

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

DATE: FRIDAY, FEBRUARY 22, 2008
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

AMENDED

APPROVED BY THE BOARD
AT ITS MEETING HELD ON
JUN 13 2008

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Ms. Laura Thielen
Mr. Ron Agor
Dr. Sam[uel] Gon [III]

Mr. Timothy Johns
Mr. Jerry Edlao
← Mr. Robert Pacheco

STAFF

Mr. Morris Atta, LD
Mr. Eric Hirano, ENG
Mr. Sam Lemmo, OCCL
Ms. Nancy McMahan, HP

Mr. Scott Fretz, DAR
Mr. Paul Conry, DOFAW
Ms. Tiger Mills, OCCL

OTHERS

Mark Bennett, Attorney General
Bill Wynhoff, AG's Office
Keith Kato, D-4
Tim Hill, C-1
Ann Shiigi, DOT-AIR
Kai Markell, K-2
Chester Koga, K-3
Crystal Peltier, D-1
Tim Lui-Kwan, D-10
Ron Bard, D-8
Gary Okuyama, C-2

Vince Kanemoto, AG's Office
Bill McCorriston, L-1
Scott Fretz, C-1
Dexter Kaiama, K-1
Yvonne Izu, K-2
Michael Kumukahoali'i, K-2, D-10
Robert Wago, K-3
Barbara Ichishida, D-9
Dr. Garrett Frank Saikley, D-10
Phil Hauret, D-12
Kali Gumapac, K-2

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

Chair Thielen announced that the Board has a legal matter to consult with the Attorney General who needs to leave early. They will go into discussion and return for the rest of the Board meeting.

Item N-1 **The Board may hold an executive meeting to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, and specifically in relation to the recent Supreme Court's ruling in the Office of Hawaiian Affairs, et al., vs. Housing and Community Development Corporation of Hawaii (HCDCH), et al., S. Ct. No. 25570 (Civil No. 94-4207)**

9:07 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 Attorney General.
(Johns, Pacheco)**

9:36 am **Reconvened**

Item A-1 **Amended December 14, 2007 Minutes.**

Item A-2 **December 13, 2007 Briefing Minutes.**

Item A-3 **January 11, 2008 Minutes.**

Unanimously approved as amended and submitted (Johns, Edlao)

Item A-4 **January 25, 2008 Minutes.**

Item A-5 **February 8, 2008 Minutes.**

Deferred. Not ready.

Item L-1 **Request for Grant in Part and Deny in Part Request for Contested Case Hearing by Pflueger Properties as to Authorization for Department and its Agents, Employees, and Consultants, to Enter upon Various Private Properties and Easements / Right-Of-Ways for the Purpose of Conducting Investigations and Inspections of the Kaloko Dam, as Directed by Act 118, SLH 2006, Relating to Emergency Relief for Natural Disasters, and Pursuant to Hawaii Revised Statutes Chapter 179D.**

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.

Eric Hirano, Chief Engineer for DLNR, reminded the Board that this item came up on January 25, 2008 Land Board meeting which was to approve staff's request for a phase II dam safety inspection starting at Kaloko dam reservoir. He reported on the background and provided amended recommendations to staff's submittal.

1. That the Board authorizes appointment of a hearings officer for the subject contested case hearing and that the hearings officer conducts all the hearings relevant to the subject petitions for a contested case hearing.
2. That the Board also delegates the authority for the selection of the hearing officer to the Chairperson.

His deputy attorney general is present.

Bill McCorrison representing the Pflueger interests described the Kaloko dam reservoir, ditches and agreements with the State. The litigation involves Kaloko reservoir in an ongoing criminal investigation and a Kauai civil law suit involving 30 individuals. Mr. McCorrison cited unfair advantage in the courts through investigations. In the contested case hearing he wanted to present evidence that the State is asking for unfair advantage by having an investigation of the reservoir for use in civil litigation. He wrote to Deputy Attorney General, Bill Wynhoff, asking to assure him that these investigations will not be used in criminal or civil investigations. Mr. Wynhoff wrote back that he could not give that written commitment.

Chair Thielen inquired are you saying the only reason this Board has requested to move to a phase II is to try to leverage for position in court as opposed to having a responsibility that the dams are safe for the people of Hawaii. Given the phase I results this Board felt it was important to move to phase II.

Mr. McCorrison stated there is no safety issue because water isn't going into the dam reservoir. He said that an investigation was already done by Attorney General Mark Bennett's crew who investigated for several weeks. Mr. McCorrison's client spent over \$100,000 on their own phase II investigation and turned that information over to the State Attorney General's office. If the Board wants to see that based on confidentiality he has no problem with that.

Member Johns asked would the Board normally limit the scope of the particular contested case or would we normally leave that to the hearings officer to set the scope of what the issues would be with regard to the Board action.

Bill Wynhoff, Deputy Attorney General, explained the Board has the authority to hold a contested case and a contested case officer stands in the shoes of the Board. The Board has the authority and duty to limit the issues to issues that the Board, through the hearings officer, has jurisdiction to consider.

Member Johns understood, but a lot of times the Board has contested case on Board action and the Board doesn't necessarily go through the list of issues addressed in a contested case.

Mr. Wynhoff stated the reason that it isn't necessarily always addressed is because there aren't issues outside the jurisdiction of the Board. The Board doesn't have the authority to consider or to commit to the hearings officer to hear matters that aren't within your jurisdiction.

Member Johns concluded that is the basis for the denial of the request b, c, d, e and f. He inquired how would Mr. McCorrison have recourse to argue that.

Mr. Wynhoff replied he is sure Mr. McCorrison would come up with that on his own. He assumed Mr. McCorrison would go to the court in which the civil lawsuit is pending. He had asked Mr. McCorrison if he was willing to cooperate with the case. Mr. McCorrison questioned can it be guaranteed it won't be used in a civil case and Mr. Wynhoff can't guarantee that. In a civil case, he thinks Mr. McCorrison's recourse would be to go to the judge and say this is what is being done and please don't let it come to court. Mr. Wynhoff he had no knowledge of the Attorney General's criminal team going up to the dam and doing an extensive investigation. He doesn't believe the Attorney General will share that knowledge with him or staff. If Mr. McCorrison was willing to share that knowledge with this Board and if that was adequate with staff then a phase II was not necessary. It was Mr. Wynhoff's understanding that the safety of the dam has been a paramount concern with Mr. McCorrison who repeated many times to Mr. Wynhoff his concern that the State wasn't aggressively following up on the safety of the dam. Mr. Wynhoff finds it a little surprising now that after numerous letters over the course of more than a year in which Mr. McCorrison urged the State to go ahead and protect the safety of the dam and now he is willing to reassure us that the dam is safe. That is news to Mr. Wynhoff and if the Board wishes to take that into account they are free to do so.

Member Johns inquired the statutory authority that the Board is being asked to authorize the investigation for the testing is Act 118.

Mr. Wynhoff replied he didn't remember the act, but it was passed last year. It was codified as 179D-23. There was a pre-existing right for this Board to enter on to such land in the absence of an authorization which he thinks was 179D-6. A new provision was entered in the most recent law.

Member Johns asked the constitutional or due process rights of the land owner were they taken into account when that statute was passed authorizing the State to go forward with these investigations. He concerned using the rights given to the State when there is criminal action going on.

Mr. Wynhoff felt that is not an issue. It could be excluded from the criminal case. If the jury doesn't hear it then why is that a problem in the criminal case? The point here today

is the Board does not have the right or the jurisdiction to say that the statute is unconstitutional.

Mr. McCorrison finds it a little disingenuous to say that Mr. Wynhoff is surprised that he is here arguing against safety which is entirely untrue. From the time after the dam broke he and his client sent correspondence to the Dept. and Attorney General's office to inform exactly what needs to be done to ensure public safety which is to control the intake ditch at Kaloko and to monitor the water levels. There are volumes of letters back and forth on that issue and that is how to control safety at the reservoir. Not the dam, the intake valve is where to control safety. Also, he and his client wanted to present evidence at the contested case hearing about the examination they had done and they have no problem sharing that with the public. It may have taken the Department 2 years to do a phase II investigation. They had done it a year ago.

Chair Thielen clarified that the law requires staff to look at the dam itself and not just the intake system. This is the first time anyone has heard an offer from the property owner to share any structural investigation that they may or may have not done on the dam itself. Mr. McCorrison mentioned he had no problem sharing that information in a contested hearing. Would he have a problem sharing that now and passing that information to staff?

Mr. McCorrison replied absolutely not assuming that it would be kept confidential from the civil and criminal investigation.

Chair Thielen stated she wasn't sure how the Board would do that because most documents are public documents. They would have to consult with their counsel on that. She asked are you saying that your client conducted an equivalent of a phase II study on the structural integrity of the dam.

Mr. McCorrison responded it goes way beyond a phase II investigation which he and his client have already shared with the State of Hawaii and are willing to do so for DLNR under those same conditions. If there is a determination after review of that data that there is a safety issue then maybe an inspection is warranted. He has a problem with this because whether or not the State has jurisdiction and then having the hearing officer decide. Also whether or not a phase II investigation is warranted and he and his client want to address that issue with their expert.

Chair Thielen perplexed that Mr. McCorrison knew that staff would move to a phase II after the request for a phase I why is this offer to share this information only being made now.

Mr. McCorrison assumed the State of Hawaii had this information for months.

Chair Thielen queried the Attorney General's office for the criminal investigation.

Mr. McCorrison replied he didn't know. But the Attorney General's office had that information for months now.

Chair Thielen inquired if he understood there is a wall between the AG's and the deputy AG's.

Mr. McCorrison responded he is aware that they say that, but not aware if they do that.

Chair Thielen reiterated if Mr. McCorrison gave that information on the criminal side because this is the first time the Board is hearing it.

Mr. McCorrison replied this is the first request from the State on the regulatory side.

Chair Thielen stated staff and a certified engineering company needs to see that data to determine whether it is sufficient to meet the regulatory needs that DLNR has to do for the dam safety inspection program.

Mr. McCorrison's response was it's a fair request and it's one he is willing to accommodate on confidentiality and if the Board's decision after is to go ahead to a phase II investigation he understands that it has to go public and that's the Board's decision.

Chair Thielen asked Mr. Wynhoff is there a way to take this information and keep it confidential during this initial determination.

Mr. Wynhoff replied he thinks so, but would have to look at it. It would be public record, but there are exceptions to doing it. Part of which is frustration of government purpose. If Mr. McCorrison is saying they won't turn it over to DLNR unless we have this confidentiality agreement and it might work.

Mr. McCorrison stated his view is if you start the contested case hearing making anything confidential becomes very difficult.

Member Johns inquired what does the Dept. want. The Dept. requested to conduct an investigation and it's the land owner's response to ask for a contested case. Is it unnecessary to approve for a contested case and/or....

Mr. Wynhoff believes the AG's office should discuss with Mr. McCorrison his conditions of confidentiality to see whether the AG's office could obtain that information and get it to the Dept. to respond to your question.

Chair Thielen recommended deferring decision making. Staff will review the data and make a determination at the next Board meeting whether to move forward on this request.

Mr. McCorrison explained maybe next week sometime because the engineers are on the mainland.

Chair Thielen stated because Mr. McCorriston raised a number of allegations about the intent behind this Board's actions she wanted to share what is driving the Chair of the Board which is an interest in protecting public safety and following forward on the recommendations of the phase I report. She does not want an undue delay in having staff review this information. She suggested expediting this process until the next Board meeting on March 14, 2008.

Vince Kanemoto, Deputy Attorney General, inquired how long does Mr. McCorriston want confidentiality.

Mr. McCorriston replied however long staff needs to make their decision on the data.

Member Agor added there is an irrigation issue with the Kilauea farmers and he is getting public pressure for the State to investigate and determine whether or not Kaloko dam reservoir is safe.

Mr. McCorriston replied the calls not only have to do with safety, but more of the calls they've received are whether they can ensure a water supply to the farmers. Having water is their main concern, not safety. The Kaloko water is much cheaper than county water. If the county or the DLNR wants a dam he'll give it to them for nothing because the land owner gets none of the revenues and gets all the liabilities. That is why pursuant to the amended dam safety act that the Board does have jurisdiction over. He and his client have not made a request to restore the dam and they will not do so. They made a request to decommission the structure that is there, but has not heard back from DLNR on what procedures to follow. They are open to discussion between the farmers and DLNR. They want to do what is right for the farmers and the State, but they don't want to be the ones holding the liability for everyone.

Chair Thielen pointed out until the decommission it still a dam and the Board has a responsibility to the public to perform the dam safety inspection. It has to go through a process under the statute.

Member Pacheco inquired after staff gets the data and it says its safe how does it help the phase II investigation if that data is confidential. Does it become public record at all?

Mr. Hirano thinks it would be staff's recommendation to the Board that the dam would be safe and will not be attaching any data.

Member Johns queried if staff doesn't initiate a request for any other dam then are they safe. Would it be staff's call?

Mr. Hirano noted staff came before the Board before for dam safety, but in this case they came back because staff was denied access.

Chair Thielen assumed the confidentiality agreement with the AG's office permits the information to be share with the court and that would be similar is there is a need for the Board under court action to demonstrate the basis for the decision by the Dept. not to pursue a phase II if such is the determination to retain that information and share it with the court under those circumstances.

Mr. McCorriston replied he couldn't say yes or no, but will consider what the Chair is describing.

Deferred for 2 weeks. (Agor, Johns)

Item D-4 Set Aside to the County of Hawaii for Elderly, Affordable Rental Housing and Related Purposes and Issuance of a Right-of-Entry Permit to the County of Hawaii, Waiakea, South Hilo, Hawaii, Tax Map key: (3) 2-4-001: 168.

Morris Atta representing Land Division informed the Board on the background and that Edwin Taira was here to answer questions.

Keith Kato, Executive Director of Hawaii Island Community Development Corporation, is interested in working with the County to develop the property. He gave details about the property and understands the conditions.

Member Pacheco inquired how the property handled the last flood.

Mr. Kato described the flooding situation and that they will mitigate it by putting in a diversion ditch taking it to the existing facility.

Unanimously approved as submitted (Pacheco, Edlao)

Item C-1 Request for Approval to Release for Public Review the Draft Habitat Conservation Plan and Accompanying Incidental Take License for the Lanai Meteorological Towers, Lanai, Hawaii

Scott Fretz, Wildlife Program Manager for Division of Forestry and Wildlife, reported background. Staff is releasing this for review to proceed with the public process.

Tim Hill representing Castle and Cooke agrees with the recommendation and is here to answer any questions.

Unanimously approved as submitted (Edlao, Gon)

Item K-1 Appointment and Selection of a Hearing Officer to Conduct All Hearings for Contested Case HA 08-06 Regarding Conservation District Use Application (CDUA) HA-3443 for the Proposed Expansion of Open Ocean Fish Farming by Kona Blue, LLC Located

on State Submerged Lands, Ulualoha Point, North Kona, Island of Hawaii

Sam Lemmo, Administrator for Office of Conservation & Coastal Lands (OCCL), gave background. Staff asked to hire a hearing officer to run the contested case and to delegate that authority to the Chairperson.

Dexter Kaiama, Attorney for Kanaka Counsel, is one of the petitioners who approved the submittal.

Unanimously approved as submitted (Gon, Agor)

Item M-1 Amendment No. 1 to Concession Agreement No. DOT-A-06-0007 Retail Concession Agreement DFS Group L.P., Kahului Airport

Ann Shiigi representing Department Of Transportation, Airports Division described amendment and recommended authorization.

Unanimously approved as submitted (Edlao, Gon)

Item M-2 Consent to Assignment of State Lease No. DOT-A-00-0004 COX Aviation, Inc. to Sky River Holdings LLC Honolulu International Airport

Ms. Shiigi gave background and reported DOT has no objections to this assignment.

Member Johns inquired about the assignment premium on page 3.

Ms. Shiigi said she would have to check on it.

Unanimously approved as submitted (Johns, Gon)

Item K-2 Amendments to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel at Honouliuli, Ewa, Island of Oahu, by HASEKO TMK/Plat Map (1) 9-1-012

Sam Lemmo of OCCL reported on background. The fine was paid and staff worked with Historic Preservation (HP) to devise the Historic Preservation Monitoring Plan which has been completed and the elements are listed on page 2. Haseko is compliant. He described amendment requests and recommendation.

Nancy McMahon representing Historic Preservation Division described sites destroyed and damaged. The fences are all up. HASEKO would like to revise preservation plan to adjust the boundary for a cane haul road. She verified there are no other sites in the area. The preservation plan is being reviewed.

Yvonne Izu representing HASEKO reminded the Board they presented HASEKO's vision for the marina a couple months ago. She complimented staff's submittal and she is here to answer any questions.

Kai Markell, Director of Native Rights and Culture for the Office of Hawaiian Affairs (OHA), expressed having to repeat himself. He spoke with disbelief that this project has been going on for 3 to 4 years without oversight from a regulatory agency and that the developer is self-monitoring? Mr. Markell explained that OHA is part of this MOA and have not been notified or consulted by HASEKO about destruction of historic sites. It is disrespectful of OHA whose beneficiaries suffered from the destruction of a wahi kupuna. This Land Board approved the initial CDUA saying there is nothing there, but in 1998 the Supreme Court came back saying DLNR "you do that again." In 2000 the Board did it again by bringing in a kupuna who said she didn't know of any burials or sites there and again approved the permit. Six, seven months later ali'i bones were unearthed by homeless man. Mr. Markell listed names of possible ali'i and he wondered where this find is because it is no where in the archaeology summary. In 2001 no one talked about the chiefess who is in a box for the last 7 years. No red flags came up when these bones were found on the beach right where the marina is coming through. The fate of these bones was undecided. Since then more bones have come up. He asked as an agency if the Board believes HASEKO is in compliance of the CDUP. He questioned whether the Board is in compliance of its constitutional statutory judicial mandates to uphold our native Hawaiian people's traditional customary practices. The Board of Trustees requested to conduct a site visit to see what is happening with everything. Mr. Markell apologized for his emotion and asked what are the Board's duties. Is it to just approve or to ask for an investigation because how many sites might have been destroyed in 3 years by these bulldozers? He suggested before approving to make sure the Board has all their information from all sources.

Michael Kumukauoha Lee is a native Hawaiian practitioner of limu medicine, ocean, stars and chant. He testified that he has a contested case hearing on the Kalo Gulch in May. The bones were never brought to Historic Preservation for the native practitioners to properly care for. It goes against state rules because the Burial Council wasn't notified. It is his right to spend time with his na kupuna ali'i wahine and the Board is bond by the constitution. The pa'akai ruling that took place, Memorandum 53, that states BLNR and HASEKO were not and is still not in compliance with the state constitution. He is in court because state agencies aren't following the rules. Mr. Lee requested for a contested case CDUP amendment on traditional cultural practices before the end of this discussion because this is wrong. That area is the mother hub that supplies all the limu seeds for Waikiki and all of Waianae side. He went on to explain konohiki rights and traditional practices. The drainage portion is one of the problems.

Mr. Lemmo stated Mr. Lee has 10 days to write a petition and to work with staff.

Nancy McMahan confirmed it's true that staff hasn't been following up due to staff turnover at the main HP office. She was here when this all started in 1979. The last time SHPD staff was out there (at the site) was 2000. Usually at the end of a project the bones

are re-interred. There are monitors for the drainage and the marina. There was some testing early on, but because this project has dragged out the vegetation is not the same and the survey work wouldn't apply today. She agreed with OHA that OHA had not been involved in some of the consultations, but now they are and staff welcomes their comments. Mr. Markell was involved with that burial and she asked him to help staff re-inter it.

Member Johns addressed Mr. Markell's comments saying that the Board does take their responsibilities seriously and referred to the October Board Meeting, condition #7, enforcement action which was to ask for a monitor compliance plan and to report back to the Board. Its almost separate from today's amendment, is that right?

Mr. Markell responded affirmatively.

Member Johns continued and that was necessary for further action in regard to the CDUP. The amendments that are requested today, other than the drainage part are not directly related to whatever might have happened in regards to the MOA and the HP issues. Or are they related? At what point does lack of compliance with either a MOA or otherwise limit that trigger to something beyond. Staff thought there were problems with HP protection of cultural resources and how iwi kupuna may have been treated or not treated. Then the Board got a report back that seems to indicate there are or have been problems, but everybody is saying there are problems the project moves on. What other options is there following up to the report the Board asked for that is being submitted to the Board. Do you have any recommendations in response to the report?

Mr. Lemmo reported there was a discussion of the effect of this on the CDUP. The resolution was even though it was a MOA between HP, OHA, other parties and OCCL staff felt a responsibility to raise the issue.

Chair Thielen interrupted it was one of the conditions of compliance with the MOA that is why it came up through OCCL.

Member Johns said but the determination whether there was compliance or not was in effect deferred to SHPD and they are saying there was compliance and now we have a report that says there wasn't full compliance after all. His question is what do we do?

Chair Thielen said she had a factual question. Based on the investigation HASEKO was fined by this Board for the destruction of the cultural sites. Is there additional concerns raised in this report other than the destruction of historic sites for which the Board took action to fine them which require more action by this Board?

Member Johns acknowledged that is the right question. Does the conditional monitoring report, compliance report raise questions that were not addressed in our enforcement action?

Mr. Lemmo replied HASEKO gave a road map of what they are going to do, but he didn't know of anything else.

Chair Thielen noted because compliance with that MOA is a condition of the conservation district use permit. If this road map is not followed and there are any future violations the Board has the ability to bring that matter back to this Board for failure to comply and to seek further sanctions if necessary.

Mr. Lemmo agreed.

Member Johns reiterated OHA's testimony that consultation never happened with them.

Ms. McMahon acknowledged that. The last time OHA was involved was during the original preservation plan in 1997. Staff was unaware because no one has been out there (at the site) since 2000. Not until HASEKO turned themselves in on destroying sites.

Chair Thielen suggested having a follow-up investigation and asked under the MOU, does HASEKO have to file an annual report?

Ms. McMahon replied it was never asked for. Staff needs to continue to constantly monitor the fence boundaries around the preserves because that was where the violations occurred, the equipment operators didn't know (about the site) and the fence wasn't up at the time. The first violation in the preserve area happened in 2000 where no sites were damaged. The Board took action on the most recent occurrence which went into the preserve areas.

Member Pacheco inquired who is responsible to monitor.

Ms. McMahon said the consultant archaeologist was on site at the lower end of the shoreline where Mr. Markell has a concern with burials. This archaeologist routinely walks through the preserve to make sure the fences are continually up. Staff will periodically check.

Member Pacheco asked what is the protocol if the archaeologist should find something amiss or in violation.

Ms. McMahon replied the archaeologist would call her office and HASEKO, who will contact their operators that something has happened. HASEKO usually has a monitor right next to the preserve boundaries to make sure there is no construction happening in that area.

Member Gon inquired what is your response to Mr. Markell's report on the ali'i iwi symbols.

Ms. McMahon stated she wasn't involved. It would be a high ranking person and it's a sensitive area that staff needs to look out for. She would like to know where all the

burials are before starting a project, but it's very difficult. She doesn't know if the testing was adequate back then with the assessment survey. There wasn't a lot of subsurface testing and Mr. Markell is correct on that.

Member Gon asked (noting on the map) that most iwi in harms way is at the entrance of the Marina where the burial was found.

Ms. McMahan responded the problem is there are previously made conditions. Unless we can show in this situation that the plan has changed then staff can ask for new conditions at that point and time. But there was always a condition that HASEKO and their consultant archaeologist will monitor and that is where they are right now. Because of the damages HASEKO decided to re-take on the preservation plans and re-update them and get the community involved in this situation.

Member Gon queried there will be some additional assessment in the preservation plan...

Ms. McMahan replied there is the Kahala preserve which staff submitted recently and there are 2 more being worked on with the community. She did suggest to counsel to involve OHA right now.

Member Johns inquired what would be an appropriate time period for the reports to come back to the Board periodically.

Ms. McMahan suggested every couple months.

Chair Thielen asked does HASEKO submit reports to HP.

Ms. McMahan said no it would be staff going out to look at them. She described a project on Kauai that reported to her monthly because of a lot of burial issues. She doesn't know yet what staff will run into and if they do staff will have to reassess the situation. Mr. Markell mentioned another burial that came out of Ewa, but the first one he was involved with.

Member Gon inquired if staff is monitoring right now because there is activity what is the nature of that activity.

Ms. McMahan replied it's the residential area which is next to the preserves.

Chair Thielen clarified what is before the Board today is a reduction in the size of the marina.

Mr. Lemmo added the drainage decision was made by HASEKO and staff is modifying the language of the permit to be consistent. He wants to make sure the condition considers the entire watershed.

Member Johns concerned that this particular request is separate from HP compliance. He asked Ms. Izu why there haven't been discussions with OHA.

Ms. Izu noted under the MOA there is a requirement by the Corp of Engineers for the permit where HASEKO submits all mitigation plans to the Corp of Engineers. The Corp distributes these plans for comments to other signatory agencies which she assumed the Corp of Engineers has done. When Ms. McMahon went on the site visit for the latest incident she mentioned to the consultant that OHA had not received the latest ones for comment. The consultant found that the Corp of Engineers had not yet sent the plans which the consultant sent directly to OHA.

The consultation with OHA is under the interpretive program which is with the Hoakalei Cultural Foundation. The intent was to consult and involve OHA for the interpretive program which hasn't yet started because the archaeological sites are not accessible in the Kauhale Preserve right now. OHA's participation was always anticipated. Ms. Izu related background about the Hoakalei Cultural Foundation, the kupuna involved and the activities planned.

Member Johns asked Ms. Izu if HASEKO would approve an additional condition that would require HASEKO to work directly with OHA and Historic Preservation Division on these issues opposed to going through the MOA and the Corp of Engineers. And for SHPD provide the Board a report on a quarterly basis.

Ms. Izu replied she doesn't see a problem, but it depends how the condition is phrased. HASEKO's concern is if OHA or HP doesn't follow through on their part that it becomes a condition violation that prevents HASEKO from moving forward.

Chair Thielen suggested instead of SHPD reporting on a quarterly basis to have HASEKO submit a written report on their progress to SHPD then it would be SHPD's responsibility to come back to the Board with the quarterly reports from HASEKO. That way quarterly reports will come from HASEKO to OHA and SHPD on the implementation of these actions.

Ms. Izu noted HASEKO wouldn't have a problem with that. Also they have been doing an annual report on all the CDUP conditions and are up to date.

She offered to meet with OCCL, Mr. Markell and Ms. McMahon to craft some language and come back to the Board later in this meeting. They adjourned.

Item K-3 Conservation District Use Application (CDUA) OA-3440 for the Asia-America Gateway Fiber Optic Cable Located at and Offshore of Keawa`ula, Waianae, Island of Oahu, by AT&T, TMK: (1) 8-1-001:007 & 008

Sam Lemmo of OCCL reported on submittal background. He reminded the Board there was a request in January from Telstra to use the same conduit and landing. This project will be coordinated with Telstra. Staff recommends approval.

Chester Koga from RM Towill Corp. representing AT&T introduced Robert Wargo from AT&T Corp., New Jersey and Mr. Wargo can address any questions. Initially, AT&T thought the project would be completed sooner in April 2008, but won't be completed until June 2008. AT&T will coordinate with Telstra so all activities will be in the same window. Both companies will be using the same contractor. During the public comment period there were issues raised and he wanted to make it clear that only the beach section will be affected and not the land. This is the 3rd time the trench will be opened and the previous 2 times they did not encounter any historic properties. An archaeological monitor will be there.

Member Gon asked if AT&T read all the conditions and that they are in agreement.

Mr. Wargo answered in the affirmative.

Chair Thielen noted that multiple operators are using the same area. She questioned if there were similar conditions placed on other operators. If we put a condition on one party and the other party is not cooperative... She is happy this is the case for future applications where we know there is going to be shared sites around utilities and we don't disturb a broad swath of the beach. It would be akamai to do it with the original applicants, too.

Mr. Lemmo clarified it may not be in there because it came prior to this action. There is language in the report that indicates there is another similar project being planned.

Mr. Wargo stated that whether it is in the permit, report, conditions or not AT&T has worked with Telstra before putting the applications together.

Chair Thielen was glad to hear that because of the logistics of this site. For this application they are requiring to cooperate with the existing operators. She asked whether to require any future operators that may come into the same landing area. Would AT&T have a problem with this?

Mr. Wargo responded it is AT&T's landing site. Any operators would have to come to them for a commercial agreement. If it's a condition of the permittees it shouldn't be a problem.

The Board:

Amendment to staff's recommendation:

This project will be completed in June 2008. For this application AT&T is required to cooperate with existing and future operators for use of this site.

Unanimously approved as amended (Johns, Gon)

Item D-1 Approval of Lease of Private Property with Edward S. Kurokawa and Ms. Janet T. Kurokawa on Behalf of the Department of Health, Clean Air Branch for Air Monitoring Purposes, Lanipuna Gardens, Keahialaka, Puna, Hawaii, Tax Map Key: (3) 1-3-46: portion of 75

Morris Atta, Administrator for Land Division, informed the Board on the background.

Crystal Peltier representing Department of Health was here to answer any questions.

Unanimously approved as submitted (Edlao, Gon)

Item D-9 Authorize the Sale of Remnant by Sealed Bid, Niu, Honolulu, Oahu, TMK: (1) 3-1-011:003.

Morris Atta of Land Division gave background history and that they are not ceded lands.

Barbara Ichishida of Bank of Hawaii was here to answer questions.

Unanimously approved as submitted. (Pacheco, Gon)

Item D-12 After-the-Fact Grant of Perpetual, Non-Exclusive Easement and Issuance of a Management Right-of-Entry to Hawaiian Electric Company, Inc. for Access and Utility Purposes, at Wahiawa Intermediate School and Wahiawa Freshwater Park site, Wahiawa, Oahu, Tax Map Key: (1) 7-6-01: 03 & 06.

Member Johns recused himself.

Morris Atta reported on background.

Phil Hauret of HECO was here to support submittal and to answer any questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-10 Re-submittal – Affirm the Encroachment Area; Grant of Term, Non-Exclusive Easement to Garrett Frank Saikley Trust for Revetment Purposes, Kuliouou, Honolulu, Oahu, Tax Map Key: (1) 3-8-1:1 portion.

Morris Atta representing Land Division explained submittal.

Tim Lui-Kwan on behalf of Garrett Frank Saikley Trust requested to withdraw and he distributed written testimony. Dr. Saikley is present for questions.

Member Johns inquired of Mr. Lui-Kwan, the client doesn't have to pay for the use of the State property because the State had approved the placement of the rocks.

A Lady representing the Saikleys testified that they acquired information that the State had previously ratified and approved the action taken by Mr. Rodney Inaba in 1978. She referred to Mr. Lemmo's letter dated January 12, 2005, Exhibit C, which notes the determination by an easement was necessary and expressed premise on the belief that the record did not provide any indication that the matter was approved after-the-fact. But, that the item attached to the submittal and the request for ratification in the 1978 Board minutes clearly demonstrate that approval or after-the-fact ratification was given by the Land Board together with additional evidence by way of the 1978 Board minutes and the State's decision to assume responsibility for the CDUA for the revetment. 1978 demonstrates that the State recognized its responsibility for the land and therefore that removes any responsibility by the client to have to pay for this easement.

Mr. Atta explained that this was presented by the home owners before. There needs to be clarification of what was or was not approved in 1978. The emergency measures taken by Mr. Inaba to the extent that the emergency was alleviated and that was approved. Emergency mitigation situation where temporary emergency measures were authorized and he referred to Exhibit E. Land management has no objection to the emergency action, but a subsequent action was needed for the approval of the structure itself.

Chair Thielen asked whether your client would be paying for the easement. It's not whether his client had approval to do an emergency action or not if you're going on someone else's property while you may have permission to take emergency action to protect your own, that is a completely separate question from if you are going to be retaining some use of that other person's property that you are going to have pay for it. Correct?

Lady replied their position is because the State ratified and approved the placement of those rocks and made no indication that any subsequent action would be required that to require the current land owner to now pay for an easement 30 years later is inappropriate and not necessary.

Mr. Lui-Kwan referred to the April 28, 1978 memo and the March 1978 Board minutes which is attached to his testimony. Item H-9 (page 5) where comments of the Board members acknowledged that it's the State's responsibility to protect the land and the Board agreed that Mr. Inaba acted on behalf of the State when he put those rocks in.

The other evidence is whether or not there should have been a subsequent disposition or action. The CDUA and Environmental Assessment that was filed and accepted by the Department in the summer of 1978, there was no provision for the actions taken by Rodney Inaba. There is nothing saying he has to come back and do a disposition of an easement. The staff recommendation of January 26, 1979 was when the Department and the Board finally withdrew the application for the revetment. The 1978 CDUA is not the

same thing they are here for today. It was an immense structure and Mr. Lui-Kwan described it. It was all paid for by Rodney Inaba, but it's the State's application.

An issue in 1978 was the loss of access to the peninsula by the Department. The lagoon side roadway was gone. The 1978 CDUA was a roadway and shoreline protection measure to protect the State and private lands. There was no discussion of private action, private taking, and private use. Their position is this is not an encroachment. This is different from what the Board has had to deal with in terms of after-the-fact permits or revetment easements for unauthorized structures. He believes the Board in 1978 said they understood Mr. Inaba acted on the State's behalf and it's ratified. He thought that was final. There were comments by Jimmy Dietrich who was head of Land Division at the time who wasn't in favor of the big project. Mr. Lui-Kwan doesn't believe this falls under the category of encroachment. He did not see this letter requesting for ratification and action until the Division provided it to him when they met late last year. The January 26, 1979 CDUA approval had no request for action be taken on disposition for emergency action that was taken by Mr. Inaba in April of 1978.

Member Johns asked what will happen if the Board doesn't approve this.

Mr. Atta replied the structure remains. The old submittal stands, but it has an area of 300 square feet as opposed to the proposed 1500 square feet.

Member Johns stated that counsel is asking to withdraw both submittals. Can they do that?

Mr. Atta confirmed that. Mr. Lui-Kwan is characterizing the 1978 Board action as one that would ratify a pre-existing emergency structure, but by the fact that it did not address or mention it. The counter argument to that is it was clearly a structure intended to be replaced by the State. A long term permanent solution to the erosion problem was being sought. At the time the rock pile was placed, Mr. Inaba had a choice. He could have put the rocks on his own property, but he chose to put it on the State property therefore causing an encroachment. The State said its ok for emergency purposes, but it doesn't nullify the fact that it is an encroachment.

Member Johns noted in the 1978 minutes that Member Kealoha stated that the application was different because Mr. Inaba was not applying use for himself, but for commercial purposes by doing the State's job on State property.

Mr. Atta said that was a totally different structure that never happened. Mr. Inaba withdrew his offer to pay for it and the project never went forward. The State's responsibility is an opinion; yes the State should protect the shoreline.

Chair Thielen was confused reading the 1978 minutes. There were questions about the ownership and one of the Board members stated it was the State's job to protect for erosion, but there was no action taken on the submittal. There was no determination by the Board.

Mr. Atta clarified this was all discussed in the context of a replacement structure that was being proposed to replace the emergency structure placed by Mr. Inaba. He reiterated Mr. Inaba's choices. The temporary structure was ok, but a permanent structure was always contemplated.

Member Pacheco asked why are we here 30 years later with this.

Mr. Atta explained a lot of shoreline encroachments have been in place longer than that and are only being worked on now. The Department has been enforcing and a number have been brought before the Board for old encroachments. This is one of them and because Mr. Saikley requested a shoreline certification this issue of unauthorized structure arose. The shoreline rules say staff cannot issue a certification if there is an encroachment. As a means to facilitate Mr. Saikley to obtain the certification, staff has an interim procedure where an owner will place a deposit and promise to go forward with the easement then staff will allow a shoreline certification to proceed. One of the conditions of the 2005 submittal was if Mr. Saikley didn't proceed with the easement he would forfeit the deposit. Staff would use that money to remove the encroachment.

Chair Thielen inquired if someone could gain ownership of State land by occupying it for a long period of time.

Mr. Atta responded that is a question for the deputy AG, but it's his understanding that there is no adverse possession of the State.

Member Pacheco summarized above certification process then asked now Mr. Saikley doesn't want this and he wants his money back.

Chair Thielen asked Mr. Lui-Kwan why now after going through this shoreline certification easement 2 years ago.

Mr. Lui-Kwan referred to Sam Lemmo's 2005 letter that there was no approval or authorization by the State of Hawaii for what Mr. Inaba had done in 1978. That became the basis for the application. He reiterated the above certification process. Mr. Saikley waited 2 years where nothing happened and Mr. Lui-Kwan kept checking. March or April 2007 they were told that the appraisal was done and staff would process the easement request. This was kind of late to be changing maps because the State accepted the maps from 2005. He described what the easement map process was and got the valuation from the appraiser in September/October 2007. One of the reasons for not getting the easement finalized was DOFAW (who administers the sanctuary) had commented requesting an easement from the landowner because they didn't have an adequate roadway to access the peninsula due to the lagoon eroding away which is the same problem as in 1978. He referenced the letter to Chairman Susumu Ono in Mr. Lui-Kwan's testimony that it's the Department's responsibility.

Chair Thielen noted the (1978) minutes reflect a single Board member making a comment at a meeting and the memorandum is a staff member's interpretation. That's not a statement by the Board.

Mr. Lui-Kwan reported that no one mentioned encroachment in 1978 or 1979.

Member Pacheco asked Mr. Lui-Kwan what is his take on Exhibit A of his testimony, "Land Management has no objections as an emergency action, pending approval of a more permanent action."

Mr. Lui-Kwan thinks Jimmy Dietrich was referring that this was going to happen. Rodney Inaba's application isn't appropriate because it is State's land. Therefore Mr. Inaba withdrew his application and the State became the applicant.

11:57 am Member Johns departed.

Chair Thielen stated everyone here is in agreement that this is State land which is not the issue. The issue is whether the owner should have to pay for the structure that is on the State land.

Mr. Lui-Kwan responded that he understood.

Mr. Atta said the comment saying that it's the State's responsibility to control erosion on its property he thinks is a statement that staff has to maintain its property. The fact that someone has on their own volition took action and built a wall on State land. It is true it is the State's responsibility, but it doesn't necessarily make that action valid or correct or not an encroachment. He reiterated Mr. Inaba's choices.

Chair Thielen asked what does the wall protect.

Mr. Atta replied essentially private property and a strip of State land behind it, but it prevents erosion from going further into the private property.

Chair Thielen inquired what is on the State property that is behind it.

Mr. Atta said it is the only existing dry land public access to the wildlife sanctuary. He doesn't know if Mr. Inaba miscalculated, but he built the structure on State land. The State came in with the plans for a permanent structure. Mr. Inaba believing it was his responsibility offered to pay for it. The State approved and went forward with the CDUP. There was discussion and comments that came up about the State land, why is it Mr. Inaba's responsibility to build this wall. Mr. Inaba said he won't pay for it because it's not his responsibility. It did not address the status of the existing structure. They only talked about the proposed new permanent structure which was intended to replace the existing structure. Why talk about an encroachment knowing that this temporary structure will be replaced?

There was discussion where the State land and public access is on the map and photos.

Mr. Atta explained that public access moves with the shoreline. It's protecting private property from becoming public access.

Chair Thielen asked that the revetment could have occurred on private property and along the walkway (referring to the photo).

Mr. Atta replied Mr. Inaba could have built a seawall inland or a revetment in the water which is an engineering question.

There was discussion on the erosion to the forestry area if a wall was built.

Paul Conry, Administrator for DOFAW, believed that the access his staff has been using is not the one that goes across the front (as pictured). They are using a back access on the other side of the property which is eroding away and they will have to resolve that in the future.

Mr. Atta described the reason why Forestry got involved was because the rear access at one time provided vehicular access to the wildlife preserve in order to bring in maintenance equipment. That vehicular access eroded to the point where it only allows pedestrian access. DOFAW had concerns on their ability to maintain the remainder of the wildlife preserve and that is how the discussions have been going with possibly negotiating some concessions from the landowner to create vehicular access. Staff didn't feel it was appropriate to link the 2 issues of shoreline ownership and Forestry's access.

Member Pacheco asked and suggested would it be acceptable to go back to the June 21st estimate of 298 sq. feet, \$15,000 and went from there to refund the balance of what the deposit was.

Mr. Atta said that is a policy call that the Board can make, but his problem with that is if staff designates the easement area only based on that prior survey it leaves a substantial portion of that structure remaining on State lands and remains a shoreline encroachment for future resolutions.

Chair Thielen recommended if the landowner is willing to compromise by removing the landscaping and keep that entire front area public access which would be a mutual benefit. Work out an arrangement for what would be the cost for an easement that is protecting the public access and as well as the private property owner and encroachment in that case. The Board could give the property owners the option to defer for 2 weeks, but we don't want this coming back to a Board 30 years from now and getting confused whether this is a partial or full easement. She thinks it would be more practical for Mr. Saikley what the dollar that will have to be paid by accommodating with a fee for an easement which covers this entire area and protects public access over time. The landowner either pays for the encroachment or removes the rocks.

Mr. Lui-Kwan spoke that at the time it could have been encroachment, but couldn't find any record of State approval of what was done by Rodney Inaba. He confirmed Mr. Atta's sequence, but noted Mr. Inaba was always unhappy with the State based on the correspondence. Mr. Inaba hired Mr. Okamoto to create a big revetment plan and submitted it along with an EA. He proceeds to put in the rocks. The owner is willing to sit down with the Department. They agreed with the 295 sq. ft. and the survey.

Mr. Atta is ok with deferring to the next meeting to find a resolution. He explained that a private surveyor, Kazu Saiki turned in the survey to the State surveyor. After going to the site it was found that the 2 foot easement wasn't shown, but is bigger on the photos. There was a mistake. The State surveyor marked it off correctly to determine the footing.

Michael Kumukohoali'i described he was Mr. Inaba's neighbor from 1964 to 1992 and was a witness to all this. Mr. Inaba placed top soil over the rocks then grass. He artificially put himself in danger. When the big waves came it eroded his top soil giving him the excuse to take over more land. When Mr. Kumukohoali'i's family saw the rocks jutting out they knew he was making a land grab. The erosion was not on the State side. The other side of the land when Carl Breeze bulldozed all the mangrove that caused the erosion.

Deferred for 2 weeks. (Agor, Gon)

12:20 pm Adjourned for recess.

12:28 pm Reconvened.

Item D-8 Consent to Assign Sublease K-20 under General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Lessee, by Sunrise Capital, Inc., Sublessee/Assignor, to Pacific Aquaculture and Biotechnology, LLC, Assignee, Kailua-Kona, County and Island of Hawaii, Tax Map Key: (3) 7-3-43: portion 42.

Morris Atta of Land Division informed the Board on the background.

Ron Bard, CEO of NELHA, has no disagreement. Sunrise Capital is here to answer questions.

Unanimously approved as submitted (Pacheco, Gon)

Item C-2 Request for Approval to Enter into a Memorandum of Agreement with Castle and Cooke Resorts, LLC to Conduct Endangered Seabird Management on Lana'i

Paul Conry for DOFAW described request for an approval. It will be approved by National Fish & Wildlife Service and the go through the public process.

Gary Okuyama of Castle & Cooke was here to answer questions.

Unanimously approved as submitted (Edlao, Gon)

Item K-2 Amendments to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel at Honouliuli, Ewa, Island of Oahu, by HASEKO TMK/Plat Map (1) 9-1-012

Mr. Lemmo distributed revised language to condition number 26 of the CDUP OA-2670 to ensure reports get to Historic Preservation.

Mr. Markell appreciated Ms. Izu for writing the proposed language. OHA wants to be actively involved. The office can't move forward to make things pono when things are unresolved. Their primary concern goes to the obligation this Department has to help identify and protect the traditional customary practices of irreplaceable resources. Mr. Markell reiterated not getting all the information and OHA's duty to their beneficiaries. They are not obstructionists, but they are here for a reason.

Ms. Izu stated they included what the Board had said and everyone is agreeable.

Chair Thielen asked Ms. Izu to submit quarterly reports to SHPD and OHA and to amend it to say that.

Ms. Izu did not object.

Chair Thielen stated HP is agreeable to the language. She can work with Ms. McMahon on the frequency of reports.

Kali Gumapac from the Big Island representing Kanaka Counsel and Huipui finds it difficult to hear about this. He understands the difficulty, but it is not a good thing because it is hewa. These companies are using a band aid approach and he noted other burial issues. What the Hawaiian community wants is to stop disturbance of burials. It should be protection of burials. He felt the project should stop until the entire assessment is completed. This area is full of iwi and they will keep coming up. Oahu doesn't have anymore natural resources.

There was discussion whether or not the Board can act on the amendment if there is a contested case.

Chair Thielen remarked that the Board can still act on it because the petitioner has to specify what they are contesting. She asked to take a close look at the proposed amendment on the drainage because it is not saying any particular drainage site has to be used. This Board is saying there must be fully developed and government approved plans for constructing a flood drainage system in concert with existing drainage plans for the upper development of Kapolei, Ewa Villages, etc. Take into consideration the entire watershed.

Mr. Markell noted that OHA will schedule a site visit for their trustees.

Chair Thielen summarized a conservation use permit had been approved in 2001 and this is an amendment to it.

The Board:

Approved staff's recommendations with the addition of recommendation #5 which entails an amendment to the original condition item #26 of the CDUP OA-2670 by adding the following new language:

...treatment of historic sites on the project site[;]. Provisions of the MOA to the contrary notwithstanding the applicant shall also consult directly with the Hawaii State Historic Preservation Division and the Office of Hawaiian Affairs on matters relating to the MOA. Applicant shall submit quarterly written reports to SHPD and OHA on activities relating to, and progress in implementing, the MOA;

Ayes: Chair Thielen, Members Agor, Edlao and Pacheco

Nays: Member Gon

Approved as submitted and amended. (Agor, Pacheco)

Item C-3 Request to Amend Prior Board Actions of May 14, 2004 under Item D-7 and January 14, 2005 under Item D-23, Sale of Land License at Public Auction for Removal of Sand from Kawaiie Wild Bird Sanctuary, Covered by Executive Order No. 3685 Kawaiie, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002: Portion 001.

Paul Conry of DOFAW reported background and having discussed it with OHA. If there are any bones found the work will stop. Contractor will excavate the site.

Unanimously approved as submitted (Agor, Gon)

Item C-4 Cancellation of Revocable Permit No. FW-2007-01, and Issuance of Revocable Permit No. FW-2008-01 to Palani Ranch Company, Inc., Kailua-Kona, North Kona, Hawaii, TMK (3)-7-4-002:007 and (3)-7-4-001: por. 003.

Paul Conry representing DOFAW explained that this was ceded lands where 20% of payment goes to OHA.

Unanimously approved as submitted (Pacheco, Gon)

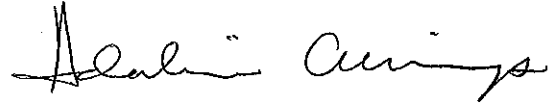
- Item D-2** Designation of State Lands as an Industrial park at Waiakea, South Hilo, Island of Hawaii, Tax Map Keys: (3) 2-1-12: 41 and portions of 71 and 149.
- Item D-3** Issuance of Direct lease to Hospice of Hilo for Inpatient Hospice Facility and Related Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-01: portion of 24.
- Item D-5** Amend Prior Board Action of October 12, 2007, Agenda Item D-4, Grant of Term, Non-Exclusive Easements to Chantee Shiroma, Glenn Shiroma & Samuel Alameda for Access and Utility Purposes, Kulaimano Homesteads, South Hilo, Hawaii, Tax Map Key: (3) 2-8-06:06.
- Item D-6** Grant of Term, Non-Exclusive Easement to Robin Ramsey, James MacKenzie, Catherine Caverly, Steven Oldfather and Hortense Cassidy Oldfather for Access Purposes, Ola'a, North Hilo, Hawaii, Tax Map Key: (3) 3-9-02: portions of 07 & 08.
- Item D-7** Issuance of Revocable Permit to Kahua Ranch for Pasture Purposes; Hualua, North Kohala, Hawaii, Tax Map Key: (3) 5-5-07: 08 & 09.
- Item D-11** Issuance of Right-of-Entry Permit to Department of Transportation on Lands Encumbered by Revocable Permit No. 6392, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-009: 262 portion.

Unanimously approved as submitted (Pacheco, Gon)

Adjourned. (Agor, Gon)

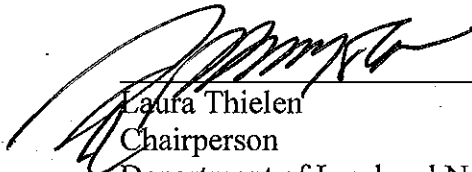
There being no further business, Chairperson Thielen adjourned the meeting at 12:59 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



Laura Thielen
Chairperson
Department of Land and Natural Resources