

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

DATE: FRIDAY - MAY 23, 2008
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

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

MEMBERS

Laura Thielen
Ron Agor
Tim Johns

Rob Pacheco
Jerry Edlao

STAFF

Sam Lemmo, OCCL
Morris Atta, LD
Dan Polhemus, DAR
Matt Ramsey, DOFAW

Ed Underwood, DOBOR
Dan Quinn, SP
Paul Conry, DOFAW

OTHERS

Linda Chow, Deputy AG
John Mail, K-1
Kawika Winter, K-3
Reverend Cloudia Charters, J-1
Arnold Lum, J-1
George Downing, J-1
Noa Napoleon, J-1
Catherina Pabla, J-1
Frank Lange, J-1
Willie Marshall, J-1
Grant Arnold/OHA, J-1, D-3
Greg Nasky, D-8
Eric Knudsen, D-3
Jerry Ornellas, D-3
Dean Okimoto, D-3
Reverend Katir, D-3

Dave Merchant, K-1
Donald Newton, K-1
Ken Goldblatt, J-1
Bruce Middleton, J-1
Melissa Ling-Ing, J-1
Mark Meyer, J-1
Janet Mandrell, J-1
Liz Enoka, J-1
Zelei Abordo, J-1
Kawika Napoleon, J-1
Joe Farber, K-2
Bill Maris, D-8
Alfredo Lee, D-3
Leslie Milnes, D-3
Roy Oyama, D-3
Mark Sletten, E-1

Allan Takase, D-7
Tim Lui-Kwan, D-11
Beth Malvestiti, D-6 & D-2
Robert Taonen, F-2
Stephen Karl, F-5

Guy Tagomori, D-5
Marti Townsend, F-2 to F-8
Brian Bowen, F-3
Evelyn Cox, F-8

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

Item A-1 April 11, 2008 Minutes.

Approved as submitted (Johns, Edlao)

Item A-2 April 25, 2008 Minutes.

Item A-3 May 9, 2008 Minutes.

Deferred (Johns, Edlao) Not ready.

**Item K-1 Enforcement File MA-08-30 Regarding Unauthorized Seawall
Improvements Located Makai of Shoreline by Hale Kai AOA
Condominiums, 3695 Lower Honoapiilani Road, Lahaina, Island of
Maui, in the Vicinity of Parcel (2) 4-4-001:042**

Written testimony was received.

Sam Lemmo, Administrator for Office of Conservation & Coastal Lands (OCCL), corrected the address from 3695 to 3691. This is a follow-up from a complaint. He recommended the county and the Board enforce this. Background and recommendation was given.

David Merchant, Attorney representing Hale Kai Condominiums, reported that this condominium was built too close to the shoreline with a poorly constructed seawall. Hale Kai had consulted with engineers and followed their instructions. He disagreed with staff on the definition of where the boulders were placed in front of a landscaping wall which is behind the seawall. He referenced the Sea Engineering, Inc. document and photos.

There was discussion on whether to allow an after-the fact permit which staff may not have approved had the client come for a permit.

Mr. Merchant has a problem with the removal of the boulders and asked for a reduction in the fine.

There was discussion regarding cementing of the rocks which the client agreed.

Member Johns asked whether Mr. Lemmo wants to do an after-the-fact permit or does he think it will be rejected. The client has 180 days to remove it. 270 days or permitted by the Board.

John Mail, President of Hale Kai, explained what happened with an uncontrolled contractor even when the client didn't want it.

Donald Newton filed the first complaint and was there when all this occurred. No engineers were present and he gave more background. He would like to see the wall at the pool removed.

Mr. Lemmo mentioned staff will refer this back to the county because that particular wall is not under DLNR jurisdiction.

Chair Thielen clarified this Board is discussing the makai portion. The wall issue Mr. Newton raised will be addressed by the county through the SMA permit process. She suggested he meet with staff.

There was discussion of the wall in the pictures.

Unanimously approved as amended (Edlao, Pacheco)

Item K-3 Conservation District Use Application (CDUA) KA-3449 to Use the Dunn Single Family Residence (SFR) for Administrative, Education, and Tool Storage for National Tropical Botanical Garden (NTBG) Limahuli Garden and Preserve, Haena District, Island of Kauai, by Chipper Wichman, Executive Director, National Tropical Botanical Garden, Hawaii, Parcel TMK: (4) 5-9-006:012

Member Agor recused himself.

Mr. Lemmo reported on background history. Limahuli Gardens started using the Dunn home, but was notified that it can only be used as a single family residence. They stopped and filed a CDUP to seek OCCL's permission to use the house for additional purposes. Staff recommended the Board approve this. There was public support on Kauai.

Kawika Winter, Director of the National Tropical Botanical Garden, explained that the goal is to be in compliance to incorporate this in the special subzone. The master plan was updated last year. About 3-5 staff will utilize this as an office. He has reviewed all the conditions and agrees with them.

Unanimously approved as submitted (Agor, Johns)

Item J-1 Request for Board Approval of the Proposed Parking Plan for the Ala Wai Small Boat Harbor (Exhibit A).

Numerous testimony was received.

Ed Underwood, Administrator for Division of Boating & Ocean Recreation (DOBOR), distributed packets on the Ala Wai parking plan which were handed out at the third public meeting and notes from the facilitator. Staff requested for approval. He reminded the Board that at the January 25, 2008 Board meeting where the Board approved the request to amend the rules and requested for staff to have subsequent public meetings for more input on a parking plan. April 9, 16 and 30 public meetings were facilitated by Mediation Company to keep the meetings on point and to gather information. The two facilitators, Ken Goldblatt and Evalyn Inn ran those meetings.

Ken Goldblatt, Facilitator from Mediation Company, read his written testimony reporting on each of the public meetings regarding who attended, testimony received, and attendees' thoughts, concerns, and opinions. An organized group supported by 13 other groups submitted an alternative parking plan. The majority of the attendees support the maximum number of free parking spaces to be maintained.

Mr. Underwood referred to exhibit B and C. Because the boaters were under represented at the 3rd meeting staff put together a survey with the facilitator's input, mailed out 501 and received 137 responses. This was based on 966 harbor parking stalls resulting in a wide range of responses. He read the recommendation to approve.

The Board questioned the time frame [which]where Mr. Underwood said 10:30pm-4:30am was a compromise. Staff is asking for \$1.00/hour. The fees were adjusted for the permittees who can park either in the permit areas or open stall and could still access the entire harbor. It is an ala carte fee with the slip. Parking runs out during the weekends. Boaters can get parking passes for their crew and guests.

Member Pacheco asked how much revenue would be generated. Mr. Underwood stated staff factored in at \$1/hour/stall to about \$1,000,000 per year gross which might be a little high. Normally the vendor makes 20% and DOBOR 80%. The boating special fund goes to all harbors, but staff would like this money to stay in the Ala Wai but Mr. Underwood couldn't guarantee that. The parking vendor projects \$800,000 per year.

Chair Thielen asked if there was a plan for the Ala Wai Harbor improvements which Mr. Underwood explained staff put out to all the boaters an R&M plan and CIP plan asking for their recommendations. Staff hopes to get permission from the Legislature to make pier repairs as income is generated.

Member Johns noted that the slip holders didn't agree to limit the public parking to only ocean recreational users. Public is public.

Mr. Underwood replied it would be for harbor users. The money will go into the Boating Special Fund or it could go to repairs. Staff has a continuing list of repair and maintenance on the Ala Wai.

Member Johns asked if this was ceded land. Mr. Underwood said any water and submerged lands that was filled. Any monies generated on ceded land would go to OHA.

Member Edlao asked about the approximate number of 300 stalls. Mr. Underwood stated that the vendor will restrip and number the stalls to make the most efficient use of the harbor which may increase the number of stalls. It won't be less than 300.

Member Agor was disturbed that there is no attempt for an enforcement plan. He would like the hotels and construction companies to notify their employees. Maybe start ticketing people the first month to get the message out. Mr. Underwood said staff will work closely with DOCARE to monitor the parking. Member Johns recommended notifying the hotel association. Mr. Underwood answered Mr. Pacheco's question that the vendor will enforce the entire harbor using pay stations.

Member Johns asked it doesn't have to be a \$1/hour in order for it to be worthwhile for the vendor which Mr. Underwood agreed.

Mr. Underwood was not opposed to an oversight committee.

Member Johns thanked Mr. Underwood for going back out to the community.

Reverend Cloudia Charters, Chaplin for Kona Theological Institute, a live aboard and works in Waikiki, read her written testimony. She feels this violates peoples' rights because they can't afford the increase in fees not just in parking.

Chair Thielen said per Sunshine Law the Board can only act on matters noticed on the agenda which is the management of the parking plan. She understands people may want to discuss the slip holders permit fees, but that is not on today's agenda because the Board had passed it and is an Administrative Rule. She asked people to limit their comments to the parking plan.

Bruce Middleton, Chair of the Ala Wai Marina Community Association, echoed Reverend Charter's sentiments and felt that the Board could better handle this by establishing an adhoc committee to work with DOBOR to resolve the plan defects and address this in a public forum. The plan doesn't address the Yacht Club's struggles. He thought the privatization of public administrative functions was handled improperly and wondered whether HGEA or civil service has been contacted. Mr. Middleton described how an adhoc committee would address HGEA comments comparing it to a condominium association.

Member Johns asked who should be the adhoc committee.

Mr. Middleton mentioned 3 voting organizations – his organization, surfers/paddlers/fishermen and boaters. Enforcement by a private contractor is not true. Statutory violation – law enforcement cannot be delegated to a private entity. It has to be rooted in authority granted by the State. That vendor can't enforce the law by writing tickets or towing cars unless the vendor has a property interest. Under the provisions of HRS 290-11 - where property owners, condominiums, hotels, etc can tow with the proper signage up, but that is only to protect their property interest. Could DOBOR conceivably give the vendor property rights throughout the entire harbor? Yes, a revocable permit for so many months, years. The problem with that is tax law says after 12 consecutive months on a one month revocable permit the vendor would have to start paying taxes on that land or if a 12 month RP it would start paying immediately. The public overwhelming stated they want the 549 currently free parking spaces kept free. Even the majority surveyed wants the 549 kept open, but was also ignored by DOBOR.

Chair Thielen said that the Office of the Attorney General will consider his research.

Arnold Lum, Chairperson of the Marine & Coastal Zone Advocacy (MACZAC) which assists the Office of Planning in coastal matters, about 5 years ago an adhoc citizens committee surveyed critical shoreline parking around Oahu and that information was placed on a GIS data base by the Office of Planning. He commended Mr. Underwood's efforts with the public participation. The 300 space parking is consistent with MACZAC's adhoc committee's prior data. He explained the city's enforcement by having a couple people on motor scooters watch the metered lot and give out \$35 tickets. DOCARE could do this.

Melissa Ling-Ing represents all ocean recreational users and hopes the Board read her written testimony. She reiterated their wish to keep the 549 free parking stalls and everyone is maxed out financially. She recommended the rate kept at 25 cents per hour. The Boaters are paying 3-1/2 cents per hour, but they don't want to pay. All the free stalls were taken and almost all the pemitted stalls were empty and they weren't surfers parking there. She reiterated keeping parking for recreational users and suggested using meter maids for enforcement.

George Downing reported because the surf off of the Ala Wai is well known worldwide it attracts tourism which is a concern. He supports Common Ground's written testimony. He wondered why an EA or EIS was not conducted on this issue?

Linda Chow, Deputy Attorney General, explained that it is an existing use and does not trigger an EA or EIS.

Chair Thielen added this is a change in how that is managed and not a different use.

Mr. Downing noted in the 3 meetings no one answered him what this is for. It is financial.

Mark Meyer reiterated a need for an adhoc committee. He felt item J-1 should be stricken from the record because it is in error. He objects to the increases. Also, ~~[strick]~~strike exhibit A because it is in error relating to an incomplete inventory. There is insufficient number of disabled parking because they are taken up by hotel users and not reflected in exhibit A. This is misleading the Board. There is a loss of \$2300/month because DLNR hasn't been collecting fees and no one is enforcing.

Noa Napoleon representing the Ala Wai surfer's coalition has distributed his written testimony. He reiterated the need for an adhoc committee and using the general fund. He gave some history and mentioned the signage issue.

Janet Mandrell for the Makai Society distributed a handout. She had circulated a petition where 160 permittees opposed the plan because it unfairly favors other groups over others. DOBOR did not look at the 5 options offered by the public during the public hearings. The plan is still incomplete. They believe the plan[e] and public participation process was flawed and DOBOR did not perform their proper due diligence. She felt the cumulative effect since 2000 would trigger an EA.

Catherina Pabla oppose[s]d the 300 free stalls and prefers the 549. She wants enforcement, signage and a 25 cent/hr. parking rate.

Liz Enoka opposed the parking plan because of the financial hardship. It should be free.

Frank Lange, Commodore for the Hawaii Yacht Club, asked what is the total number of boat slips that will be available for the public and the number of parking stalls.

Mr. Underwood replied about 750 slips and 966 parking stalls currently.

Mr. Lange noted if all the boaters had one space there will be a shortage of parking. None of his members oppose the surfers parking for free. This plan pushes aside the people who use this harbor in favor for a vendor who could increase the prices and in turn may not be able to collect the money from those people.

Zelei Abordo had furnished her written testimony. She is against DOBOR's plan because it is incomplete. The RFP is against an adhoc committee. She felt this will affect harbors statewide, [and] [n]No one was listening to the people. Give the public a true fair process.

Willie Marshall, a nursing instructor at UH Manoa, had submitted written testimony. He is a live aboard, state worker [and]who cares for the health [for the people] of Hawaii's people. It is getting harder to find parking for people to relax at the ocean.

Kawika Napoleon representing his dad from Anuenue Canoe Club is against this plan because he wants to see his grand kids go to the ocean. He asked to keep it free.

There was discussion on the Hawaii Yacht Club parking and whether to continue issuing the 50 stalls which will remain unchanged.

There was discussion on the disabled parking which is in compliance based on Federal law.

The free parking was discussed and a possible contract with the vendor.

The Board talked about an evaluation. Whether there was an adhoc committee which there are none currently. No one wants to pay for parking and the preference for 25 cents per hour.

Chair Thielen concerned that there is a certain breaking point a vendor would accept this. Mr. Underwood spoke to 3 vendors and we[']re willing to do an RP month to month. He felt there should be an adhoc committee for any future changes. He would like to go forward with this plan then implement.

There was discussion regarding the fee amount and enforcement.

Member Pacheco had a problem with the plan, but he is for it because the money goes back to the resource. Mr. Underwood doesn't know until it is in place.

The next step was discussed which is to ask for an RP. An RFP could take 6 months. The process was mentioned which could affect other issues. There are ways to set-up enforcement with the vendor.

Member Agor reported his observations, the need for more enforcement in the mornings and supports staff recommendation.

The Board discussed the 25 cents/hour which should be supported.

Grant Arnold of OHA can't claim the amount, but OHA would like 20%.

The meters as discussed will not change because they will be taken out later.

Member Johns moved to approve staff's recommendation with the amendment to set aside no less than 300 stalls as shown in the map exhibit A-1, direct the department to create an adhoc committee using the facilitator to provide input on parking and enforcement issues as staff proceeds in this process, and changing the hourly rate to 25 cents as shown on exhibit A.

Member Agor seconded.

Chair Thielen summarized the Board approved the parking plan subject to amendments that it be no less than 300 free stalls as shown on exhibit A-1, an adhoc committee will be created to work with the division[s] on issues of enforcement, the division will come back to the Board with a request for a revocable permit which would have more details including input from the adhoc group and the parking rates would not be more than 25 cents per hour. It is possible during conversations with a vendor that they may not be interested in bidding on the parking at 25 cents per hour and that will be flushed out in

more detail and brought back to the Board. Staff couldn't proceed with a parking plan greater than 25 cents per hour unless this Board was to change that vote.

Member Johns amended his motion to exempt the 40 cent metered area and permit the department to start signage with regards to closure from 10:30pm to 4:30am.
Member Agor seconded.

Chair Thielen clarified this changes the area that are currently metered at 40 cents per hour will remain and to move forward with signage to close at night in the public areas.

Unanimously approved as amended (Johns, Agor)

Recess 11:50 am

Reconvened 12:10 pm

Item K-2 Conservation District Use Application (CDUA) HA-3447 To Restore and Rebuild the 1893 "Kapoho Fishpond," Puna District, Island of Hawaii, by John Barsell, Pahoā, Hawaii, Parcel TMK: (3) 1-4-002:036

Sam Lemmo of OCCL reminded the Board this was deferred from May 9, 2008 to seek advice from the Attorney General's Office. Staff recommends the same which is to amend condition 15 to say to delete that verbage.

Linda Chow, Deputy Attorney General, cited the Kaiser Hawaii Kai Marina case and the public need for access. These are considered a private fast land to a degree public is allowed access. Public is not required access.

There was discussion regarding condition #10.

Joe Farber on behalf of the applicant appreciates staff. He commended the owner for restoring this fishpond and to allow traditional customary rights.

Member Pacheco moved to approve as amended condition #15 deleting "the general public."

Member Johns seconded.

Unanimously approved as amended (Pacheco, Johns)

Item D-8 Consent to Mortgage of Sublease K-4 with Estoppel Certificate and Subordination Agreement, General lease No.; S-5619, Natural Energy Laboratory of Hawai'i Authority (NELHA), Lessee, Cyanotech Corporation, Sublessee/ Mortgagor, Kalaoa 1st – 4th, North Kona, Hawaii, TMK: (3) 7-3-43, Portion of 42.

Morris Atta, Administrator for Land Division, gave background and recommended approval of consent as well as execution.

Greg Nasky representing Cyanotech Corporation named other representatives who were present. Thanked Mr. Atta and the Board for their consideration.

Unanimously approved as submitted (Pacheco, Johns)

Item D-3 Resubmittal: Co-existence Plan with State Permittees for the Issuance of a Revocable Permit to Green Energy Team LLC, Wailua, Lihue, Kauai, TMK: (4) 3-9-01: Portion 2 and (4) 3-9-02: Portions 1 & 20 and (4) 4-2-01: Portion 3.

Morris Atta for Land Division reminded the Board that this came before and gave background. An Environmental Assessment isn't required because the use [is] contemplated is consistent under the statute.

Eric Knudsen of Green Energy Team, LLC is committed to the 10 years of removing the albizia. DOFAW will dictate what will be planted. He explained removal of albizia and will not use chemicals.

Jerry Ornellas of East Kauai Water Users Cooperative stated their position is the same from the last meeting. They object to giving them (Green Energy) irrigated land. He wants more diversified agriculture.

Leslie Milnes representing the Kalepa Koalition distributed 2 maps and pointed out various areas. 250 in albizia and 9 acres in full albizia.

Dean Okumoto of Nalo Farms is not against this, but felt that use of good ag lands for fuel is poor use. Need to put best lands in food production.

There was discussion on diversified agriculture.

Reverend Katir from the Saiva Church and Kalepa Koalition felt Green Energy should pay a fee to the water coop.

Grant Arnold of OHA reported these are ceded lands and asked for 20% for OHA.

There was discussion on the acreage amounts and uses.

Mr. Lee commented that they will try to work with less, but concerned that this is a 30 day revocable permit once the trees are in, it's permanent. It would be better to lessen the 255 acres.

Chair Thielen [stated] said take 68 out of Green Energy would be below the 1000 minimum and to find 31 acres elsewhere. She assumed their business plan starts with harvesting of existing albizia and asked if they would plant elsewhere first.

There was discussion between Mr. Milnes and the Chairperson regarding planting the 137 acres last and to come up with other alternatives in the meantime.

Member Agor moved to approve the recommendation by amending page 3 to add 31 acres to Mr. Milnes then he could work things out with other land owners. Instead of 143 he would divvy out 174 acres. And remove the 68 acres from unit C. Mr. Milnes agreed. Member Johns seconded.

The Board:

Amended staff's recommendations by amending Recommendation No. 3 by noting that tenant Leslie Milnes will be [C]contributing an additional 31 acres to the lands being transferred to Green Energy Team LLC ("Green Energy"), and by amending Recommendation No. 4 by: (1) changing the total number of acres assigned to Green Energy from 1,037 acres to 1,000 acres; and (2) removing the 68 acres of irrigated Kalepa lands in Parcel Unit C from the lands being assigned to Green Energy and keeping those irrigated lands available [fro]for immediate use by future diversified agriculture tenants. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Agor, Johns)

1:15 pm Member Johns departed.

Item E-1 Request for Approval of a Special Use Permit to Conduct a Remote Sensing Research Experiment at Makapuu Point, Ka Iwi Scenic Shoreline, Oahu

Dan Quinn, Administrator for State Parks, reminded the Board that this was listed on the last meeting and was deferred due to a problem with the title. He gave some background and presented the location on the map. It would occur at night to minimize any exposure to hikers and will be fenced in. There is no risk to marine life.

Mark Sletten of the Naval Research Laboratory, Washington, DC, described the research and the applications used.

Unanimously approved as submitted (Agor, Pacheco)

Item D-7 Grant of Perpetual, Non-Exclusive Easement to DJAT, LLC for Utility Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-57: Portion 01.

Morris Atta of Land Division gave background and proposed to amend the submittal to place the burden on the applicant if it was determined an EA/EIS is required which hasn't been determined. He suggested amending recommendation #1 to reflect this.

Allan Takase representing DJAT, LLC will follow what staff says, but he didn't feel it was necessary.

The Board:

Amended the recommendation by replacing the first recommendation with a requirement that the Applicant shall be responsible for obtaining an EA or EIS in compliance with HRS Chap. 343 if staff, after consultation with the AGs, determines such action is necessary. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Pacheco, Edlao)

Item F-9 Request for Approval of an Agreement for Grants, Subsidies, and Purchases of Services between the Board of Land and Natural Resources and the Hawaii Nature Center, Inc. for \$500,000 to Create an Environmental Education Center in Wailua, Kauai (Term of Agreement: June 1, 2008 through June 30, 2011)

Dan Polhemus, Administrator for Division of Aquatic Resources, reported that the 2006 appropriation has been released by the Governor as of [the]yesterday. He amended the background section, paragraph 2; line 1 should change from SLH 2006 to SLH 2005.

Wade Ishikawa of Hawaii Nature Center spoke for Ramsey Taum who supports the request. DLNR can move forward to create more family recreational activities in this area.

Unanimously approved as amended (Agor, Pacheco)

Item D-11 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. *Submittal to be distributed.*

Morris Atta representing Land Division reminded the Board that this is a re-submittal and the recommendation remains the same as last time. Mr. Saikley requested the easement be withdrawn and his deposit refunded. Staff opinioned although they are following the deputy attorney general's request that the easement be withdrawn staff believes that the prior Board action appears to legitimize the structure based on erroneous perceptions that the state may be liable to the property owner which staff don't necessarily agree with.

Tim Lui-Kwan was here to answer questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-12 Consent to Assign General Lease No. S-5592, Herbert Seichi Omizo and Keith Omizo, Personal Representative of the Estate of Kenneth Shundo Omizo, Assignor, to Nalo Farms, Inc., Assignee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-009: 269.

Amend agenda item title D-12 with item D-13 title.

Morris Atta of Land Division said staff concurs with this assignment.

Dean Okimoto representing Nalo Farms explained how he needs this to expand capacity. He concerned with competition [with]by landscapers and energy producers.

Chair Thielen suggested that Department of Agriculture needs to determine and work proactively to develop these criteria for the leases.

Unanimously approved as submitted (Agor, Edlao)

Item D-5 Consent to Lease Amendment of Lands under Governor's Executive Order No. 2849 to The Arc of Hilo, Piihonua, Hawaii, TMK: (3) 2-3-32: 6.

Morris Atta for Land Division described background.

Guy Tagomori representing the Department of Human Services who currently controls the lease for ARC of Hilo related some history. The funding source requires amending the lease.

Unanimously approved as submitted (Pacheco, Agor)

Item D-6 Set Aside to the Hawaii Housing Finance and Development Corporation for Future Housing and Housing Related Development Purposes, Waiakea, Hawaii, TMK: (3) 2-4-20: 2, 3, 5, 6, 54; 2-4-24: 157; 2-4-26: 45.

Item D-2 Set Aside to the Hawaii Housing Finance and Development Corporation for Future Housing and Housing Related Development Purposes, Hanapepe, Kauai, TMK: (4) 1-9-9: 6, 7, 8, 9 and 1-9-10: 3.

Morris Atta representing Land Division grouped these 2 items together because they are the same type. He gave background.

Beth Malvestiti was here to support.

Unanimously approved as submitted (Agor, Pacheco)

Item D-9 Mutual Cancellation of General Lease No. S-5152 and Issuance of Direct Lease to Hawaii Conference Foundation for Youth Athletic, Education, and Religious Purposes, North Kona, Hawaii, TMK: (3) 7-6-16: 33.

Morris Atta of Land Division the Attorney General's office questioned whether an EA was done and asked to withdraw it.

Withdrawn (Pacheco, Edlao)

Item D-1 Amend Prior board Action of July 11, 1997 (D-1), Cancel Executive Order Nos. 1201 and 1221, Reset Aside to the Department of Education, Hawaii State Public Library System, and Grant of Easement to Citizens Utilities Company for an Underground Electrical line, Hanapepe, Waimea, Kauai, TMK: (4) 1-9-06: 14 & 29.

Item D-4 Amend Prior Board Action of March 28, 2008 (Item D-4) Set Aside to County of Hawaii for Park, Recreational, and Ancillary Purposes; and Cancellation of Revocable Permit No. S-7165; Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-5: 28.

Item D-10 Cancellation of Governor's Executive Order No. 3403 and Reset Aside to Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Ocean and Ocean-Related Recreational and Commercial Purposes and Issuance of a Management Right-of-Entry, Lahaina, Maui, Government Shores, Shore Waters and Submerged Lands of Tax Map Keys: (2) 4-4-1; 4-4-6; 4-4-8; 4-5-14; 4-5-21.

Item D-13 Sale of Lease at Public Auction for Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-010:46.

Item D-14 Amend Prior Board Action of December 14, 2007, Agenda item D-20, Cancellation of Grant of Non-Exclusive Easement Bearing General Lease No. S-5172 to Stanley Chun and Katherine S. Chun and Grant of Term, Non-Exclusive Easement to Gilbert K. Chun and Leialoha K. Chun for Seawall Purposes, Kahaluu, Koolaupoko, Oahu, TMK: (1) 4-7-019: 26 (seaward).

Amend by renumbering agenda items D-14 as D-13 and item D-15 should be D-14.

Unanimously approved as submitted (Pacheco, Edlao)

Item C-7 Request for approval to restrict access to portions of 'Ahihi-Kina'u Natural Area Reserve for a period of up to two years to implement the 'Ahihi-Kina'u Resource Protection Action Plan

Paul Conry, Administrator for DOFAW, asked the Board to approve and summarized background with reference to the map. There are provisions for a special use permit for access by Native Hawaiian practitioners and researchers.

Matt Ramsey, NARS Manager, concerned with resource degradation because 700 people impact the reserve that is set aside for preservation. Because it is a protected marine area it has been advertised as having the best snorkeling on Maui. People are treating it like a park – stepping on lava and coral impacting the resources. Staff may come back to ask for a partial closure.

There was discussion whether there are unlimited consecutive 2 year closures which there are.

Mr. Ramsey indicated that Maui DOCARE supports the action, but they cannot place full attention to one preserve.

Member Edlao supports this, putting out better information and suggested hiring more rangers which staff is proceeding with.

Mr. Ramsey explained the human use and resource monitoring then at the end of 2 years report back to the Board with staff's recommendation.

Unanimously approved as submitted (Edlao, Pacheco)

1:54 pm Recess

2:07 pm Reconvened

Item E-2 Approval to Enter Grant-In-Aid Agreements with Various Non-Profit Organizations Subject to their Release of Funds

Dan Quinn of State Parks reported on background.

Unanimously approved as submitted (Agor, Edlao)

Item F-1 Amend Prior Board Action of March 28, 2008 under Agenda Item F-1: Request for Approval to Provide Additional Funds and Extend through FY09 Two (2) DLNR/University of Hawaii Contracts: Contract No. 47471--Hawaii Fish Aggregating Device System (\$330,000) and Contract No. 47261--Improvement of Bottomfish Stocks (\$398,000) by amending the bottomfish contract number to reach Contract No. 55137

Dan Polhemus of DAR asked to amend the submittal title.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Robert Toonen, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Reef Invertebrates Genetic Survey Activities.

Dan Polhemus representing DAR explained these seven submittals involve on-going research activities by HIMB (Hawaii Institute of Marine Biology) scientists and have been renewed by this Board. He described background. The transport protocol was approved and he related the process. Independent scientific peer reviewers on the mainland accepted these protocols. Monument Management Board, DAR biology staff, Hawaii Dept. of Agriculture staff and IBC staff agree the protocols are suitable. This protocol has not had public review because it was under development. It is available as of today for public comment.

There was discussion regarding sharing of samples. A material transport agreement is needed to leave the state. The joint Monument still needs to develop an agreement and until then nothing leaves the state. It will go through NOAA and our Attorney General's office to imbed then come before the Board.

Chair Thielen suggested going through a public process review and then to the Board.

Mr. Polhemus was asked by the Board regarding Native Hawaiian reviewers. He described a cultural briefing by William Aila on the Hawaiian perspective in regards to the monument where each person participating can make an offering of water.

Marti Townsend representing KAHEA had e-mailed her testimony and commended the Federal and State staff for putting together these disease protocols, but concerned that there isn't someone charged with protecting the State's interests. KAHEA would prefer a state employee who understands the state refuge and knows the history to review these protocols. Any public comment disinfects any harm and prevents oversight on issues not covered. She re-emphasized with concern comment #5 regarding a daily take log. This is important information to the cumulative effects. Ms. Townsend suggested deferring to give the public time to review and to add a previous condition prohibiting transport of any live organism within the monument which was not a problem after she spoke to Federal and State representatives.

Mr. Polhemus said the transport protocol does not include a daily take log and noted that all the researchers keep a log and data data-base as part of the annual assessment of research activities. Usually the researchers log individually depending on the project.

There was discussion on the need to log and whether to access that information.

The Board asked how enforcement is worked into the protocol. Mr. Polhemus stated there are no officers on the vessels. The transport protocol uses freezing or chemical fixation. It would be evident to the trustee representatives on board if someone is freezing things that they shouldn't. He referred to the reported violation by the State's research coordinator on board the vessel. State and Federal co-trustees are on these cruises to oversee these permit conditions. The chief scientist is responsible for everyone's activities on the ship and it is in his best interest to follow these permit conditions.

Ms. Townsend wants to ensure enforcement of state regulations. She suggested a crew member be the compliance officer for the vessel instead of a scientist for objectivity in enforcing regulations. She would like to see amongst the co-trustees who have the best authority to handle a certain issue. The State should be on par with the Federal and if the State raises an issue the Federal should embrace it as if it was their own.

Mr. Polhemus noted that the Monument Management Plan is out for public comment and these issues are not being ignored. There is no legal requirement for the transport protocol. It was brought up by Department of Agriculture and was developed internally for staff's security and assurances on the permit.

There was discussion regarding no transport of live organisms, but staff didn't want a blanket prohibition on transport because of the need to bring in a sick monk seal, bird or transferring of plants. Chair Thielen clarified the concern is the transport of diseased coral or fish. Ms. Townsend added this is for specific transport not general from the State's view.

Dr. Robert Toonen from HIMB clarified there are no live transport as noted in his permit and he concurs with Mr. Polhemus.

Chair Thielen said that this Board hasn't had time to review the transport protocols or heard on it until today. Pending that review would the Board want to impose a condition.

Mr. Polhemus stated the protocol tells the applicant how he is going to make it dead and keep it dead, but does not address how to transport it dead.

Chair Thielen referred to condition 3 where it may need to be reworded. "The transport of live organisms is prohibited in order to prevent the introduction of disease..."

Mr. Polhemus agreed.

The Board:

Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."

Unanimously approved as amended (Agor, Edlao)

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Brian Bowen, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Reef Fish Genetic Survey Activities.

Mr. Polhemus reported background. Scientific and cultural reviews accepts this. Staff approves as long as the transport protocol is attached and followed.

The Board asked why not include parrot fish where Brian Bowen for HIMB replied they are long lived organisms and he didn't want to kill a 15 year old fish for a little piece of tissue. If there is a way to collect them in a non-lethal way.

Ms. Townsend stands on her previous testimony, emphasized the intake log and cumulative effects. Mr. Polhemus noted the Board has been briefed with the cumulative results.

HIMB puts out a 6 month report which is being edited currently.

The Board:

Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."

Unanimously approved as amended (Edlao, Agor)

Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Joshua Reece, Washington University in Saint Louis, for Access to State Waters to Conduct Moray Eel Research Activities

Mr. Polhemus described background and it has been accepted.

Mr. Bowen said they will capture a few moray eels for non-lethal sampling. They are finding eels are looking different, but are the same.

Ms. Townsend stands on her testimony.

The Board:

Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."

Unanimously approved as amended. (Agor, Pacheco)

Item F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Stephen Karl, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral Genetics Research Activities.

Mr. Polhemus spoke on background and it has been accepted.

Stephen Karl explained that because no one knows when the cruise is going it is difficult to organize a crew. The Monument staff suggested they give a number instead of naming all because not everyone is going on the list otherwise it might give the impression that more was going.

There was discussion regarding the compliance.

Ms. Townsend's testimony stands.

The Board:

Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."

Unanimously approved as amended (Pacheco, Agor)

Item F-6 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Ruth Gates, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral-Endosymbiont Research Activities.

Mr. Polhemus gave background.

Ms. Townsend's testimony stands.

The Board:

Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."

Unanimously approved as amended (Agor, Pacheco)

Item F-7 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Michael Rappe, University of Hawaii, Hawaii Institute of

Marine Biology, for Access to State Waters to Conduct Coral Microbial Community Characterization Activities.

Mr. Polhemus informed the Board on the background and has been accepted.

Ms. Townsend's testimony stands.

The Board:

Amended staff's condition #3 to say "The transport of live organisms is prohibited in order to prevent the introduction of disease or unintended transport the permittee must comply with."

Unanimously approved as amended (Pacheco, Agor)

Item F-8 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Evelyn Cox, University of Hawaii, for Access to State Waters to Conduct Coral and Fish Disease Research Activities.

Mr. Polhemus asked to defer.

Evelyn Cox, Assistant Professor at U.H. West Oahu, informed she was permitted to attend this cruise. She distributed a photo handout on coral diseases and presented background. This research is to prevent the spread of the disease.

David Lonborg, U.H. Office of General Counsel, noted that 2 or 3 weeks is too late to make the cruise [and this work is important]. The University wants this work to continue and Ms. Cox can't go by herself. He requested the permit be acted on. Dr. Aeby is not the applicant on this permit. They are willing to meet with staff.

Ms. Townsend stands on her testimony.

The Board felt this looks like a maneuver for Dr. Aeby to get back into the research and that it can't continue without her. Mr. Polhemus stated this is a policy matter determined by the Board and the Division will work with the Board and the AG's office.

Chair Thielen noted that these are discretionary permits and the Board takes stewardship responsibilities seriously.

Mr. Polhemus pointed out at the back end of this submittal [is] under Monument Board opinion is not your standard statement.

Deferred (Agor, Edlao)

Item C-1 Request for authorization for the Chairperson to negotiate and sign a contract to purchase a backhoe/loader for Kauai District, bulldozer for Hawaii district and vehicles for DOFAW

Paul Conry representing DOFAW amended page 2, item 6 should be DOFAW Hawaii for 6 instead of 7.

Unanimously approved as amended (Pacheco, Edlao)

Item C-4 Request for approval of expenditure of funds and authorization to negotiate and sign a contract to purchase two mobile office trailers, Island of Maui

Mr. Conry amended the recommendation 1st line to read “The Board approve the expenditure of funds up to \$100,000 from the Natural Area Reserves Special Fund and to authorize the Chair to negotiate and sign a contract.” It will go through an RFP process.

Unanimously approved as amended (Edlao, Pacheco)

Item C-5 Request for approval of the design and placement of Warning Signs on improved public lands (Kula and Kahikinui Forest Reserves, Polipoli Springs State Recreation Area TMK (2) 2-2-007:001), pursuant to Act 82, Session Laws of Hawaii, 2003

Mr. Conry amended the map exhibit 2, page 6 where two of the diamonds were suppose to be circles. To correct the 2 dots on where the hazards are.

Unanimously approved as amended (Edlao, Pacheco)

Item C-2 Request for approval to enter into a contract with Land Prep LLC to cut and chip non-native trees in Kanaha Pond Wildlife Sanctuary, Maui, for the Division of Forestry and Wildlife

Item C-3 Request for approval of expenditure of funds and authorization to negotiate and sign a contact with Pacific Consulting Services Inc. (PSCI) to conduct an archaeological inventory survey at Mauna Kea Ice Age Natural Area Reserve, Hawaii

Item C-6 Request to conduct a Public Hearing regarding withdrawal of approximately 650 acres from Na Pali-Kona Forest Reserve (TMK (4) 1-4-001: portion 003), Waimea District, Kauai, for set aside to Hono O Na Pali Natural Area Reserve

Unanimously approved as submitted (Pacheco, Edlao)

Item L-1 Appointment of Soil and Water Conservation District Directors

Unanimously approved as submitted (Pacheco, Edlao)

Item M-1 Amendment No. 9 to Lease No. DOT-A-92-0018 Restaurant and Lounge Concession Lease Host International Inc. Honolulu International Airport

Amend agenda title to read as M-1 instead of M-5.

Unanimously approved as submitted (Edlao, Pacheco)

Item K-4 Conservation District Use Application (CDUA) KA-3121 Second Time Extension Request for Greg and Joanne Allen's Single Family Residence (SFR) and Accessory Structures, at Kawaihau District, Wailua, Island of Kauai, Parcel (4) 4-2-003:002

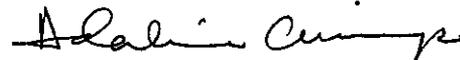
Sam Lemmo of OCCL asked to withdraw.

Withdrawn (Edlao, Pacheco)

Adjourned. (Pacheco, Agor)

There being no further business, Chairperson Thielen adjourned the meeting at 3:30 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