a plan to eradicate it and an entity wants a license to grow it unless we can come up with an alternate tree.

Chair Thielen inquired is ranching the best use of these prime agricultural lands or is there a consideration to phase ranching out of this area.

Mr. Ornellas explained ranching is an interim use of the land. The plan specifically states to keep this land open and un-forested. The reason is when agricultural opportunities arise you can move quickly onto those lands. His opinion is there can be co-existence between ranchers and farmers because farmers are always looking for land that has been fallow and the best way is by ranching. This is why the applicants want this land.

Mr. Atta clarified the Kalepa Master Plan was conducted by DLNR and gave the background history. It was a conceptual plan which required 5 million dollars in infrastructure development and DLNR could not implement it. This plan was based on the hope staff could maximize the use of these lands for agriculture.

Mr. Ornellas recommended the Board study the plan scenarios.

A map and letter of testimony from William Sanchez was distributed to the Board by Les Milnes.

Les Milnes, Interim Chair of the Kalepa Koalition, apologized that he misunderstood the question earlier about the affected parcel holders. His group had questions on page 2, 3<sup>rd</sup> paragraph of the submittal which relates to the 10 year plan identifying the lands for removal of albizia. They are not certain if that is the Kalepa lands in question or does that encompass all the Forestry lands that are infested with albizia. Page 3, paragraph 2 speaks of mandating utility companies by 2020, 20%. He can understand a multitude of different uses other than albizia planting toward that 20% especially at the expense of losing prime ag lands and irrigated food producing lands. He thinks marginal lands are appropriate. Kalepa Koalition has a concern with the distance of the facility to the lands requested. Page 6, paragraph 8 relate to letters of support which were submitted prior to the application and may not represent the true feeling now. He referred to the co-existence plan and presented his exhibits. Mr. Milnes presented William Sanchez's letter of testimony and a map outlining the lands in question. According to the plan Mr. Sanchez would lose a quarter of his pasture immediately. He would as a result cut his herd by ¼ as he is running at a maximum carrying capacity. Mr. Milnes reported Mr. Sanchez's history.

Chair Thielen referred back to the concept that was raised at the farmers meeting regarding a cooperative plan. It appears what Mr. Ornellas has raised on the Master Plan for this area is ranching is an interim activity. Taking a look at irrigated lands there is a preference on the master plan for different crops to go in the area. She inquired are the ranchers willing to entertain some type of co-existence plan given the understanding that these aren't viewed as permanent ranch lands.

Mr. Milnes replied in the affirmative. The ranchers have been working with the farm bureau to get started. Mr. Sanchez is aware of the diversification of agriculture.

Chair Thielen queried if the issues of the albizia trees regarding the types of grasses grown under them were addressed would the farmers be willing to come back to the table to discuss a cooperative arrangement where both uses could be done on the property.

Mr. Milnes responded the 13 parcel holders did meet and they discussed where they would stand. Mr. Sanchez would lose out. The rest are at 50%, 75% and 5% reduction. He described "silver pasture." Taking into consideration the biomass and the integration of both uses he felt a third of the land area could be planted, but not as tightly proposed. The problem that the farmers faced is coming up with 2000 acres. He explained the type of acreage and possible situation.

Member Johns stated he didn't realize the transfer to the ADC was never approved by the Board. It was deferred. He recommended ADC should resolve this if the agency is to get the land. It looks like staff held back because of some concerns over specific facilities.

Mr. Atta confirmed Member Johns statements and cited the land transfer never went through because it was tied to the transfer of the water systems. OHA had a problem with this and certain individuals didn't want portions of the water system re-opened. The land portion was held up [was] because of the difficulties of transferring the water portion. It was never approved.

Alfredo Lee, representing the ADC, agreed to a co-existence and informed that this is irrigated land. They were thinking of making the irrigation system be self sustaining and ADC would need to have more water users (diversified agriculture). He suggested the trees don't need irrigated land and are more suitable for forestry lands at the north of the parcel.

Chair Thielen asked is ADC willing to facilitate a discussion with the parties to determine how a co-existence plan may work in this area.

Mr. Lee affirmed they would participate.

Member Johns inquired of Mr. Atta would the Department be ok with allowing ADC to act as facilitator to get a co-existence plan and bring it back to the Board. Not sure about the timing because staff doesn't know if Green Energy could be a long term venture until the legislature decides whether they can do a direct lease or not.

Mr. Atta confirmed working with ADC was never an issue with staff and explained the urgency of getting this before the Board. He reiterated the transfer has never been approved.

Discussion whether to act on deferral of DOA (Department of Agriculture) subdivisions.

Member Agor asked what kind of money are we talking about to get the irrigation up to par.

Mr. Lee replied the legislature gives ADC \$50,000 to \$100,000 every year.

There was discussion of a contested case on diversion of streams and objections by Hanalei Watershed Coalition because the areas in question are abandoned. They could request conditions on the water system

Mr. Knudsen reported on the timing and referred to Hawaiian mahogany feed stock. His company has lower pricing, but can't hold that price if it can't reach the target date because of Federal tax credits.

Member Johns inquired Green Energy entered in a PPA in March 2007 at that time it didn't have a secure biomass fuel source in place and that's why this submittal.

Mr. Knudsen acknowledged affirmatively. He reported on the types of business on the parcel and the effects on the permittees. Green Energy would offer the best programs to support the ranchers, but not everyone will fully agree.

Member Johns acknowledged how it affects the timing of economics and that there are albizia all over the place. Forestry has offered Green Energy to take it all off the State Lands.

Mr. Knudsen affirmed his company will be working with Forestry to remove the surrounding trees. He explained the nature of albizia and in 9 or 10 years will satisfy their needs economically. He added they will use cane haul roads.

Chair Thielen suggested ADC commit to some negotiated sessions between the parties and to come back January 11, 2008 to see if the parties can come up with a co-existence plan that would work and address Forestry Division's concerns regarding management.

Member Pacheco stated he didn't support the project because 1. it's taking permits away from people who have permits who aren't in violation and replacing them with ag lands. 2. Replanting those lands with albizia.

Mr. Knudsen reported that there is one segment of the parcel about 500 acres currently in albizia. According to Forestry comments Green Energy will manage and harvest it. He is willing to commit to working with ADC through the time period until January 11, 2008.

Mr. Lee agreed to move this along.

Member Johns added he wants staff to work with the Attorney General's office in regards to the EA issue.

Mr. Milnes addressed the Board regarding the consideration of co-existing and the long range plan of transferring to ADC to give all the current permit holders a long term life possibility. The permit holders would more than welcome entertaining and providing biomass areas for the project which is how they would address talks with ADC. They would like long term tenure on the property.

Henry Curtis argued that to make a decision before having all public input is a violation of Sunshine Law. He explained this Board needs to amend the rules because the legislature and constitution says to eradicate invasives. And here is talk about co-existing by planting invasives which is a big shift for the State.

Member Agor clarified the applicant was asked to find another source instead of albizia.

Mr. Curtis continued the environmental assessment is not complete. There are a million albizia trees on Kauai and he feels they should harvest those first before planting any. To have this proposal for Kauai to be renewable by 2020 seems absurd since Kauai Island

Utility has entered in a memorandum that exceeds the 20 %. The applicant noted in order to have crops considered for biomass is 1. speed of growth 2. high caloric content 3. moisture content that is immediately reduceable. He referred to algae. He expressed his concern that the Board moved ahead to approve waste to energy conversions that contradicted each other without resolving that conflict.

Member Thielen clarified that the Board is not making a decision and is not violating the Sunshine Law. They are asking the applicants to have further discussion and to come back with a decision in January.

Earl Yamamoto, representing Chair Sandra Kunimoto at Department of Agriculture, asked that this matter be deferred because of concerns. 1. Alternative sites be considered. 2. Displacement or termination of revocable permits for existing farmers. 3. Concerns of affected permittees should be addressed. 4. Concerned with economic harm to the existing permittees including the water coop. 5. Existing permittees are offered opportunities to access their current lands while the trees are growing however they still stand to loose 25% of their lands.

Chair Thielen asked him if Department of Agriculture (DOA) would like to join the other parties in the facilitated discussions between now and January to come up with solutions.

Mr. Yamamoto replied that would be the administrative part of DOA.

Bill Cowern, of Hawaiian Mahogany who will be harvesting the albizia trees, asked whether they could harvest existing stock and get permits to continue removal for the next 20 years on State land. Does DLNR have a plan to eradicate albizia on Kauai?

Chair Thielen replied there was a reference to a management plan as part of this application to harvest in certain areas. If there is going to be discussion, Land Division could obtain permits to harvest albizia and she believes Forestry would be delighted to have this go on. She encouraged working with staff.

Chris Buddenhagen testified the use of invasive species is a major concern because of the number and long distance dispersal. He cited examples and research.

Member Agor made a motion and Member Edlao second to defer with the understanding that ADC will work with the parties including DLNR on the EA issue and come back January 11, 2008 with a resolution that will address the invasive species as well as the co-existence issues.

### **The Board:**

#### **Defer staff's submittal.**

**Deferred to the January 11, 2008 Land Board Meeting. Applicant was asked to work with the Kalepa Koalition and the permittees under the affected**

revocable permits to resolve the issues under the proposed coexistence plan and return to the Board in January with the results of that effort.

**Deferred. (Agor, Edlao) All approved.**

**Item D-14 Informational Briefing regarding installation of signage by Hilton Hawaiian Village, LLC, Kalia, Waikiki, Oahu, Tax Map Key (1) 2-3-037:021 (por.)**

Morris Atta of Land Division clarified this is a briefing and staff will need to correct the submittal because it is written as if there is a recommendation for Board action, but it is merely a reporting of status. On the recommendation portion it includes an error that obligates the Hilton to conduct enforcement, but Hilton does not have the authority to enforce State rules. The report on status is staff is working with Hilton on the final wording and placement of the signage in the Hilton lagoon area. This arises as part of Hilton's improvements to the Hilton Duke Kahanamoku Lagoon and it arises from their obligations under the deed to the State where there's a requirement for Hilton to maintain the lagoon and improvements. This is merely an effort by Hilton to comply with their obligations on this matter.

**The Board:**

**Amendment to Staff submittal:**

**Staff corrected the following errors in the recommendation section of Agenda Item D-14 by:**

- 1) **Deleting the section heading stating "RECOMMENDATION: That the Board:";**
- 2) **Replacing the phrase "Authorizing staff to assist Hilton," in the first sentence of the section with the phrase "Staff is cooperating with Hilton,"; and**
- 3) **Deleting the phrase "and enforcing" from the second line of the item (b) of the section.**

**Item M-2 Issuance of a Revocable Permit to DB Supply Inc., Keehi Industrial Lots, Kalihi-Kai, Honolulu, Oahu**

Glenn Abe, representing Department of Transportation (DOT) – Harbors, described submittal and the area for storage. Staff asked the Board to approve the permit.

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

**Item M-3 Approve the Issuance of a New Lease Issued by the State of Hawaii, Department of Transportation, Harbors Division (DOT-H), of Approximately 20 acres of Public Lands, by Direct Negotiation, to Allow the Development of a Master-Planned Industrial Park for Maritime or Maritime-Related Purposes, at the Keehi Industrial Lots Site, Honolulu, Oahu, Hawaii, Tax Map Key Parcels: 1-2-023:029,**

**033-037, 040-042, 045-050, 053-054, 056-066, 069-080, 082 and 084-091.**

Sandy Pfund with DOT – Harbors stated this action is to seek the Board’s approval to have the DOT issue, by direct negotiation, a master lease for this area as mentioned in the submittal. She described DOT’s request and the unimproved area.

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

**Item C-2 Request for Approval to Terminate the Surrender Agreement Between the Department and McBryde Sugar Company, LTD at Tax Map Keys (4) 5-8-001:001, Wainiha Valley, Hanalei District, Kauai Pursuant to Section 183-15, Hawaii Revised Statutes, and Remove Same Halelea Forest Reserve, and the Forest Reserve System**

Member Gon recused himself.

Paul Conry, administrator for Division of Forestry and Wildlife, informed the Board on submittal background. The 50 year term will terminate in 18 months and this is a request to move that forward to allow a cooperative agreement with The Nature Conservancy and enter into more aggressive restoration and management of the parcel. Staff is in favor of this because it will add an enhanced ability to manage and restore the area and be a net benefit to the State. The recommendation is based on AG’s advice that where DOFAW has private lands designated as forest reserve by executive order but not covered by a surrender agreement that those lands should be removed from the executive order. The agreement with The Nature Conservancy (TNC) is for 10 years. If TNC doesn’t continue that then it would be at the desire of the land owner. Mr. Conry noted this parcel is in the watershed partnership and it’s also covered under the conservation district protection.

Charlie Loomis from Alexander and Baldwin and McBryde Sugar Co. agreed with staff, but is here to answer any questions. Regarding the 10 year term, we’ll see what happens because its Alexander & Baldwin and McBryde Sugar’s intent and hope that TNC will extend it for a longer period of time.

Trae Menard, director of The Nature Conservancy on Kauai, reported they have been working with the watershed alliance as the coordinators for the last two and half years. TNC identified this particular parcel as a very high priority because of the intact biological systems and hydrological importance of the parcel. It sits directly in the center of the island and it is the rainiest spot in the world. TNC has also found a very high diversity of plants that only occur on Kauai. The reason why TNC entered into the agreement was to have a solid agreement to acquire funds from the Federal Government, from the State, and to be able to acquire their own private money to manage. Although, the parcel is in a very intact state right now it’s very short lived. There’s a very narrow window of opportunity to control the weeds. That is the reason why TNC wants to move forward quickly on this.

**Unanimously approved as submitted. (Agor, Pacheco)**

**Item C-1 Subject: Request Approval on a Memorandum of Agreement (MOA) Between the Hawaii Invasive Species Council (HISC) and the Board of Land and Natural Resources (BLNR)**

Paul Conry of DOFAW requested to approve this agreement to administer this program.

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

**Item K-2 Request to Extend the Processing Period in Order to Process a Contested Case Hearing, Case File KA-08-01, for Conservation District Use Application (CDUA) KA-3399 for the Consolidation of Two Parcels and the Construction of the Morrow Single Family Residence (SFR) in Haena, Hanalei District, Kauai, TMK (4) 5-9-03:10, 45.**

Member Agor recused himself.

Sam Lemmo, representing OCCL, explained submittal background. Staff recommends the Board grant the 60 day extension.

**Unanimously approved as submitted. (Pacheco, Gon)**

**Item K-3 Appointment and Selection of a Hearing Officer to Conduct All Hearings for One Contested Case Hearing Regarding Enforcement Case KA-06-77 Regarding Anawalt Lumber's Unauthorized Construction of a Tension High-wire Fence Within the Conservation District at Haena, Hanalei District, Kauai, TMK (4) 5-9-02:31.**

Sam Lemmo of OCCL gave submittal background. Staff recommends authorizing the appointment of a hearing officer and delegates the authority to select a hearing officer to the Chairperson.

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

**Item D-1 Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu**

Member Johns recused on the revocable permits (RP) addressing Parker Ranch and Hawaiian Electric Company.

Member Gon recused from The Nature Conservancy.

Morris Atta, representing Land Division, communicated annual renewal and pointed out staff's chart. He indicated a 3% increase in the rents for the RPs and recommended approval.

Member Johns inquired of the Mauna Kea Broadcasting Co. telecom facility. In the past there were questions whether to put this out for public auction and staff is choosing to roll it over?

Chris Racine, broadcaster and owner of 4 Hawaii television stations, communicated this permit should be revoked and put out to the public because the owner is in serious violation and it is in the best interest of the public. He described the tower location and gave the history. He alerted that the owner's lawyer is involved. The lease has gone defunct for seven years. Mr. Racine indicated previous submittal recommendations were never followed. The owner's response to each increase in rent is "can't afford it." The owner has not made any improvements which might cause the tower to fall. Mr. Racine offered to pay \$20,000 per month for it instead of \$9000 per year resulting in a huge interest in the site by making it safer, and providing for more practical uses. It is valuable to broadcasters. Mr. Racine suggested either sell outright or put the lease out to bid. He alerted that this owner has had the tower for 27 years and has not paid taxes in years resulting in the State losing millions in taxes because Mauna Kea Broadcasting is a dba of a California Corporation called Mt. Wilson FM Broadcasters.

Morris Atta stated staff can take it out as a separate submittal. It will be up for annual renewal with a revocable month-to-month.

Discussion on whether to go to auction process or best arrangement and the need to do more research.

### **The Board:**

#### **Amendment to Staff recommendation.**

**In response to testimony from Mr. Chris Racine regarding alleged violations by permittee, staff proposed and the Board approved the removal of Revocable Permit No. 5384 to Mauna Kea Broadcasting Co., Inc. from the list of permits being renewed in Exhibit "A" by the Board action. Otherwise, the Land Board approved staff's recommendation as submitted.**

**Unanimously approved as amended. (Johns, Gon)**

**Except for Hawaiian Electric Co., Parker Ranch and The Nature Conservancy.**

**Unanimously approved as amended on recused items. (Agor, Edlao)**

**Item E-1 Request for Permission to Hold the Aloha Council, Boy Scouts of America, Makahiki at Sand Island State Recreation Area, Oahu**

Dan Quinn representing State Parks reminded the Board approved a similar event that was conducted earlier this year and the Boy Scouts of America would like to conduct the same event next year. He explained the event is held at the most Ewa end of the park and the conditions are the same as last year. There is a Boy Scouts representative here to answer any questions and he approves.

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

**Item D-12 Board Briefing on the Proposed Land Transfer Approved on July 14, 2006, Under Agenda Item D-9, and as Amended on July 27, 2007 Under Agenda Item D-9, Kawainui Marsh, Kailua, Oahu, Tax Map Keys: (1) 4-2-13:22; 4-2-16:portion 1, 5, and portion 6.**

Morris Atta, acting administrator for Land Division, introduced Gavin Chun.

Gavin Chun of Land Division briefed the Board on Kawainui Marsh since the last Board action of July 27, 2007. Following the Board's approval to amend its action of July 14, 2006, the City submitted objections to the Board's conditions precedent to closing of the land transfer. Subsequent to the objections, the City, the Department and the Army Corp of Engineers met and worked to complete a phase one. There is a representative from the City here available if any questions.

Chair Thielen inquired when would phase one be scheduled to be completed.

Mr. Chun replied we hope to have a preliminary draft within a month or so.

Member Pacheco asked is there a loss of funding possibility or is there a deadline.

Paul Conry, administer of DOFAW, explained there is an Army Corp of Engineers project that is going to provide about 5 million dollars in funding. Right now it's in the budget before congress. One of the concerns for the Army Corp is they are interested in seeing this process move quickly to inform their Washington folks that a land transfer has occurred. He hasn't heard whether it has passed through the budget. Staff is making major steps on the State side for funding and completion of the plan. There is a Corp (of Engineers) deadline. Staff will be returning to the legislature to request for additional State funds.

Member Johns inquired do we have to resolve the issue regarding Phase I/Phase II as a condition of the acceptance of the marsh or are we working toward a solution that the Land Board should act.

Mr. Chun confirmed with the latter.

Member Pacheco inquired about the deed issue (Quickclaim Deed).

Laverne Higa, director of Facility Maintenance – City & County of Honolulu, reiterated Mr. Chun that the City and Corp of Engineers met and are moving to completion of Phase I. They expect the draft at the end of this month and will know then if a Phase II will be required. Regarding the Quickclaim Deed issue, the City forwarded information to the State and at this point it is not an issue.

**Item K-4 Request to Deny Standing for Petitioner Ilioulaokalani Coalition for Contested Case OA 08-04 Regarding Conservation District Use Application (CDUA) OA-3414 for Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge; and Request to Approve Conservation District Use Application (CDUA) OA-3414 for Public Purpose Subdivision of Land for the Expansion of the James Campbell Wildlife Refuge by James Campbell LLC., Located at Kahuku-Keana, Koolauloa, island of Oahu, TMK:(1) 5-6-002:010**

Sam Lemmo of OCCL informed the Board on the request background and staff recommends denying standing. Should the Board do that staff recommends approving the pending conservation district use application (CDUA). He described petitioner's request was unclear how it would impact native Hawaiian rights and staff feels this is not the venue for the petition.

A representative of the applicant was there to answer questions.

There was discussion on the petitioner's grievance.

Member Johns explained letter indicates lot 1001 will incorporate the .9 acre parcel and the CDU doesn't address that development. Staff is saying the .9 acre portion will not be developed as part of the development of 1001.

Mr. Lemmo replied he doesn't think so.

Petitioner was not there to testify.

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

**Item K-1 Second Time Extension Request by HASEKO to Extend the Processing Period for Conservation District Use Application (CDUA) OA-3412 For a Portion of the Kaloi Gulch Drainage Way Improvements Located Makai of Oneula Beach Park, Ewa, Island of Oahu, TMK:(1) 9-1-012:025 and (1) 9-1-011:007**

**Item K-5 Request for 90-Day Time Extension to the 180-day Processing Period for Conservation District Use Application (CDUA) OA-3413 to Change the Liljestrand's Single Family Residence (SFR) Land Use for Subject Parcel to Accommodate Commercial Use(s), Robert**

**Liljestrand, Located at Tantalus, Island of Oahu, TMK: (1) 2-5-011:008**

Sam Lemmo representing OCCL reported no changes.

**Unanimously approved as submitted. (Gon, Pacheco)**

- Item D-4 Approval in Principle Acquisition of County Lands for Consolidation with Existing Naalehu School Campus, Kaunamano, Kau, Hawaii, Tax Map Key: (3) 9-5-09:15.**
- Item D-5 Amend Its Prior Board Action of September 14, 2007 (Item D-6), to Rescind Its Prior Actions of January 10, 2003 (Item D-16), Issuance of a Termed, Non-Exclusive Easement to William and Louise Pape for Access and Utility Purposes at Kuwaikahi Gulch, Manowaipae and Kihalani, North Hilo, Hawaii, Tax Map Key: (3) 3-5-04:35.**
- Item D-9 Rescind Prior Board Actions of June 18, 2004 (D-10), and Subsequent Amendment of February 24, 2006 (D-4), Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Mount Kaala Natural Area Reserve System, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:021.**
- Item D-10 Consent to Lease of Lands under Governor's Executive Order No. 3504 to Alcoholic Rehabilitation Services of Hawaii dba Hina Mauka, Kaneohe, Oahu, TMK: (1) 4-5-023:02 (Portion)**
- Item D-11 Grant of Perpetual, Non-Exclusive Easement to the City & County of Honolulu for Access and Utility Purposes, and Issuance of a Right-of-Entry Permit for Construction & Management Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-018:portion of 52.**
- Item D-13 Amend Prior Board Action of November 18, 2005, Agenda Item D08, Grant of Term, Non-Exclusive Easement to Barham Trust for Seawall Purposes, Honolulu, Oahu, Tax Map Key: (1) 3-5-003:010 seaward.**

Morris Atta of Land Division stated no changes.

No public testimony.

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

- Item E-2 Withdrawal from Governor's Executive Order No. 2876; Set Aside to the County of Hawaii for Park and Recreational Purposes; Authorize Cancellation of Various Encumbrances; Memorandum of Understanding with the County of Hawaii; Construction and**

**Management Right of Entry to the County of Hawaii, Portions of the Land of Keahuolu and Lanihau-Nui, North Kona, Hawaii, Tax Map Keys: 3<sup>rd</sup>/7-5-05:07, 72, 73, 74, 79, 82, 83**

Mr. Dan Quinn of State Parks introduced Glenn Toguchi, district superintendent for State Parks on Island of Hawaii. Mr. Quinn requested approval to transfer the Old Kona Airport State Recreation Area to the County of Hawaii. He presented some displays from Mr. Toguchi. Mr. Quinn alerted that the State needs to retain the hanger building for their Kona base yard otherwise staff will have none on the Kona coast. Also, staff needs to transfer a half a million dollars to the County of Hawaii to complete the waste water system. Mr. Quinn explained the mayor is in favor, but the parks director is not as enthusiastic. Our staff would be responsible for the parks further north.

Discussion of staff distribution and loss of staff at two parks.

Mr. Toguchi described wastewater maintenance system costs.

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

**Item E-3 Request to Approval to Execute memorandum of Agreement with the County of Kauai, County of Maui, County of Hawaii, and City and County of Honolulu to Provide Lifeguard Services at State Parks Beaches**

Mr. Dan Quinn of State Parks spoke on submittal background. He asked for Board approval to enter into those contracts and delegate to the Chairperson's level the authority to execute future contracts. If everything works right this will be routine and the State will be in charge of those beaches.

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

**Item F-1 Request for Approval to Amend a DLNR/RCUH Agreement (Contract No. 52850) to Provide \$562,991 in FY08 and Extend the Agreement through June 30, 2009 for a Division of Aquatic Resources' Aquatic Invasive Species Project**

Member Tim Johns recused himself.

Dan Polhemus, Administrator for Division of Aquatic Resources (DAR), described background.

**Unanimously approved as submitted. (Gon, Edlao)**

**Item F-2 Request Approval to Hold a Public Hearing on a Proposed New Hawaii Administrative Rule Chapter 13-60.4, Miloli'i Subsistence Fishing Area, Hawaii**

Dan Polhemus of DAR explained submittal request. He spoke of working with the community over the past two years.

**Unanimously approved as submitted. (Pacheco, Gon)**

**Item J-1 Request for The Board to Consider an After-The-Fact Renewal of Mooring Permit NO. O 6130 Issued to Mr. Ronald Nelson for Berth NO. 496 at Ala Wai Small Boat Harbor**

**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.**

Chair Thielen explained this is not possible under HAR and recommended withdrawing.

**Withdrawn. (Johns, Agor)**

**Item L-1 Approval for Award of Construction Contract – Job No. F00CF82A Sewer Connection for Waimea State Recreational Pier Waimea, Kauai, Hawaii**

**Item L-2 Permission to Hire Consultant for Job. No. 48-HW-E, Honokaa Well Development, Hawaii**

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

There being no further business, Chairperson Laura Thielen adjourned the meeting at 2:10 pm. 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,

/s/ Adaline Cummings, Secretary  
Board of Land & Resources

Approved for submittal:

/s/ LAURA H. THIELEN, Chairperson  
Department of Land and Natural Resources