

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

DATE: FRIDAY, APRIL 25, 2008
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Member Tim Johns called the meeting of the Board of Land and Natural Resources to order at 9:06 a.m. The following were in attendance:

MEMBERS

Tim Johns
Ron Agor
Sam Gon

Rob Pacheco
Jerry Edlao

STAFF

Morris Atta, LD
Eric Hirano, ENG
Sam Lemmo, OCCL
Charlene Unoki, LD
Barry Cheung, LD

Dan Quinn, SP
Dan Polhemus, DAR
Ed Underwood, DOBOR
Steve Molman, LD
Paul Conry, DOFAW

OTHERS

Pam Matsukawa, Office of the AG
Eric Leong, DOT/Harbors
Dr. Jim Anthony, E-3
Ululani Bierne, E-3, E-2
Robert Perreira, E-1
Susan Nita Nuipono, E-1
Philip Leas, D-12
Kay Takemoto, D-12
Sheila Deal, D-12
Sam Uea, D-12
Primrose Kalili, D-12
Dr. George Antonelis, F-5
Heidi Guth, OHA
Mike Lee, F-5, D-10, K-2, K-3

Bill Wynhoff, Office of the AG
Bernard Carvalho, D-5
Grace Anthony, E-3
Becky Chestnut, L-4
Nesser Okazu, E-1
Carole McLean, E-2, E-1
Moses Takemoto, D-12
Malia Kanoa, D-12
David Deal, D-12
Angeline Takemoto, D-12
Jerome Yasuhara, D-12
Marti Townsend, F-1 to F-5
Grant Arnold, OHA
Tim Lui-Kwan, D-1

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

Item A-1 January 25, 2008 Minutes

Unanimously approved as submitted (Pacheco, Edlao)

Item A-3 March 28, 2008 Minutes.

Member Gon recused himself.

Approved as submitted (Pacheco, Edlao)

Item A-2 February 22, 2008 Minutes.

Item A-4 April 11, 2008 Minutes.

Deferred (Pacheco, Edlao) Not ready.

Item D-5 Re-submittal Set Aside to the County of Kauai for Public Park and other Recreational Purposes and Issuance of a Management Right-of-Entry at Hanalei, Kauai, TMK: (4) 5-5-1: Accreted Lands Fronting North and West Boundaries of Parcel 4.

Morris Atta, Administrator for Land Division, reported on background. This involves lands surrounding the county park.

Bernard Carvalho, Director of Parks & Recreation – County of Kauai, explained that the additional parcel will expand their camping and park opportunities to the general public.

Member Agor asked historically, does the water flow over these lands or is it permanent.

Mr. Carvalho replied it's permanent. There is a plan in place to work with State and County to remove any unauthorized activity by May 15th. The park will close from May 15th to 31st then reopen on June 1st offering more camping and activities. The park rangers will monitor and are trained accordingly.

Member Johns asked whether or not DOCARE is enforcing the violations.

Mr. Atta responded that there was confusion on who should enforce and this action is intended to resolve that jurisdictional ambiguity.

Member Johns noted that there is a history of the State and County not agreeing on whose responsibility it is to enforce certain rules against commercial use in that area. If the State now says that the County has all enforcement abilities and authority to enforce against illegal commercial use there, then the Board wants the County to give their

assurances that is what they intend to do before the State gives up their jurisdiction because it has been a long standing issue.

Mr. Carvalho felt comfortable in discussions with their State partners because the County was able to map out issues they needed to address. Also, the County is looking at the rules and regulations for commercial activities to do a comprehensive overview and work with statewide parks directors who are looking at it. But specifically to this area the County is working on a draft on how to manage that park.

Member Edlao asked if the county allows commercial activity does the State get a portion of it.

Mr. Atta replied no, once it's set aside to the County they have management jurisdiction oversight and are entitled to the revenues.

Mr. Carvalho noted the issue of the water and for the State and County to work diligently together to get the rules and regulations in place to move forward.

Member Johns expressed concern that the Land Board will want continuing reports because in the past the State and County agreed, but no one enforced and all kinds of problems occurred. Even after the Board approves this the State has jurisdiction over the waters, but there are certain restrictions as to how much the State can regulate what goes on in the waters based on litigation that came out of the beach park. He wants to be very careful with what goes forward because once the Board gives it to the County it's hard for the Board to take it back unless the next administration decides commercial use is appropriate and the State doesn't.

Member Edlao recommended the County submit a comprehensive management plan to the Board for review.

Mr. Carvalho agreed and emphasized that both State and County work together.

Member Pacheco asked if the conservation rules will still be in effect.

Mr. Atta said once the State relinquishes it to the County where their SMA rules will take precedence over the State's conservation rules.

Member Johns didn't agree because to do particular activities the counties have certain exempt activities and the question is whether or not their plan will fall within the exemption. The counties have a general exemption from the conservation district use permit requirements. It depends what is proposed. The underlining zoning will stay the same. The question is whether the County will stay within the exempted activities.

Mr. Pacheco added the County has plotted out what is what and where it is. Today is the result of those discussions and he believes the relationship is there to document.

Whoever comes in next will have a trail of information, addressing Member John's concern.

Member Agor asked whether the accreted lands still belong to the State.

Mr. Atta replied staff made a determination through their abstractors, the accreted lands and the lands under the Hanalei River, or at least this portion, belongs to the State.

Bill Wynhoff, Deputy Attorney General, commented that the State believes they own it. But, a Mr. Sheehan has asserted claim to the land and Mr. Wynhoff made it clear on the record that because the Land Board is taking action with respect to this land and acting as it must on the assumption the State owns the land it isn't in anyway shape or form, any kind of binding determination on Mr. Sheehan. If he wishes to assert his claim moving forward it is perfectly fine for him to do so whether filing a title action or whatever is appropriate. At this stage the landlord can act on the premise that the State owns it.

Member Johns wondered if today's actions are related to the boatyard.

Mr. Wynhoff explained the actions today are not related to the boatyard. But, Mr. Sheehan thinks he owns this land which he EO to the county. If that was in fact correct then the State/Board's action would...

Member Johns interrupted you're saying that the Board has the legal authority to act on this despite Mr. Sheehan's claims. This action today doesn't give the State litigation advantage.

Mr. Wynhoff replied absolutely not. As the Board knows it's very common for people to assert claims to land that the State believes it owns. Member Johns is absolutely correct.

Member Johns made Mr. Carvalho aware of the claim by Mr. Sheehan when the county accepts this property. For the record, Mr. Sheehan has sued the State claiming ownership in the past. He suggested when the county's lawyers review the documents that Mr. Carvalho is ok with that. This still has to go through the state and county attorneys.

Mr. Carvalho understands the lands are available and would like to use it for park and recreation use.

Mr. Atta asked whether the Board wanted to review the management plan or the authority to approve it.

Member Agor felt the Board should be allowed to comment.

Member Johns added a periodic report back to the Board is sufficient.

The Board:

Amended the recommendation by adding a third recommendation that the County of Kaua'i be required to submit a management plan for the beach park and set aside areas to the Board for review and comment. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Agor, Edlao)

Item E-3 Request for Approval to Assign Lease S-5287 held by Grace V. George, now known as Grace V. Anthony, to the trustees of Grace V. Anthony Revocable Trust, Ahupua'a'O Kahana State Park, Kahana, Oahu

Member Agor recused himself.

Dan Quinn, Administrator for State Parks, requested approval and gave background.

Dr. Jim Anthony introduced his wife Grace Anthony and circulated his written testimony which he read. They concur with recommendation to approve.

Ululani Bierne a lessee of Kahana Valley suggested all residents of Kahana should set up a trust and educate the community instead of approving it like this.

Unanimously approved as submitted (Pacheco, Agor)

Item L-4 Request that the Board 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.

Eric Hirano, Chief Engineer, distributed attachments for the petition for contested case hearing and he reported on the background. On April 16, 2008 staff and their consultant went to the law office to review the data and found that additional information is required. Staff would like to proceed with a Phase II investigation and recommended approval. The things staff are looking for is the stability analysis of the dam, dam structure, soil boring and testing, topographic surveys and other related field measurements, hydrologic and hydrologic analysis including the spillway adequacy (if there is a spillway), flow monitoring and other matters. The data had some soil boring data, some topographic information but only at the breached section of the dam. The Kaloko dam is 1800 feet long and staff would like to check the entire dam and not just at the breached section. The information had raw data and no analysis was provided. Staff felt they needed additional information especially the hydrologic analysis to know

exactly whether the Kaloko reservoir remains at its present state and whether the flows are allowed to go over the breached area which is a concern.

Member Johns asked wouldn't some of the related information come out in the contested case hearing.

Mr. Hirano said some of it will and staff will move on to the Phase II investigation depending upon the conclusion of the contested case hearing. Staff and the deputy attorney general are here to answer any questions.

Member Johns stated the contested case conclusion will tell the Board whether they have jurisdiction under the statute that defines dams. If they don't have jurisdiction then they can't use that statute to gain access to obtain the information staff wants. The other issues raised by the Pflueger counsel petition: due process, equal protection, property rights, violations to a fair trial, violations to reasonable search and seizure those are not issues that the deputy attorney general believes should be appropriately addressed in a contested case with the Board.

Mr. Hirano agreed.

Becky Chestnut representing Pflueger Properties has nothing to add. Her concerns have been addressed.

Unanimously approved as submitted (Agor, Pacheco)

Item M-1 Issuance of a Revocable Permit to Penhall Company, Keehi Industrial Lots, Kalihi-Kai, Honolulu, Oahu

Eric Leong, Property Manger with DOT Harbors spoke on the background.

Unanimously approved as submitted. (Edlao, Gon)

Item E-1 Establishment of a Kokua Partnership Volunteer Agreement for Heeia State Park, Oahu

Dan Quinn, Administrator for State Parks, gave background. Staff recommends approval. The RP (revocable permit) has been pending, but staff is reviewing a draft document now. The Friends of Heeia's are on a lease until August and staff should have the process underway before then.

There was discussion about the 1 year lease, other applicants and the location on the property.

Robert Perreira of Kaneohe Canoe Club introduced Nesser Okazu. Mr. Perreira would like a 2 year term and reiterated Mr. Quinn's reasons.

Mr. Okazu recommended a 2 year term and explained they are working with the children and with the homeless in the area.

Susan Nita Nuipono staff attorney for Senator Clayton Hee, who couldn't be here, are in support of this agreement and recommended extending for 2 years. Heeia has been cleaned up and the canoe club contributes to the community and the children of Kaneohe.

Carole McLean, Executive Director of Friends of Heeia State Park, gave background on their organization. She verified the previous comments and supports this.

There was a question raised on the relationship between this and the larger RFP management which will be addressed. Revisions will be made as necessary.

Member Gon noted Mr. Quinn can't make the recommendation to extend to a 2 year period, but the Board can.

Mr. Quinn agreed.

The Board:

Member Gon moved to approve staff's recommendation with a amendment to approve for a 2 year term.

Unanimously approved as amended (Gon, Agor)

Item E-2 Request by the Friends of Heeia to Increase Banquet Rental Fees, Heeia State Park, Oahu

Dan Quinn representing State Parks requested for an increase and asked Ms. McLean to distribute comparison sheet. She asked to treat this like a ceiling. Non-profits use the facilities free of charge during the week, but this is primarily for luaus and such. Ms. McLean presented the cost details and would like to continue with a variable rate because there is a higher demand during the summer. She cited the difficulty of obtaining funding because of the 1 year term.

Ms. Nuipono reiterated their support.

Ululani Bierne described the difficulties of higher fees for Hawaiian families.

Member Gon asked to clarify whether the \$1000 is a maximum on a variable rate scale.

Mr. Quinn acknowledged there are different rates for different days. Call it a ceiling of a \$1,000.

Member Gon said it was reported there was no rate change in 15 years and he calculated that within 6 years it would be this amount. He moved to approve the recommendation

and raised the ceiling to \$1200 to better reflect the rates that were shown on the rental hall comparison.

Member Pacheco seconded.

The Board:

Approved staff's submittal with an amendment to raise the ceiling of \$1,000 to \$1200.

Unanimously approved as amended (Gon, Pacheco)

Item D-12 Consent to Assign Homestead Lease No. 45, Moses Kapuhilani Takemoto, Assignor, to Anthony Mark Lakana Takemoto, Margaret K. Maiava, Barbara N. Preston, Assigness; Margaret K. Maiava, Assignor, to Chastity Tuai Kanoa Cox, Assignee, Hauula, Koolauloa, Oahu; TMK: (1) 5-4-008:016.

Morris Atta representing Land Division informed the Board on the history. Staff recommended approval of the consent. The deputy attorney general's position is it is a 1/3 interest in the homestead lease. Based on the court order, Moses had the entire homestead lease interest. With regards to what is being assigned there is a discrepancy. In terms of consenting to the assignment whatever that interest is staff doesn't have a problem.

Philip Leas representing Moses Takemoto distributed written testimony. He gave more history. The statutory amendments did not go away with the joint tenancy form of ownership. It only did away with the restriction against assignment with a homestead lease. He described various possibilities which did not severe joint tenancy. Survivorship is a vested right. Mr. Leas felt that if the deputy AG's interpretation was right we'll end up with people claiming for compensation which is not the intent of the statute of the legislature. Alternatively, if the court had consented to the assignment as presented and left it to the parties to resolve, as they have done, who owns what interest in the property?

Moses Takemoto gave his background in regards to the property and because of illegal activity on the property he had no choice but to do something about it. Otherwise, his family would lose the property. DLNR, OHA and Native Hawaiian Legal Counsel all suggested he take this to court. He wants to keep the legacy of the land in the family to preserve and protect it. Mr. Takemoto and his counsel tried and it was not successful. One of the reasons the family can stay there is to take care of the land and to keep it clean, but in the past 10 years the property was a mess. His brother who is the lessee reports to him what is happening there because his nieces and nephews either don't respect his brother or is taking advantage of him.

Kay Takemoto widow of William Takemoto felt illegally evicted and explained her situation. She wanted to know if she has a share.

Malia Kanoa is grand daughter of Thelma Takemoto (Moses sister) who grew up there. She felt the court's decision was unfair to her uncle and aunty's case because they put in a lot money into the land and should be compensated. She hopes the Board decides fairly because many families are affected

David Deal husband of Sheila Deal (who is Pauline Takemoto's daughter) explained his family's situation in regards to his mother-in-law's house. How they were told the incorrect time for their court hearing which resulted in a no show and were not allowed to speak. On a Sunday morning they were evicted and lost all their family heirlooms. This is the first time they were able to speak before a government board about their case.

Sheila Deal, Pauline Takemoto's daughter, gave her family history and described who had what. She felt illegally evicted and having to live on the beach.

His Excellency, Samson Palama'ai, Jr., son of Thelma Takemoto Kanoa. He reported on who are living on the property and gave some history. He reiterated the question whether it's a 1/3 interest to Moses Takemoto or is it shares to the four families living on the property at the time. He doesn't think a determination should happen today.

Angeline Takemoto daughter of William & Kay Takemoto gave her family history in regards to this property. Her father and Moses agreed to original memorandum, but when her father died Moses took over. She felt deceived and asked is the State the owner of this land? And who owns the other 2/3 of the land. What happens after Moses passes away.

Primrose Kalili daughter of Thelma Takemoto reiterated what Moses Takemoto did and the family's feelings toward each other. She wants to know if they have a share.

Ululani Bierne mentioned the appraisal of Kay Takemoto's home at \$187,000. She reiterated the question 1/3 share of what property because Moses doesn't own any of the houses there. Ms. Bierne explained the relationships. There is a problem of heirs and changes in the law. She doesn't think this is fair. She felt the Board should only consider the families who lived there.

Jerome Yasuhara for Office of Hawaiian Affairs (OHA) doesn't have an official position on this, but will revisit the issue of the 199 lease led by trustee Judge Heen. There was a Board of Trustee meeting in Hau'ula and they discussed this matter. These are all ceded lands and they hope to avoid situations like these in the future.

Mr. Takemoto reiterated his previous reasons for this. He wanted his nieces and nephews to show some respect to him and to bring the family together. If they understood his position they would do the same. Something had to be done. He wants to settle before he dies because this will become a bigger mess.

Member Johns said this is not whether or not the judges decision was correct or whether the property was properly managed or not. The question is what interest if any Mr. Takemoto has to assign in this lease.

11:07 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 deputy attorney. (Johns, Gon)

11:36 am Reconvened

Member Agor stated this is a complicated issue and any Board decision will affect future situations like this. He believes OHA's statement in exploring a program to resolve these problems is needed. He motioned to deny staff's recommendation.

Member Edlao seconded. The Board unanimously denied recommendation. Motion passes.

Denied (Agor, Edlao)

11:45 am Member Johns recused himself. Member Agor covered.

Item F-1 Request to Enter into A Six-Month No-Cost Extension (Supplemental Contract No. 1) for Contract No. 55999 between DLNR and Bishop Museum for an Invertebrate Survey of Nine North Shore Oahu Streams (Extended from July 1, 2008-December 31, 2008)

Dan Polhemus, Administrator for Department of Aquatic Resources (DAR) gave background. These streams may be impacted by the stryker brigade.

Member Gon commented this survey is much needed because of the biological information.

Unanimously approved as submitted (Agor, Gon)

11:40 am Member Gon departed.

Item F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. George Antonelis, National Marine Fisheries Service, Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Non-lethal Shark Deterrent Activities

Dan Polhemus of DAR spoke on background.

The Board questioned whether he has killed any sharks and Dr. George Antonelis answered no not yet. The predation is about the same as before. It is difficult to catch some of the sharks because they are wary of humans.

The Board asked about tagging sharks. Dr. Antonelis replied that 14 were tagged and half a dozen were involved. Several were caught and removed. He suggested collaborating with HIMB to do shark movement studies to see what percentage are coming into the atoll and to learn about their behavior for future mitigation.

Marti Townsend representing KAHEA distributed her written testimony which is toward all the permits. She urged discretion and concerned with any lack of oversight. To provide reports to the public because the applicant could be trying all kinds of procedures that might negatively impact other species and there could be unforeseen consequences. Ms. Townsend also concerned about the way the permits were drafted with the lack of reporting and compliance.

The Board questioned who and how the reporting will be done. Dr. Antonelis explained it goes through the monument. Mr. Polhemus recalled earlier this year the Board was briefed on a draft format of results of what was permitted in the monument. That 2007 document is nearly complete and the Board will see this report every year. Staff could always report back to the Board on specific outcomes which the Board concurred.

Heidi Guth representing OHA said that these applicants have been good about coming to cultural briefings, coming to OHA, going out to the native Hawaiian community to ask for suggestions and including native Hawaiians in their working group. They appreciate their willingness to use new alternatives and doing it in a respectful manner.

Mike Lee supports this. Although sharks are Hawaiian aumakua it is important to protect the seal pups. He suggested moving seal pups to Rabbit Island because the seals know the shark danger. He doesn't think culling of the sharks will help the pups.

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, TMK: (1) 3-8-1:1 portion.

Written testimony was submitted by the applicant's counsel.

Morris Atta representing Land Division said that the Board is familiar with this issue. Staff was unable to come to a compromise with Mr. Saikley's attorney. Staff still believes this is unauthorized encroachment that needs to be dealt with. Mr. Saikley's attorney believes it is not an encroachment because it was ratified by a prior Board action and requested a withdrawal of that request. It depends on whether the Board believes the structure is unauthorized encroachment or not. Based on Mr. Saikley's attorney's allegations the prior Board action ratified the emergency measures taken by Mr. Inaba at the time, but did not ratify that it be a permanent structure. In the exhibits, a permanent structure was contemplated in the ratification of that temporary emergency action. Mr. Saikley's attorney took the position that the exhibit to the Board action doesn't constitute part of the Board's decision. Its Mr. Atta's understanding that past and current practices,

with regard to Board action and submittals, when a submittal is included it includes all parts of the submittal, including exhibits and comments from agencies. That is how staff determined that the subsequent permanent structure was required. The structure that is there now was never intended to be permanent. The Board will determine whether this recommendation should be approved or not.

The Board inquired if the deputy attorney general saw counsel's testimony. Mr. Atta replied no because it was received by staff last night. He felt the deputy AG should have time to review it.

Tim Lui-Kwan, attorney for Mr. Saikley, explained that Ron Inaba didn't build a new revetment. He repaired an existing one. Mr. Lui-Kwan referred to the memo from Mr. Inaba to his realtor, exhibit 4 of his written testimony. It describes the events leading up to Mr. Inaba's actions. The rock revetment that was already there was damaged during a storm. There are regulations relating to shoreline structures that can be repaired.

Member Johns said that this is new information which the deputy AG needs to look at before the Board can decide. If the Board accepts his recommendation to withdraw wouldn't that start an enforcement action?

Mr. Lui-Kwan confirmed that it could and would be the next step. He cited the Siegal law in 1978 where it was a time of conflicting jurisdiction, the 1976 Hawaii Revised Statute § 205-33, presently codified as 205(a)44 with changes. It was ruled with amendments in 1984 and 1989 when shoreline policies needed to be defined. He read 1978 regarding structures. What Land Division assumes applies to this action is unauthorized structures will stop someone from obtaining a certification of the shoreline. Legislature authorized DLNR to come up with shoreline regulations.

Member Johns said that the applicant says it is not his structure, but is encroachment allowed?

Mr. Atta reported an inspection was done by the state surveyor. Unless this is resolved an easement is needed. He would require it.

Member Johns stated there are two options: if an encroachment he has the process for an easement then its deposit in place or removing the structure.

Mr. Atta explained if it is not an encroachment a deposit refund will be made. If there is an encroachment there will be either the removal or use the deposit for the removal.

Mr. Lui-Kwan noted what was argued last February which was a withdrawal. The question is whether they were required an easement.

Mr. Atta pointed out that the prior revetment has conflicting evidence in the exhibits presented whether or not the existing structure encompasses the entire coast. He referred to exhibit 9, page 3 of the submittal which has Department of Health's analysis. There is

contradictory evidence that could affect this. In regards to the state of the law in reference to allowance of structures is meant for private property lot. This structure is on public land which is trespass. He recommended the deputy AGs look at it. OCCL thought the preference should be let the natural process of the ocean run its course. There will always be public access wherever the shoreline is.

Member Pacheco asked what happens if the Board denies this.

Mr. Atta said the existing action will stand from the February 11, 2005 Land Board meeting. Staff is looking for an easement for part of the structure for the amount that was submitted. In discussions with Mr. Lui-Kwan, from a regulatory stand point, it still doesn't solve the encroachment issue. The other 1200 feet would be an encroachment and pursued as an enforcement action.

Mr. Lui-Kwan added or could be assumed as a pre-existing revetment. He asked why not remove the entire peninsula including the land portion where he referred to Exhibit 2 of his testimony. He agreed it's the State's option because it's State's land.

Member Pacheco asked about the certification where Mr. Atta stated that revoking the certification is a moot issue.

Michael Lee lived at Paiko Lagoon from 1962 to 1992. People could walk through before the erosion started. There was concrete and rocks that jutted out to the beach. Before this structure was built the sand shifted from one side to the other. When the structure was put in it blocked the sand's natural course resulting in the sand washing away from the beach. His family was not allowed to do what Mr. Inaba did. Mr. Inaba took advantage of jutting out his section which was an inconvenience for the neighborhood by impacting the beach and wildlife. Mr. Lee felt it should be removed up to where the wall used to be. All this was to protect Mr. Inaba's property.

Member Pacheco denied recommendation and Member Edlao seconded it.

Member Agor felt because of this new document that the Board and the deputy AG will need more time to review it. He doesn't support the motion.

Member Pacheco withdrew his motion.

Member Agor motioned to defer. Member Edlao seconded.

Member Johns asked how the Board should resolve this.

Mr. Atta tried to negotiate, but staff and the applicant couldn't agree on the structure. He asked for a determination by the deputy AG.

Member Johns thought this might be better explained in a contested case.

The Board:

Deferred the matter for 2 weeks until the next board meeting to allow additional time for the Deputy Attorney General to review and consider the letter and supporting documents submitted by the Applicant's attorney just prior to the Board meeting.

Deferred (Agor, Edlao)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Cynthia Vanderlip, State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife, for Access to State Waters to Conduct Spinner Dolphin Monitoring Activities.

Dan Polhemus representing DAR gave background.

Marti Townsend of KAHEA previously submitted applies to Items F-2, F-3 and F-4.

Unanimously approved as submitted (Pacheco, Agor)

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Special Ocean Use Permit to Brian Armstrong, National Geographic Society, for Access to State Waters to Conduct Documentary Filming Activities.

Dan Polhemus, Administrator for Aquatic Resources (DAR), presented background. The applicant's representative was available for questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Kelly Gleason, National Oceanic and Atmospheric Administration, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct Maritime Heritage Activities.

Dan Polhemus of Aquatic Resources reported on background.

Ms. Townsend of KAHEA was concerned with how the permit application was drafted. Checking the box that says "they will have to dredge and drill" when putting in stainless steel pins may be unassociated with the activity itself. There is concern for the lack of a disease transport protocol. She described the removal of a bell and how to disinfect it. There is some reference in the application on protocols they are following. She would like to see the public have access to this information.

Mr. Polhemus confirmed that there is protocol for dive gear. Staff has concerns with how to transport live organisms from the monument. Staff is working with the University of Hawaii Institutional Bio-safety Committee to look into these. The proposal is not to transport live organisms. It's to transport 3 archaeological artifacts where the protocol is to use fresh water to kill any organisms. The applicant would have to obtain a conservation district use permit (CDUA) if he wanted to do anything extensive. State law addresses this.

Heidi Guth of OHA stated they have no issue, but alluded to the fact that this requires consultation which was not made with OHA. She reiterated the Federal law that this consultation should be happening on a regular basis.

Mr. Polhemus understood. Staff may have overlooked it.

Unanimously approved as submitted (Pacheco, Edlao)

Item J-1 Approval for Award of Contract - IFB No. 08-001-M, Refuse Collection Service for Small Boat Harbors on the Island of Maui Issuance of

Ed Underwood representing DOBOR asked for approval of the award and recommendation.

Unanimously approved as submitted (Edlao, Agor)

Item K-2 Proposed Memorandum of Understanding Between the Hawaii Tourism Authority and the Department of Land and Natural Resources to Provide Funding for the Development and Restoration of Visitor Area Resort Beaches

Sam Lemmo, Administrator for Office of Conservation & Coastal Lands (OCCL), asked for approval of concurrence and described background. It was reviewed by the Attorney General's office.

Grant Arnold representing OHA objects with this MOU because beach restoration is a statewide problem and he concerned with limited scarce funds to these areas. Instead of just Gray's Beach it should be for Waikiki Beach. OHA objects to just resort area beaches because it limits it to provide access. Also a third party like Kyoya was recently granted a shoreline set-back to further develop areas.

Mr. Lemmo doesn't share the same concerns. Any beach restoration in Waikiki will benefit the public 100% with lateral access. He described Gray's Beach situation. Its common for multi-agencies to be involved. Waikiki is an engineered beach and he would like to give staff the opportunity to go through the environmental process. Mr. Lemmo wanted to be more specific, but HGA didn't want that because they are responsible for

the whole state and wanted broader language. There are no plans to do any beach restoration outside of Waikiki.

Mr. Arnold noted that the same language was denied this past legislative session. He wants staff to state who are involved instead of saying an unknown party.

Mr. Lemmo said that DLNR has to be accountable with where that money goes and asked the Board to keep the process moving.

There was discussion of a wetland there before the hotel came in and a small fringe beach.

Mr. Lemmo spoke on the history of the Waikiki Beach creation.

Mr. Arnold referred to the sea wall which is the cause of the erosion and reiterated the scarcity of funds.

Mike Lee described how his father managed the Halekulani Hotel in the late 1960s and the family went to Gray's Beach. Before the wall was built the sand would shift and build up in April. There were certain healing seaweeds grown here and Hawaiian customary practices are still valid. They used to fish and surf there. He asked to consider the background research.

Member Johns asked Mr. Lemmo to keep the Board apprised.

Unanimously approved as submitted (Agor, Edlao)

Item K-3 Appointment and Selection of a Hearing Officer to Consider a Petition for a Contested Case and if Necessary Conduct All Hearings for One (1) Contested Case Hearing in Regards to Amendments to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel Located at Honouliuli, Ewa, Oahu

Sam Lemmo representing OCCL reported background and asked to withdraw it. He explained this practice of coming before the Board when they receive a petition to automatically hire a hearing officer; the hearing officer would find standing and run the contested case hearing. Staff has been receiving a lot of petitions lately and hiring a hearing officer is expensive, time consuming and staff is not budgeted for it. He asked to go back to an older system which seeks the input of the Attorney General's office first then come back to the Board where staff asks if there is standing for contested case. This by-passes the hiring of a hearing officer who acts as a proxy for the Board and who reports back to staff and the Board.

Mike Lee the petitioner gave background on what happened when he asked for the contested case hearing. There was no mention that there would be a break through to the ocean for the marina. Millions of dollars are involved here at the expense of the

destruction of the resources which is a crime. He didn't feel it right to stop doing contested cases when this came up because of what is at stake. It is not fair. He will try everything to make sure this is handled properly.

The Board discussed the benefits of going back to the old process which is a better due process for the party to come directly to the Board and make the argument for standing as opposed to going through a hearing officer. With either process the Board will decide.

Mr. Lee asked how many cases are in contested case and how many should be handled the old way.

Mr. Lemmo said some are in contested case mode. Staff will come directly to Mr. Lee on the issue of standing and from here on all petitions will be handled the same way.

Member Johns asked whether the action for the Department is to bring a standing recommendation. How soon will that happen?

Mr. Lemmo replied as soon as staff is advised by the AG's office.

Member Pacheco asked what is the process to find standing. How does the hearing officer do it?

Member Johns stated staff will supply the facts and the deputy AG will provide the legal.

Member Pacheco inquired why was this done before?

Member Johns explained it was a previous Chair's prerogative to package everything all at once. The Board still makes the decision, but it depends how quickly staff gets it through.

Mr. Lemmo there is a timing issue because staff doesn't have a cadre of hearing officers and there are a number of steps to get them and to process. This will bring the Board to a decision faster.

Withdrawn (Edlao, Agor) All approved.

Item K-1 Conservation District Use Application (CDUA) OA-3450 for the Establishment of the Kalaeloa Artificial Reef and the Emplacement of the First Increment of Reef-Building Material by the Department of Land and Natural Resources Division of Aquatic Resources Located Offshore of Ewa, Island of Oahu

Sam Lemmo of OCCL gave background. There was concern with some of the language and he was asked to defer by counsel.

Deferred (Pacheco, Edlao)

Item D-1 Re-submittal Set Aside to Agribusiness Development Corporation for Agricultural and Related Purposes and Issuance of a Right-of-Entry Permit to Agribusiness Development Corporation, Wailua, Kauai, TMK: (4) 3-9-1:2 and 3-9-2: 1,9, 20.

The Board asked about the estimated time which Mr. Atta didn't have at this time.

Item D-2 Amend Prior Board Actions of February 23, 2001 (D-11) and August 24, 2001 (D-20), Issuance of Revocable Permits to Various Private Individuals, Companies, Organizations; Set Asides to Department of Land and Natural Resources Divisions and the County of Kauai; and Immediate Rights of Entries, Wailua and Kawaihau, Kauai, TMK: (4) 3-9-1:2; 3-9-2:1, 9, 20; 4-2-1:3.

Item D-3 Grant of Term, Non-Exclusive Easement to Spence Aguiar for Building and Landscaping Purposes; Rescind Prior Board Action of March 8, 1996, under Agenda Item D-5, Withdrawal from General Lease No. S-3827 / Revocable Permit No. S-6959, Spence Aguiar Request for Purchase of Portion of Ditch Right-of-Way, Realignment of Said Right-of-Way, and Grant of Non-exclusive Ditch Easement to of the State of Hawaii, Kapaa Homesteads, Kawaihau, Kauai, TMK: (4) 4-6-26:portion 1.

Item D-4 Grant of Term, Non-Exclusive Easement to Sarah O. Nakamura Trust for Access Purposes; Rescind Prior Board Action of September 8, 2000, under Agenda item D-19, Sale of Portion of Abandoned Ditch Right-of-Way as Remnant to Sarah Nakamura, Kapaa Homesteads 4th Series, Kapaa, Kauai, TMK: (4) 4-6-28: portion 15.

Item D-6 Consent to Assign General Lease No. S-3155, Pacific Island Investments, LLC, Assignor, to Maya Nicole Baylac, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-07:21.

Item D-7 Consent to Assign General Lease No. S-3750, Art K.K. Wong and Cynthia L. Wong, Assignor, to Jieyu Shepard, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-50:76.

Item D-8 Grant of Term, Non-Exclusive Easement to Benjamin Konshak, Claude L. Harris, Jr. and Greeley West Corporation for Access Purposes, Kaiaakea, North Hilo, Hawaii, TMK: (3) 3-4-03:11.

Item D-9 Approval in Principle of Direct Lease to United States of America, Department of Agriculture for Research, Educational and Housing Facilities Purposes at Laupahoehoe, Hawaii, TMK: (3) 3-6-6:portion of 46.

Item D-11 **Amendment of Grant of Non-Exclusive Easement S-5668 to Evershine II, L.P. for Channel, Concrete Surge Break of Breakwater, and Seawall and Fill Purposes; Portlock, Honolulu, Oahu; TMK: (1) 3-9-026: 044, 045, & 048 seaward.**

Unanimously approved as submitted. (Edlao, Pacheco)

Item L-1 **Permission to Hire Consultants for State Parks Project**

Item L-2 **Approval for Award of Construction Contract - Job No.B04XH71A, Pohoiki Boat Ramp and Loading Dock, Puna, Hawaii**

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

Item L-5 **Request Authorization to Select Consultant(s) and Authorize the Chairperson to Negotiate and Execute Agreements with Consultant(s) and/or Government Agencies as Necessary to Implement Chapter 179D HRS, Entitled the Dam and Reservoir Safety Act of 2007**

Unanimously approved as submitted. (Pacheco, Edlao)

There being no further business, Member Tim Johns adjourned the meeting at 1:20 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