

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

DATE: FRIDAY, FEBRUARY 8, 2008
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
Ms. Taryn Schuman
Mr. Rob Pacheco

Mr. Ron Agor
Mr. Jerry Edlao

STAFF

Mr. Scott Fretz, DOFAW
Ms. Sheri Mann, DOFAW
Mr. Keith Chun, LD
Mr. Sam Lemmo, OCCL
Ms. Athline Clark, DAR
Mr. Russell Tsuji, CO
Mr. Dean Aoki, CO

Ms. Lisa Hadaway, DOFAW
Mr. Morris Atta, LD
Mr. Eric Hirano, ENG
Ms. Lenore Ohye, CWRM
Ms. Nancy McMahan, HP
Ms. Debbie Ward, CO

OTHERS

Ms. Pam Matsukawa, AG's Office
Mr. Robert McKnight, D-3
Senator Les Ihara, D-5
Ms. Ann Kobayashi, D-5
Mr. Louis Xigogianis, D-5
Mr. Bert Narita, D-5
Mr. Andrew Lot, D-5
Mr. Jay Hardin, D-5
Mr. Al Souza, D-5
Mr. James Stone, D-4

Ms. Linda Chow, AG's Office
Mr. David Hamamoto, C-1
Rep. Scott Nishimoto, D-5
Mr. Frank Smith, D-5
Father Darrow Aiona, D-5
Mr. Michael Marks, D-5
Ms. Michelle Matson, D-5
Mr. Ho Sik Lee, D-5
Mr. Paul Hiranios, D-5
Mr. John Dunham, D-4

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

Item A-2 Minutes of December 14, 2007.

Unanimously approved as submitted. (Pacheco, Edlao)

Item A-1 Briefing minutes for December 13, 2007.

Item A-3 Minutes of January 11, 2008.

Item A-4 Minutes of January 25, 2008.

Deferred. (Agor, Pacheco) Not ready for this meeting.

Item C-2 Request to Close Kahaualea Natural Area Reserve, Island of Hawaii, to the Public Pursuant to HAR § 13-209-4.5 for Public Safety Purposes and Authorize the Chair to Negotiate and Sign an Agreement with USGS-HVO to Ensure Effective Monitoring of the Flow.

Scott Fretz representing Paul Conry of Division of Forestry and Wildlife (DOFAW) recommended the Board ratify the closure initiated July 25, 2007 to extend for a 2 year period through July 25, 2009 and to authorize the Chair to negotiate a signed agreement with USGS. He introduced Lisa Hadaway, Natural Area Reserve Manager from the Big Island, and Linda Chow of the Office of the Attorney General (AG) here to answer questions.

Lisa Hadaway reported on July 21, 2007 the volcanic activity from Pu'u O'o vent, which is within the Hawai'i Volcanoes National Park, changed and a series of fissures opened up in the Natural Area Reserve including near the popular Captain's Trail. Big Island Civil Defense and USGS notified her office and recommended closure of the area for public safety concerns. It's expected this will be a long term eruption.

Member Pacheco inquired what is used for the closure, signage or barricades.

Ms. Hadaway replied that her staff is working with Na Ala Hele to put up signage that says "closed due to volcanic hazards" and a phone number. A fence is across the trail with signage, but people are still getting in as noted by recent rescues.

Member Pacheco asked if those people had administration action against them.

Ms. Hadaway responded no, her office is working with DOCARE on enforcement.

Member Edlao concerned with the liability and that there should be warning signs of the hazards. He inquired if after the two year closure period there is volcanic activity Ms. Hadaway will be coming back to the Board?

Ms. Hadaway replied in the affirmative. The administrative rules say up to two years. It would be reopened based on the consideration of USGS.

Linda Chow suggested the AG's office can work with NARS on the signage.

Chair Thielen recommended noticing the car rental companies and hotels by using flyers.

Ms. Chow suggested NARS do a standard letter to tell the agencies that the area has been closed and send it out to give to clients.

Ms. Hadaway stated DOCARE is working with them and the National Park Service has been giving her office advice.

Member Edlao asked if there are any expenses to the State on the monitoring and study.

Ms. Hadaway replied no. County of Hawaii Civil Defense has been giving a lot of support and HAVO (Hawaii Volcanoes National Park) staff has been using their own funds. Her staff has been working closely with the County on the rescues.

Robert McKnight lives in the area and noted the cauldron itself is extremely dangerous.

Unanimously approved as submitted. (Pacheco, Edlao)

Item C-1 Request Approval of Contract with the Kokua Kalihi Valley to Participate in the State Forest Stewardship Program.

Scott Fretz of DOFAW asked the Board to approve this contract agreement and submittal. He introduced Sheri Mann, a State Forester, and representatives from the Kokua Kalihi Valley.

Sheri Mann representing the State Forest Stewardship Program informed the Board that this is a unique opportunity for an urban community to access environmental education and recreation. She described the various activities and that it is a non-profit.

David Hamamoto of Kokua Kalihi Valley has been working closely with the Dept. The organization and Board of Directors are fully supportive of this and look forward to the reforestation.

Chair Thielen expressed the Department's appreciation.

Unanimously approved as submitted. (Schuman, Agor)

Item D-3 Amend Prior Board Action of October 26, 2007, Agenda Item D-1, Encroachment on State Unencumbered Public Land by Robert C. McKnight; Accreted Lands of Kapaahu, Puna, Hawaii, TMK: Unassigned Lands, Makai of (3) 1-2-01.

Morris Atta, Administrator for Land Division, reminded the Board that this request is to amend a prior Board action from October 26, 2007. He described staff's submittal and situation. Because of the enforcement nature of this encroachment staff decided to proceed. The improvements are on a lava extension which staff believes is not safe. There are amendments to the recommendation to change the prior penalty of \$2500 to \$1500 because the penalty was based on HRS § 171-6-12 which is the encroachment provision. That statute allows for a penalty of \$500 per violation. Staff mis-calculated and will need to correct the penalty amount. Also operating on that same HRS provision, it should be \$500 per day not \$2000 per day. Because there are some follow up provisions for enforcement if compliance isn't reached by March 31, 2008 extension staff would like the authority to work with the Attorney General's office to implement those enforcement sanctions that may be required. The changes in number 3 will be reflected in number 5. Because it wasn't clear whether staff was given authorization to work with the AG's office, staff will build that into the provision.

In regards to the rationale for not pursuing with the land exchange, staff stated that there is no need for it. Staff didn't think it was prudent to allow Mr. Knight to remain because land extensions are known to fall into the ocean. Mr. Atta has seen the property.

Member Pacheco inquired has anyone from USGS weighed in on that stability.

Mr. Atta replied he wasn't sure about USGS, but staff has had the State surveyor, coastal engineers and geologists there. The conclusion is impossible to determine with the facts we have on how safe it is. But staff does know its sitting on lava extensions.

Robert McKnight reported on the additions requested in a letter he had sent for an extension of time to remove the structures in 6 months and any possible remedies would have been a variance to utilize the property for a single family residence or this exchange in land. One of the lots is available for public access. He thought exchanging one or two lots might be reasonable considering these are conservation lands and the state may want to further conserve the two lots. As another remedy is regard to a variance rather than removing the structure which is a personal issue. He hates to see it taken down as well as the financial loses. It may be a moot issue because he decided to rescind that entire agreement because of the frustration of not getting very far with the State. It's a bit overwhelming in trying to maintain the structure. He rescinded and started removing the structure. He described the process. He didn't expect any leeway in a variance for boundary adjustment and the Board wouldn't go for a land exchange. That particular pali point is reasonably stable because he has watched them. He can meet the March 31, 2008 deadline. No problem with lowering of the fine.

The Board:

Amended staff's submittal:

The Board amended the penalty amounts in items 3 and 5 to a one-time fine of \$1,500 for the 3 offenses and \$500 per day for any continuing offenses. The Board also gave authorization to the Department to work with the Office of Attorney General to take any appropriate or necessary action to enforce the Board's decision. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended. (Pacheco, Edlao)

Item D-5 Resubmittal – Sale of Lease of Public Auction for Commercial Purposes, Waikiki, Honolulu, Oahu, Hawaii; Tax Map Key: (1) 2-7-36: 04 and 16.

Numerous written testimonies were submitted.

Morris Atta introduced Keith Chun of Land Division. Mr. Chun reminded the Board that this is a request for a final approval for auction of a 65 year ground lease because this matter came before the Board twice before. Staff went before the Board in January 2004 with a proposal to auction a commercial lease, the Board granted approval in principal subject to staff obtaining rezoning from the City. Staff came back to the Board last March 2007 with the terms of the rezoning; the Board approved it and reaffirmed support for this project unanimously. The zoning was approved last January by the City Council. The terms are laid out in the submittal.

Mr. Chun reported the State generates funds from State commercial property (ceded and non-ceded lands) to fund DLNR programs which manage parks, beaches, etc. The ceded lands comprise of 95% of the State's inventory and the revenues generated don't necessarily stay with the Dept. Some go to the general fund, some to OHA. DLNR generated 9-1/2 million last year where 5-1/2 million went to the general fund which is used statewide and not necessarily for DLNR. A small inventory, less than 5% of non-ceded lands go into the Dept's. special land and development fund. This Kapahulu parcel is important because of its income potential and is non-ceded land. Income from this property would go to DLNR's special fund which Land Division operates solely from because Land Division does not receive appropriations from the Legislature for their operations. Land Division projects this fiscal year will be 6.9 million and the expenditures to exceed 8.3 million which puts them in the red. Staff projects to transfer over 2.7 million to State Parks, DOFAW's Invasive Species Programs, Geothermal, Water Commission, hiking trail program, etc. A letter was distributed to the Legislature reporting on this special fund and with testimony from some of the Divisions supported by the fund. This fund had close to 9 million, but the projection for the next few years shows the fund dropping to \$500,000. Most of it is from one industrial tenant which puts the Dept. in a precarious situation.

Most of the testimony in opposition is to keep the property as public parking and some

asked the Board to defer decision making. But the Dept. has its own obligation and mission to protect the natural resources and the need to fund it. This 4 year parking arrangement was always meant to be temporary until staff could implement their long range plans. Staff discussed with the neighboring businesses that don't have their own onsite parking and that's why it's on a month to month lease. Mr. Chun reported on the history of the site.

He reiterated this isn't something new. Both area legislatures were informed in 2003. Staff went through a full EA which has a public evaluation process, visited the neighborhood board twice, had a public hearing before the city planning commission and 6 hearings before the city council and zoning committee. At each meeting the public parking issue was raised. The request was for the State to lease to the City the municipal lot for \$1 a year. The State doesn't run public parking lots and the City declined to do so. The City expressed any private commercial parking operator could participate in the auction of the commercial lease. None have come forward. The neighborhood board wanted to hold off.

Chair Thielen inquired what would be the anticipated revenues from a commercial lease for the highest bidder vs. anticipated revenues if it were restricted to parking.

Mr. Chun replied staff looked at it in two ways. One based on municipal rates and he described the Kaimuki parking lot which makes \$24,000/year base and percentage rent. Another staff's appraiser came up with \$6400. Staff interviewed Diamond Parking and did an evaluation based on 3 scenarios: 1 monthly, one hourly and a hybrid. It ranged from \$6500 based on 50% occupancy annually. If it was 100% occupancy all day and night it would be about \$9900 annually.

Chair Thielen queried for an open auction for commercial use, what is the estimated revenue.

Mr. Chun's response was the appraised value came in over \$280,000, but staff is recommending an \$180,000 upset. Its staff's experience to go through a public process and the market will dictate it. If it's appropriate it will be bid up and he cited a previous auction set at \$146,000 and the final bid was a half million instead. He doesn't have a problem of setting the upset lower.

Chair Thielen asked if Mr. Chun could talk about the emergency response citing last year's floods, Kula forest fire, extra dam safety inspections, what the Dept. does and whether or not the Dept. has funding from the Legislature to handle these emergencies.

Mr. Chun reported that the emergency response was funded to Engineering Division in excess of \$700,000, but the total amount was closer to \$900,000 from this fund. The division administrators are here to detail that.

Member Edlao inquired when were the public meetings held and what was the reaction. Mr. Chun replied the Neighborhood Board met April 14, 2005 and September 8, 2005.

At that time they adopted a resolution requesting that the land be given or leased to the City to use as a municipal parking lot. During the rezoning the City declined saying they didn't have any plans to build or operate.

Member Edlao asked whether a long range plan was discussed.

Mr. Chun responded the long range plan was from January 2004 subject to this rezoning. The rezoning was where the issues were flushed out and has been on-going.

Member Edlao queried what the timetable will be from the time the bid goes out.

Mr. Chun explained staff hopes to have the draft lease and package prepared by next month. The process is to publish the notice, solicit applicants, 4-6 weeks to evaluate/notify applicants if they qualify to participate in the auction and hold the auction. About 3-4 months. Staff recommends a due diligence period in the process where the successful bidder has 60 days to conduct due diligence.

Member Edlao asked whether the awarded bidder takes possession of the property.

Mr. Chun replied it's like any real estate deal. Inspections, talk to lender and lawyer, if they decide to move forward the lease will be executed within the due diligence period.

Member Agor inquired how many parking stalls are there.

Mr. Chun described it's not a formal parking lot. Some of it is striped, some is half paved. Staff estimated 50-60 cars.

Member Agor queried whether any studies were presented to Mr. Chun on the community needs.

Mr. Chun replied no.

Discussion about vacant lot next to the Kapahulu Library which is too far from businesses.

Member Edlao asked whether this doesn't preclude anyone from putting in a parking structure.

Mr. Chun remarked it doesn't, but staff left it broad for any uses permitted under the zoning.

Discussion over huge gap between amount State could generate and what was appraised.

Member Pacheco queried whether staff expects parking concessionaire to bid on this.

Mr. Chun replied at this rate he doesn't.

Member Pacheco asked if there is a way to structure the lease offer to make it more attractive to a parking concessionaire who may want to come in to look at that or will that impact the top dollar amount.

Mr. Chun responded it will definitely impact a top dollar amount. He noted that the Dept. has very few properties with income potential and this was identified.

Chair Thielen queried Mr. Chun mentioned that older businesses were developed before the LUO that didn't have parking requirements. Are any new businesses required to have on-site parking?

Mr. Chun acknowledged that the lessees will be required to comply with the common codes; the Diamond Head Special District requires on site parking.

Member Edlao asked whether Hawaiian Dredging had own parking on site.

Mr. Chun replied affirmatively. He noted some neighboring businesses don't understand that staff agreed to accommodate them until things got moving.

Member Agor noted conceivably the developer could provide stalls to the public within their development and staff should help them.

Mr. Chun reported staff had discussions with the City on access issues because it's going through the auction process. He thinks the businesses could approach the lessee to see what could be worked out. To impose things before a public auction is inappropriate. People may make deals with neighboring properties to share access.

Member Edlao queried if there have been any developers that approached the State.

Mr. Chun replied in the affirmative.

Senator Les Ihara represents the Kapahulu community in the State Senate. He presented a map and distributed written testimony. He opposed the proposal as submitted and supports a compromise proposal to limit the option to a commercial parking facility. He sought to delay this decision because Prudential Locations conducted a parking study and spoke to independent vendors with revenue numbers to the State as \$85,000 a year which is a big difference from \$6500. Senator Ihara suggested staff should look at the basis of appraisals or revenue estimates to find what the difference is. Everything changed when the City rezoned the land which, until then, staff couldn't go to auction because it was zoned residential. The community testified against the rezoning and lost. He doesn't believe the City visited the site or during the environmental assessment process.

Senator Ihara's staff counted stalls to get numbers to the consultant. His staff did their own door-to-door parking survey. There are 119 on street stalls a block and a half from the site based on his staff's study. Businesses were not surveyed, but staff was aware that at night and sometimes during the day the lot is busy. 55% of 240 residents returned the

survey. This was based on 240 cars parking on street competing for 119 street stalls. His staff did not include apartments. People who didn't respond don't park on the street, but a lot of apartment residents do. This is the most realistic figure without counting apartments or businesses. There is a tremendous illegal parking problem. The State action would force people to park blocks away. He presented areas on his map where a number of cars already park outside the area.

He and Representative Nishimoto support the Department wanting to generate funds. Its unfortunate that the Land Division special fund will be depleted which is the first time he is hearing that. This may give special emphasis to push this because their pleas have been loud and have been ignored by staff which he was quite disappointed with. The parking situation is in no fault of the residents.

Senator Ihara described the history of one car garages in the 1950's and newer homes have two car garages. Newer businesses will hurt and impact the residents' parking. He noted additional parking at other vacant lots estimated at 20-40 additional stalls. During the Harris administration there was a Kapahulu community vision team that came up with a community center with a parking lot taking some of the golf course. The consultant projected revenue of \$1100 per year per stall.

He suggested and urged this lot should be limited to commercial parking to have revenue because another commercial venture like fast food could generate the parking. And not to cause harm to the community because that raises some policy issues for him. He recommended obtaining more numbers.

Representative Scott Nishimoto asked to defer and reiterated the comparison of the Prudential studies with Land Division's because of the wide gap in numbers. The Kapahulu Neighborhood Board is meeting on February 14th and it's important for them to weigh in on this issue. He felt the Board should send a message that the neighborhood board's opinion really matters because they represent the community. Two weeks will not make a difference. It is the Board's policy decision, but he felt that \$100,000 is not worth the disruption it will cause to the community. He urged to defer and if the Board must vote to please limit to commercial parking.

Member Edlao clarified that this wasn't caused by the State and that he understands the impact, but even with the vacant lot there will still be a parking issue. This needs to go above this Board to resolve the parking problem. He concerned that the Board's decision affects the State of Hawaii. The Board has to answer to the public when resources are compromised, like why can't this be enforced or why can't this be protected, and without proper funds it's very difficult. He was surprised Senator Ihara and Rep. Nishimoto did not see the report that was sent to Senator Baker and urged them to. It will impact not only to Kapahulu, but to the all the islands of the State of Hawaii. The Board is not neglecting one community.

Chair Thielen reported that the Ways and Means had asked for a break down of expenditures that come out of this fund. The Department has been put on notice by the

Legislature that they're looking to cut positions, programs and funding within DLNR. Staff's response was that this fund was used for emergency response that was not funded by the Legislature before because no one anticipated the 40 days of rain, nor did anyone anticipate the Department having to take prompt action to protect public safety. Engineering Division had to do statewide dam safety inspections. There was a lot of flood control response, Diamond Head trail safety and maintenance issues as well as statewide problems. The impacts weighed heavily on the Board, but more so the resource needs that they have to provide for. There is an attempt by the Dept. to diversify that revenue stream because in lean times the Dept. knows they'll get cut and will need some base to rely upon for these programs and services.

Representative Nishimoto stated it is a policy call on the Board's part. He felt if \$2,000,000 could be generated from this site then go with a commercial venture. But it's a difference of possibly \$100,000 or more. The damage done to the community would be more than that.

Member Edlao noted if there is someone who can do that they would get them, but are open to submit a bid as well.

Representative Nishimoto replied but with the way the structure of the bid is now they wouldn't because there is a minimum. If they could bid \$80,000 they couldn't because the minimum is set at \$180,000.

Member Edlao explained that could be adjusted, but could be open to anyone. Staff is trying to generate funds referring to why on DLNR website "to make Hawaii a great place to live."

Representative Nishimoto understands, but felt it would bring harm to the community and reiterated the amount generated is not that much.

Chair Thielen clarified that maybe legislatures have a different idea of what is a lot of money compared to Departments because Departments get only one piece of the pie.

Member Pacheco thanked the Representative and Senator for attending and echoed Member Edlao's and Chair's comments. He was ok with the deferral if there is more coming to bridge this gap, but didn't have that currently. He described being from the Big Island and seeing the conditions of the State Parks, trails, watersheds and having to scrounge for \$100,000. He encouraged Rep. Nishimoto, Senator Ihara and colleagues to fund this department to manage the resources as it needs to because it is a world class place and should be treated that way.

Senator Ihara noted he is a long supporter of DLNR and agrees with Member Pacheco. He will speak to Senator Baker.

Ann Kobayashi representing the City Council testified that parking lots do make money. The Kaimuki parking lot makes about \$600,000 per year. The reason why the City went

with a private company was the lot needed upgrading and because there was such a shortage of parking the City felt that a private operator would get more spaces available. She believed there were 3 bidders and the winning bidder put in the upgrades to the lot, plus makes some money and pay off their debt in 3 years. The important part with the City doing parking lots, besides making money, they are serving the community. She described losing mix use neighborhoods with small businesses and that Kapahulu is a good example of a neighborhood with small businesses struggling every day and without the parking it makes it even harder. She pleaded to please protect our neighborhoods and our small businesses because it is an important part of land use.

Member Edlao inquired why the County didn't want to do the parking on the property.

Councilwoman Kobayashi replied if the land cost isn't there the City could do it that's why they asked for a dollar a year. That is the only way the City could make it work because their only revenue is property tax. The zoning chair felt with the rezoning a commercial parking lot could be done with a community center above it. The other council members are aware of the protection of the resources.

Eric Hirano, Chief Engineer for DLNR, cited support for this item and that written testimony was submitted. He described how revenues from this lease will go into the Land Division's, Special Land and Development Fund and he explained the importance of this fund to oversee Hawaii's natural and cultural resources, services, public health, safety and general welfare. It funded the emergencies due to the April 2006 floods. Also important is to provide a steady stream of revenue into the fund to prepare for the next disaster.

Frank Smith owns Island Triathlon & Bike for 24 years and he is glad that the Board is here to listen to the people. He testified that without parking all the businesses will go down. When Hawaiian Dredging was there they had a \$1 a year agreement with DLNR for that lot. It will have adverse effects to the citizens without this lot. He thanked the Board.

Louis P. Xigogianis representing St. Marks Episcopal Church reported there are 100 parishioners and about 103 children who attend the school on the church premises. The Church has 10 parking stalls and on the weekends use the playground for parking, but during special events they use the lot across the street which is dangerous to cross. He urged the Board not to take this lot away because of the negative effects. But his church respects the importance of water resources. Government needs to serve and accommodate the needs of people besides businesses. He introduced former pastor Father Darrow Aiona who wants to keep the parking. Mr. X asked if the Board decides to turn this over to a commercial venture to put a stipulation in "must include public parking."

Member Edlao asked when the church has events do they reserve the parking lot. Mr. Xigogianis replied no they don't. Uncle Bo's Restaurant valets the parking lot and the church notifies Uncle Bo's to accommodate them, too.

Member Edlao was confused how that lot is full all the time because he thought it was just an open lot and people park where they want to.

Father Darrow Aiona understood trying to generate funds. He described the limited parking and having to schedule big events in the evenings or weekends. The church has been paying for the lot along with other neighboring businesses. He explained how bad the parking situation is with parents picking up children where even he can't park. His staff can't move the church because it has been there a 100 years. He gave the history of the DOH building that was there. The businesses clean up the lot and coordinate parking time and they have a revocable permit. The church has been paying the liability insurance.

Bert Narita, Chairman of the #5 Neighborhood Board, testified that there is some misrepresentation because the DLNR representative said "this will happen" at his presentation to the Neighborhood Board without interest of the community. The Neighborhood Board's main concern was what the maximum allowable use of the property is and if the changes are not conducive to the neighborhood. He asked what is this special fund. He understands DLNR needs funds to accomplish its mission, but the public view is the State is on a catch up basis citing Kaloko Dam aftermath. He suggested spending on preventive maintenance. Mr. Narita referred to the Waylen Kapahulu Report and described it. He felt Safeway is more accommodating than government and noted the problem of people parking in front of driveways. He suggested meeting with the community because they feel no one is listening. He echoed Rep. Nishimoto's request.

Member Edlao clarified special funds for the Dept. are created so it doesn't go into the General Fund.

Chair Thielen elaborated that the Dept. has to account for its expenditures, regardless of the source, every month to the Legislature and to the public which is on-line. The Dept. of Education receives 2.5 billion dollars a year from the State. DLNR receives about 100 million and are responsible for all the lands and natural resources from the tip of the mountain out to 3 miles from shore. Its tougher meeting that responsibility with the amount of funds the Legislature is willing to give them compared to other Depts.

Mr. Narita replied understood, saying he is relaying public perception because they don't understand all of this. He suggested better informing the public about these funds.

Member Pacheco inquired how the Neighborhood Board's decision on Feb. 14th would affect the Land Board's decision.

Mr. Narita concerned with the conditional use during the bidding process. Why not write it in? The Neighborhood Board attended the City & County zoning meeting where the County's comment was that the State could, in the lease, put in a condition stating the use of the property. Everybody talked about it, but nothing was being done. The DLNR

representative stated this will all go to invasive species. These comments are a result of all the available information they have. This is the community's perception and they could be wrong.

Sam Lemmo, Administrator for Office of Conservation and Coastal Lands (OCCL), testified in his official capacity and described how special fund monies are used in his office. This fund manages 2 million acres in the State of Hawaii to enforce, protect and conserve lands for people and future generations and cited the Pila'a case, the Wa'ahila power line, koa destruction, ocean energy, aquaculture and illegal sea walls. His office depends on the special land division fund and supports this. He felt this is not unreasonable idea because it provides a lot of services to the public and he asked for patience.

Michael Marks a concerned citizen pointed out that Kapahulu is a unique area and should be kept presentable for tourists and available for the public. It is the only public parking lot between the zoo and St. Louis Heights. By removing the availability to use this parking will make it less attractive for tourists to use the area, hurt the businesses and the residents.

Andrew Lot reiterated the big difference in numbers (appraised values). He thought McDonald's or Burger King with the deep pockets will make the most money here. He suggested checking out the \$85,000 and that it is a good compromise where everyone wins.

Leonore Ohye, Program Planning Manager for the Commission on Water Resource Management (CWRM), testified on behalf of Deputy Director, Ken Kawahara. The Water Commission expressed its support for Land Division's recommendation because revenues generated would support Water Commission's programs and she described them. She summarized the funding allotted to the special fund enables the Commission to implement the State Water Code mandate to protect, preserve and enhance our State water resources. It provides funding for key personnel and program activities. To date the Commission has effectively utilized its allotment to further the management of this precious resource for current and future generations.

Michelle Matson original member of the Kapahulu Community Plan, Advisory Group spoke on her written testimony. She explained the Waylen plan and disagreed with Mr. Chun about making deals with businesses for parking. It didn't happen with Safeway and she doesn't think any commercial interest that takes over that land will allow for public parking. She objects to a long term commercial lease, asked for a deferral and further due diligence. Ms. Matson continued testifying on Public Land for Public Use in the Public Interest, Surrounding Scenic Open Space and Recreational Resources, Protection and Preservation of Mature Trees, Public Need: Vital Central Public Parking, Pedestrian Safety and Public/Private Partnerships in the Public Interest. She urged the Land Board to defer until all the facts are in.

Jay Hardin, Neighborhood Board member for St. Louis, Kapahulu, Diamond Head, referred to 2 resolutions and hoped they were read and understood. He urged the Board to obtain the Waylen Survey/Report.

Ho Sik Lee, owner of Uncle Bo's, applauded Member Edlao for questioning. He compared parking at Kapahulu with parking during Punahou Carnival time. He appreciated the Board's understanding of the parking problem and distributed photos of the parking lot. He reiterated the suffering of businesses and DLNR's situation. Mr. Lee stated when opening their (he & a partner) lifelong dream of owning a restaurant they expected to have parking across the street. The Kapahulu businesses are happy to pay for parking, but aren't doing so now. He reiterated the community hardships and recommended on insisting for metered parking.

Al Souza a long time resident who submitted written testimony and distributed petitions from residents and visitors. He informed the Board that he worked in the parking business for 25 years and that there is always a demand. It is a money making business and he felt Councilwoman Kobayashi's assessment of 3 years was a pretty good turn around. He reiterated the minimum base rent amounts from Mr. Chun which he thinks is completely ludicrous. He suggested deferring and cited examples of problems where people block residential driveways, parking on sidewalks and numerous accidents.

Discussion if this parking would eliminate the problem and using the bus.

Mr. Souza briefed there is not enough stalls, too many vehicles in the neighborhood, it'll deprive the neighborhood of parking and those people will be moving into the surrounding neighborhood with a rippling effect.

11:49 am Recess

11:55 am Reconvened

Paul Hiranios a 3rd generation resident reported on history of parking since the 1970s. He described his family being cited for parking in their driveway because that's the law. He understood for safety issues, but not if it's your driveway. A tenant is moving out because he got 18 parking tickets in 3 months. His household had a total of 23 tickets the past year. It's gotten to the point where residents can't invite guests over because they will get a ticket. The closest public parking is the zoo and the Kaimuki lot. A lot of businesses don't allow their workers to park in their lot and will park in the neighborhood. He reiterated willing to pay for the parking lot and putting in a clause "has to have public parking."

Member Pacheco inquired if it's possible to do 2 parallel proposal tracks where one is open for commercial and one for parking concessionaire to see what happens.

Mr. Chun replied he never saw it done and felt it would kill one side of it because people are putting in a lot of time and effort into it.

Mr. Atta added he doesn't see how that would work. If there is a successful bidder on either side who gets the call?

Chair Thielen clarified if simultaneous there would be two people to have the right have the property for two different purposes.

Member Agor queried whether it would be a huge deterrent in the RFP if the Board made a requirement to provide a certain amount of public parking.

Mr. Chun replied he thinks so because the property is that big. But after talking to some brokers and real estate people construction costs has escalated. That is one of the reasons staff suggested lowering the up side.

Member Pacheco asked the only way for a public parking concessionaire to come in is to make it a restriction in the bid process.

Mr. Chun responded affirmatively. People have said it is a money maker, but won't compete. It'll go to the highest bidder. Staff has gone through the process and tried to get a feel for market demand. Commercial businesses have come to staff to inquire.

*Member Pacheco made a motion to defer to get more data in 2 weeks and noted he is committed in generating revenue from this property. He hoped to get a parking concessionaire.

Member Schuman second.

Member Edlao remarked he doesn't support the motion because this doesn't preclude someone from doing a parking structure. Staff needs to be more diligent with the numbers. This has been dragging on too long and he reiterated the Board's responsibility for the State which includes Kapahulu.

Member Agor believed that the deferral will only point out the difference between \$80,000 versus \$180,000 at best.

Mr. Chun noted that discussions has gone through the zoning board and City Council about public parking and if there was that much interest and push to lobby to have commercial operators.

Chair Thielen stated that Member Agor raised a good point if staff's numbers of \$85,000 compared to \$180,000 is incorrect for the commercial use. She needs to support a stable secure revenue stream for the Dept. and felt the delay will bring unrealistic expectations because it will not change her vote.

Member Edlao commented that with continued public pressure maybe no one will bid and then it might come back to the Board resulting in having to get a parking concessionaire. It would have to go out to everyone.

Ayes: Members Pacheco, Schuman
Nays: Chair Thielen, Members Edlao, Agor
Motion failed.

Member Edlao asked if this goes through and in the interim a concessionaire steps up to the plate that is acceptable to the Board could the bid process be stopped.

Chair Thielen wondered what would be the upset price that would be acceptable.

Member Pacheco remarked who knows who might come in during the bid process.

Member Agor optimistically commented that the person who bids would have to go through the County process and at that time will hear from the community. He thinks if the developer is smart to do this they would allow for metered parking as part of the development.

*Member Edlao moved to accept the staff's recommendation.
Member Agor second.

Ayes: Chair Thielen, Members Agor, Edlao
Nays: Member Pacheco, Schuman

Chair Thielen explained that this was a very tough vote for the Board, but they take their responsibility for the natural resources seriously. She hopes the neighborhood respects the Board's decision and the Board sympathizes with the neighborhood.

Unanimously approved as submittal. (Edlao, Agor)

Item D-1 Consent to Assign Grant of Non-Exclusive Easement S-5725, to Carrie Riley and Shawn Riley, Assignor, to Riley Condominium Homeowners Association, Assignee, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-7: por. 12.

Morris Atta, representing Land Division, conveyed background and owners' request.

Unanimously approved as submitted. (Edlao, Pacheco)

Item D-2 Cancellation of Revocable Permit No. S-7190 to Gary Rodrigues and Issuance of Revocable Permit to Gary W. Rodrigues and Tani Olaso Rodrigues for Conservation Management Purposes, Kapaa Homesteads, 1st and 3rd Series, Kawaihau, Kauai; Tax Map Key: (4) 4-6-8: 23 & 24.

Chair Thielen requested for a deferral to obtain more information.

Member Agor queried if staff was aware that the lessee was locking the gate and preventing public access.

Mr. Atta was not aware of that.

Deferred. (Agor, Schuman)

**Item D-4 Affirm Appraisal Methodology to Determine Shoreline Easement
Consideration for John Dunham & Dana Lynn Kawano, Kaneohe,
Koolaupoko, Oahu, TMK: (1) 4-6-01:27 seaward**

Morris Atta for Land Division described background reminding the Board that they approved the methodology in April 2004.

Chair Thielen inquired the recommendation of staff is either to accept the offer or a timetable for the arbitration and if the owners don't follow it they will be required to remove the encroachment.

James Stone, attorney for John Dunham, agreed with Mr. Atta that they want to arbitrate. He thought they were here because the methodologies that all the appraisers in the arbitration were to use were set forth in the medusky formula. The problem is having the medusky formula imposed upon the arbitration rather than the arbitrator deciding what fair market value is. Mr. Dunham wants full market value.

Mr. Atta explained it was his understanding that the Board approved use of this formula for all shoreline encroachment evaluations for easement requests which is a violation issue. A lot of these shoreline encroachments are relatively small. The formula was imposed to deal with that class of violations. Because of efficiency it was a matter of procedure for this type of enforcement issues.

Mr. Stone reiterated from staff's submittal "it is adopted for efficiency proposes with the underlining basis being that they are usually very small and the parcel wasn't worth the money." There is no reference of imposing the formula upon contested cases. The statute says the number is offered by staff and paid by the owner and if there is a dispute then the matter is set to arbitration with an arbitrator chosen by either side. There is no provision in the law of an arbitrary formula in contested cases. He described the area. The easements are non-exclusive where the public has right of assets over these easements. These easements do not allow building, conveyance and are fully revocable by the Board.

John Dunham owner of property thanked the Board and distributed his written testimony to the Chair. He informed the Board of their situation and reiterated a desire for the State be compensated with fair full market value. He described how he obtained this property and detailed background.

Chair Thielen clarified the point of contention is whether the medusky formula would govern the arbitration. The consequences of not following the timetable would commence the arbitration procedure within 30 days of the Board action.

Mr. Stone reported the State arbitrator; Mr. Yamaguchi refused to engage in the arbitration pending an arbitrary formula imposed upon the arbitration

12:30 pm 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, Edlao)

12:50 pm Reconvened

Chair Thielen recommended deferring this matter to seek more advice from counsel. She inquired of exhibit 6 if Mr. Stone had a signed copy.

Mr. Stone replied those are in escrow and could get those for the Board. DLNR did not sign it. He offered to work with staff.

Deferred. (Schuman, Agor)

The Board deferred the matter for one month to obtain legal clarification of certain issues.

Item F-1 Request for Approval of a Six-Month No Cost Extension for DLNR/UH Contract (No. 52740) to Complete a Project Titled "Local Action Strategy to Address Land-Based Pollution Threats to Hawaii's Coral Reefs" (Contract Period: 9/15/05-9/30/08)

Athline Clark representing Division of Aquatic Resources requested approval of contract extension.

Unanimously approved as submitted. (Pacheco, Edlao)

Item I-1 Request for Approval to Enter into a Contract for an Inventory Study of Residential Structures and a Condition Assessment the Manager's Residence, Mill Buildings, and Railroad Cars and Tracks in Ewa Villages, Island of Oahu, TMKs: (1) 9-1-017:038, (1) 9-1-095:001-164, (1) 9-1-096:001-127, (1) 9-1-097:001-104, (1) 9-1-101:001-075, Portion of TMKs: (1) 9-1-017:001, 002, 046, 069

Nancy McMahan, Acting Branch Manager of Archaeology for Historic Preservation, requested approval and reported background. She noted that the grant from Preserve America is \$103,000 and there are matching funds. There a several phases.

Unanimously approved as submitted. (Schuman, Edlao)

Item K-1 Request to Extend the Processing Period for an Additional 60-Days for Conservation District Use Application (CDUA) KA-3399 for the Proposed Consolidation of Two Parcels and Single Family Residence Construction Located at Haena, Hanalei, Island of Kauai, TMK: (4) 5-9-003: 010 & 045

Chair Thielen reported that Sam Lemmo, Administrator for OCCL had to leave. She described submittal.

Unanimously approved as submitted. (Pacheco, Schuman)

Item L-1 Approval for Award of Construction Contract - Job No. H53C632A, Walkway & Railing Improvements, Phase 3 Akaka Falls State Park, Hilo, Hawaii

Item L-2 Permission to Hire a Consultant for a Land Survey at Pu'u O'o, Hawaii

Item L-3 Certification of Election and Appointment of Soil and Water Conservation District Directors

No members of the public present to testify.

Unanimously approved as submitted. (Agor, Edlao)

There being no further business, Chairperson Laura Thielen adjourned the meeting at 12:58 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,



Adaline Cummings
Board of Land & Natural Resources
Secretary

Approved for submittal:



LAURA H. THIELEN
Chairperson
Department of Land and Natural Resources