

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

DATE: FRIDAY – JULY 25, 2008
TIME: 9:00 A.M.
PLACE: KIUC MEETING ROOM
KAUAI ISLAND UTILITY COOPERATIVE
4463 PAHE'E STREET
LIHUE, HAWAII 96766

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

Laura Thielen
Ron Agor
Dr. Sam Gon

Tim Johns
Jerry Edlao
Rob Pacheco

STAFF

Dan Quinn, SP
Sam Lemmo, OCCL
Carty Chang, ENG

Dan Polhemus, DAR
Charlene Unoki, LD
Nancy McMahan, HP

OTHERS

Linda Chow, Deputy AG
Frank O. Hay, Item E-5
Ned Dana, Item E-5
Wayne Jacinto, Item E-5
Lisa Dunford, Item E-5
Frederick Wichman, Item E-5
Eric Coopersmith, Item E-5
Ron Moran, Item E-5
Frances Yamada, Item K-1
Roby Stout, Item K-1
Bruce Anderson, Item F-5

Bill Wynhoff, Deputy AG
Tony Locricchio, Item E-5
Craig Millett, Item E-5
Virginia Dunas, Item E-5
Keli'i Ho'okano, Item E-5
Robert Sweeny, Item E-5
Katie Castle, Item E-5
Shannon Graham, Item F-9 & F-10
Rayne Regush, Item K-1
Brian Bowen, Item F-3

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

Chair Thielen introduced herself and each of the Land Board members.

Item A-1 Amended July 11, 2008 Minutes.

Approved as amended (Agor, Johns)

Item E-5 Request for Approval for Disposition of New Twenty Year Recreation Residence Leases at Pu'u Ka Pele, Halemanu and Koke'e Camp Lots through Direct Negotiation, Koke'e and Waimea Canyon State Parks, Waimea. Kaua'i

Member Tim Johns disclosed that one of the permittees, Gaylord Wilcox, is on the Board of Directors at Bishop Museum where Member Johns is employed. He noted after speaking to the Attorney General's Office that there is no need for him to recuse from this matter.

Administrator for State Parks, Dan Quinn, reported on the background, the exhibits, drafts, and he read the recommendations. He asked the Board to discuss the possibility of a cost of living index increase to the lease rents. Also, the Board previously approved nominal rent leases to non-profit organizations which still stands. The deputy attorney general involved in this matter was here to answer any questions.

There was discussion regarding a park advisory counsel to work with staff on the Koke'e and Waimea Canyon Master Plan which is not before the Board today. The reason Member Johns raised this is because the law says that the advisory counsel's responsibilities include advising and assisting in the management of Koke'e recreational cabin leases. Mr. Quinn replied that there will be a lot of management of the leases over the next 20 years in terms of compliance with lease conditions, design guidelines and management of the entire area. Staff is attempting to negotiate these leases in a short time frame.

Member Edlao asked why a couple individuals were struck out in exhibit B. Mr. Quinn said that those tenants did not renew at the last renewal period.

Member Pacheco asked about condition number 5 – "...must be current with all permit terms and conditions." Does that mean compliance in all conditions? Mr. Quinn responded affirmatively that people should be in compliance at all times. Member Pacheco asked whether all the people on the list are in compliance. Mr. Quinn said that one is not current on payments, but he couldn't respond to everyone.

Member Pacheco questioned page 16 regarding "Recreation-residence purposes defined" whether previous leases say not to allow full time residence. Mr. Quinn couldn't confirm the exact wording, but that same provision is in there, a limit of 180 days per year. Member Pacheco wondered how to enforce that. Mr. Quinn replied it's very difficult. A property manager will spend quite a lot of time managing Koke'e properties.

Member Edlao asked whether design standards changed from a previous or was there a previous. Mr. Quinn noted these guidelines were intended to maintain the same

character. It is a draft, which will go for public input, and the Board will have final approval.

Deputy Attorney General, Bill Wynhoff, shared with the Board that there has been litigation regarding whether these leases include the land and the building which came up in 1985. There were 2 lawsuits where one went to trial. Judge Watanabe determined that the State owns both the land and the buildings which is the State's position. The other lawsuit is pending in first circuit. The statute itself specifically provides a process saying that the proposed lease rent is to be based on land and building. Staff obtained appraisals from the Hastings Conby firm which is what staff based the land and buildings on. The process from the statute says to present those numbers to the potential Lessees where they may obtain their own certified appraisal if they want to dispute the State's appraisal.

One of the issues that provoked some controversy is the cesspools. There are 2 aspects: cesspools in well head protection zone lots which are in the neighborhood of the lots that provide water to the Koke'e area. Their consultant R.M. Towill had suggested that it would be best management practices to have those cesspools taken out and compliant individual waste water systems be put in. There is no requirement that any of the cesspools be taken out because there isn't any new construction. That issue is best left for negotiation. There is also the issue of litigation claim made that if the State owns the buildings then it is a requirement for the cesspools be taken out and a wastewater treatment plant be put in. Staff doesn't believe that is correct. Given that the claim was made staff will address it because it isn't practical to put in a wastewater treatment plant.

According to the statute, once the Board authorizes presentation of the lease terms including the lease rent to the permittees they then will have an opportunity to comment during the 3 month period to discuss the terms of the lease and the lease rent. The anticipation is to have the new leases in place by the end of the year when the existing permits expire. The statute calls for any leftover suitable improved lots to be let by auction and that is one of the recommendations made to the Board.

Member Johns asked if the state owns the cesspool why require the new Lessee to pay for an approved wastewater system if it's a state asset. Mr. Wynhoff replied it's typical of long term leases that Lessees be required to do the improvements. The estimate based on their consultants will cost \$10,000. The lease rents for the well head protection zone lots reflect a reduction in the rent because they are required to do these improvements.

Member Johns asked if a certified appraiser is defined anywhere. Mr. Wynhoff explained they have a MAI appraiser and the term "certified" is murky to him.

Member Edlao was concerned with the draft design not being ready when the leases are ready. Mr. Wynhoff expressed he would like them together, but the legislation requires to do the leases within that time period. He agreed, it sets up a dilemma. The best staff could do is a draft and the new Lessees will get the final when it's ready. If the new Lessee doesn't agree with the final they have the option to pull out. The draft will be available on the web or mailed and all the permittees will be contacted.

Member Agor is comfortable with the draft guidelines to be the standard until the advisory counsel gets set-up. Mr. Wynhoff added the advisory counsel is completely autonomous.

Chair Thielen inquired of Mr. Quinn whether staff will complete the design guidelines by end of the year. Mr. Quinn thought it would be very difficult when the top priority is to complete the leases. Mr. Agor clarified his concern was if the permittees wanted to do something to the cabin they wouldn't have anything to follow. He feels comfortable with the draft guidelines in the interim.

The Board asked who the advisory counsel answers to. Mr. Quinn described the Diamond Head citizen's advisory counsel doesn't necessarily report to anyone, but is under the Chairperson. When they send recommendations in it's up to the Chairperson. This Koke'e advisory counsel doesn't have anyone designated and would need to work it out. The Diamond Head counsel meets every month. Chairperson Thielen noted that the statute requires the governor, the house, and senate to set up the advisory counsel. Member Agor said the Board could make a stipulation that whatever advisory counsel comes up with that they pass it through the Board for approval. He wouldn't mind doing that until the legislatures decide they don't want the Board to have the oversight and he doesn't think the legislature will have a problem with it. Member Pacheco added that this advisory counsel is only for advising. Whatever they decide will have to come back to the Board for decision. Mr. Quinn said some will come to the Board and some to the Chair depending on the significance of the recommendations. Member Edlao felt this issue should go to something more than an advisory counsel because of the responsibilities. Mr. Wynhoff remarked that the Office of the Attorney General will give advice to who is appropriate and will advise the Board on any action or leave it up to staff. The word responsibility doesn't necessarily mean the advisory counsel can act without the Board. Chair Thielen said that there will be some discussion and work it out with the Dept. and interaction with the Board. Member Johns was concerned with the deadline of 3-4 months. Until the advisory group meets this might get signed before then.

Chair Thielen noted the advisory counsel will be around longer. The actual negotiations are prescribed by statute as far as how the Dept. would negotiate with anybody over land and have to follow those statutory guidelines. That is not a matter for the Board to decide or the advisory counsel to decide we have to follow the legal process for direct negotiations. The leases will be finalized by the end of this year. The advisory counsel will operate on the overall management of Koke'e State Park. To some degree the advisory counsel is a separate issue.

Member Johns reiterated what the statute says regarding the advisory counsel. He was concerned with the design guidelines if incorporated into the lease and this advisory group weighs in on the design guidelines then the design guidelines will be set when the lease is signed. Mr. Wynhoff replied not necessarily. Chair Thielen said it will still be a draft. Mr. Wynhoff clarified the way the lease reads is there will be design guidelines and those will be finalized after the lease which could be after the advisory counsel. The

draft lease says if the Lessee doesn't like the final guidelines he/she can terminate the lease.

Member Agor asked are the wells being monitored periodically. Mr. Quinn answered affirmatively. Member Agor had a problem with converting the septic system if state law doesn't require it because it's existing. He wondered if there is a mechanism to monitor the water system because usually it becomes contaminated if there is more construction or more units added to it. Or, there might not be a problem. Mr. Quinn agreed there might not. If there is contamination then getting to a point where that water is no longer contaminated could be difficult. As the deputy AG mentioned it is not required by law, but is prudent resource management not to have cesspools within the well protection zone. In the submittal, it's for approval for a waste water treatment system. Perhaps not septic which may require DOH approval.

Frank O. Hay, a Koke'e permittee, had submitted written testimony. He informed the Board on some Koke'e history, what the previous Board did in 1985 resulting in the demolishing of the most historical cabin and asked to correct injustices. He thanked Chair Thielen, Representative Roland Sagum, Senator Gary Hooser and Member Agor.

Tony Locricchio thanked Chair Laura Thielen for her understanding and prioritizing in making the bill possible. He said that the permittees need to understand what they are signing. The design criterion needs to address the energy crisis and he suggested using a low flow water system generation to power all of Koke'e and some of Waimea. He asked to take into consideration the need for flexible support systems because of the self-sustaining and historic nature of the area. Mr. Locricchio related a discussion at the Attorney General's Office regarding cesspools. Because the State owns the cabins it makes the cabins less valuable, however, the new lessee has to pay for improvements. He reiterated Mr. Wynhoff regarding payment of a waste water system and asked the Board to look at the permittees' appraisals because they will come out much less due to the cesspool issue. He appreciated the Board's questioning. The State may want to reconsider owning these cabins because once the new Lessees run out of resources people will come after the State. He asked for a copy of the Hastings Conby appraisal.

Member Johns asked whether the fix needs a legislative change because the legislature said to appraise for land and building.

Mr. Locricchio said that the MAI appraiser could separate the building and say transfer title back to the permittee and that will reduce the rent or the rent will stay at about the same level. Appraise it at that level. It doesn't say must charge as though you own it. He gave a cesspool example. If the new lessee owns the cabin there will be no problem. He thinks the Board has the power to transfer power without legislative action. He suggested having certain new Lessees pay for the well head improvements. If the title goes back to the new Lessees it should be split among all the new Lessees.

Ned Dana, a Koke'e permittee, felt there are too many loopholes left open by the State and he didn't feel this was honest or open negotiations. He reiterated the waste water

treatment plant issue and finds it unfair. If the new lessees owned their cabins it would solve these issues. He is willing to pay the same or more lease rent if he owned his cabin.

Craig Millett asked does the Board have a reason for owning the cabins. The Koke'e community wants this place to work. They have committed to it by providing man hours and materials when DLNR wouldn't or didn't appropriate money to the park. He wondered why is it so adversarial to communicate with DLNR and no one sits down with the permittees to talk. He asked whether DLNR reviews the people who report to the department (referring to the appraisers) because these folks didn't have the correct information. He described what happens during an appraisal.

Member Agor explained the appraisers have the information on the cabins before going there. Most of the time, the reason appraisers go out there is to see if anything changed from the information that they have.

Mr. Millett referred to the Exhibit B list and wondered why one person pays this amount and another pays a different amount. Some are very high or very low. He wants greater cooperation between DLNR and the historic Koke'e community where things work for everyone. He asked to publish on the website specific guidelines for negotiations because the Lessees don't know what they are.

Wayne Jacinto, a Koke'e permittee, asked to consider Mr. Wynhoff's words regarding "take it or leave" attitude toward the lease and hoped to change that attitude. He asked the Board to direct State Parks to not charge the permittees for their assessment of the lease rents because they did not have a choice in the appraiser. He felt the permittees are getting charged double in assessment fees. He asked to amend the lease.

Page 5, #7 Compliance with laws. 1st paragraph, last sentence regarding marijuana. He was concerned that he will get kicked out of Koke'e if one of his guests using medical marijuana is arrested. He asked that things that are legal not be used against the lessee.

Page 7, #14 Subletting. 2nd sentence. He doesn't understand it.

Page 8, #17 Liability insurance. 1st paragraph, last sentence. He worried that because his house sits on Halemanu Road he will be liable for any accident on Halemanu Road although it's not his property.

Page 9, #18 Bond, performance. His parents put up a surety bond and he asked to continue this.

Page 10, #21 Breach. The last paragraph has language where the Board could create defaults that cannot be cured after the new Lessees sign the lease. He will lose his lease because of those defaults. The permittees are being forced to sign this which puts their future in jeopardy. He felt this isn't legal because it forces them to give up their civil and legal rights.

Page 20, #55 Notice. State Parks issued the former Lessees letters with a 30 day deadline to respond by, but they did not send it by certified mail. People had to scramble. He asked the Board to direct State Parks to use certified mail in their mailings.

Mr. Jacinto asked if it's true that the state will only recognize two assessment companies. The permittees were under the impression that any assessor in the state can be hired. The lease is flawed and favors the state in evicting as many new Lessees as possible. He hopes there will be good faith negotiations. There wasn't much time for him to go through everything. There are conflicts between the lease and design guidelines. The permittees want to continue the practice from 1919. The lease problems started in 1985 when the state wanted to do an auction and take the Lessees' private property. He hopes the Board sees that Koke'e wants to work with them. There are some incurable things and thanked the Board for allowing him to testify.

Member Agor noted that if the new Lessees are ever cited it comes before the Board and they have the right to present it. As an example the new Lessee is allowed to present the issue of medical marijuana.

Virginia Dunas thanked the Board and the permittees. She described her cabin's ownership history. She thought appraisals were around \$5,000 a year. Hers was \$75,000 and others were less. How is it that they are all appraised the same amount?

Lisa Dunford described how she inherited her family's cabin. She was concerned with the incurable lease clause and she always encourages friends and family to use the cabin. But, she cannot always be there to police them and would hate to lose her cabin. She hoped there was another form of redress. She related illegal logging on her property without her knowledge and she doesn't feel its right to lose their cabin over something like this.

Keli'i Ho'okano thanked the Board for the 1 year extension. He worked on the legislation and reported how one cabin's rent quadrupled plus a septic system will cost another \$13,000. He suggested getting a security bond to help pay for the extra \$6,000. He hoped to find out what kind of assessors they can get; to work more closely with the state to preserve the cultural and natural resources, and he hoped the Board understands families can't afford these increases. The state can make \$10,000,000 from the leases. Mr. Ho'okano doesn't feel its right for people to pay extra for the cabins. The Kauai community wants to help DLNR with work on the boardwalk, restoration of streams, but it's difficult if people are priced out of the area.

Frederick Wichman, a Koke'e permittee, was concerned with clear definition of contamination. Is it too much lead or too much mercury in the water? There is nothing bacterial or viral in the water system. His cesspool has been in perfect operating condition since 1924, but at the same time the State insists on building a septic system and not provide water. He asked why are we protecting the water supply if the State will not supply them.

Robert Sweeny, a Koke'e permittee, reported some cabins won't be leased out because they are uninhabitable. He asked how many there might be. In 1985 some cabins were withdrawn and he felt they should be relocated. A lot of people would like to refurbish those cabins.

Eric Coopersmith, a permittee and caretaker at the YMCA's Camp Sloggett, ran a water quality test which came out clear of any contaminants. He doesn't know what the science is that these water tables are being compromised. His septic cesspool has to go down a 100 feet of clay and earth to reach the water table that the wells are drawing from and was told that was far more than necessary to do the filtration which has been working fine for a century. Why put an imposition on all of them when there is no science. These cabins have been here longer than the water system when people used to draw water from the stream. The state is coming in after the fact to make all these improvements when everything has been working fine for a century. He agreed with Mr. Locricchio on spreading the cost out to everyone and not just a few to carry the burden. The Board has the opportunity to waive a bond. He has a \$4500 lease rent with a \$4500 bond, have to put in a septic system, and would have to come up with \$20,000 to \$25,000 in the first year of the lease rent. Most residents don't have this kind of money. He assumed the lease terms are up for negotiation and hoped to work together. We should preserve this place for the local people, but currently it's prohibitive.

Katie Cassel felt privileged to have a place in Koke'e. Hope they can iron out these issues with the Board today.

Ron Moran is part of a family who has a permit at Koke'e. His family met and decided if the rent doubles they will keep it in the family. There is a lot of uncertainty on Kauai. Koke'e provides relief from all the stresses. Community service still occurs at Koke'e which is being lost in a lot of places. The permittees are the greatest caretakers and he asked to move forward.

Mr. Millett asked to extinguish the rumor that DLNR's main purpose is to maximize income.

Mr. Jacinto said if a person gets a cabin at auction they will have to build at design standards. He asked for a 35 year lease to get a mortgage from the bank.

Chair Thielen said that staff needs the Board's authority to proceed with negotiations and a lease. Staff recommends that the Board approve the draft lease in concept and grant to the Chairperson to negotiate the final terms of the lease to be consistent with this concept. There may be changes made to those final terms and be subject for approval by the attorney general.

Member Edlao asked how the Board should consider the concerns of the permittees today.

Chair Thielen said that the Board could grant flexibility for matters like the bonds and provide guidance. Also, to give discretion to the Chair to address other issues negotiated with the tenants. Staff's recommendation is if the draft lease is approved by the Board staff will send it to all the permittees, they will provide comments, staff will assess those comments, and publish them on the website then come back as a group to discuss the final terms of the lease.

Member Edlao stated that everything is curable that is why we have the Board. There will be 2-way communication and the Lessees will have a chance.

Member Agor asked about leaving compliance as is on page 5 because he didn't have a problem with it.

Member Edlao mentioned that any illegal activity covers marijuana. Member Pacheco added staff put that in because of past problems with having to wait for the criminal process and enforcement. He wondered whether if there is a legal right to have marijuana.

Chair Thielen suggested the Board have some guidance on the strict prohibition of the use or authorization use of medical marijuana in Hawaii. The Board could look at the illegal use.

Member Edlao asked how about other drugs. Chair Thielen replied they could address those too. Seventy-five percent of illegal marijuana is grown on state lands.

Member Agor noted on page 15, the last paragraph regarding cesspools isn't against any law.

RECESS **11:05 am**

RECONVENED **11:18 am**

Mr. Wynhoff reported that the existing cesspools are legal and do not need to be changed. The State's contractor RM Towill, based on best practices, recommended replacing cesspools in a 1000 foot radius of the well head. He doesn't have the technical details. There is nothing in the lease that prohibits the tenants from voluntarily helping these people share the cost. It could come up in negotiations to say in the leases "share the cost." The well head protection zone leases already reflect the payment up front and reduced over a 10 year period, but he understands their concern.

Member Johns wondered why the legislature didn't appropriate money for the Department to do wastewater upgrade. If it's spread amongst the 18 or 19 area leaseholders already. Mr. Wynhoff reported that it has to be for public purpose and couldn't do it within the timetable set forth in the existing legislation work.

The legislation says that the Board is suppose to propose the terms of the new lease within 3 months of the effective date of the act which staff is trying to move faster because legislation also says the final terms are suppose to be negotiated within 4 months rather than the Board do it in 3 months and negotiations take one month. The statute also says that within 1 month after the final terms the permittees have to sign and legislation also says that the existing permits expire at the end of 2008. Thereafter any remaining lots shall be auctioned. Mr. Jacinto said "take it or leave it." But Mr. Wynhoff's response was it's in the legislation and the terms of the lease will be negotiated.

The lots in the well head zone are not in violation in answer to Member Agor's question. Member Johns clarified it's recommended by best practices, but not legally required. Mr. Wynhoff also clarified the term septic tank is not the correct term. The consultants suggested an anaerobic system per each lot, but they are not contemplating a large scale treatment plant. There is a treatment plant there now and some waste could be piped to it. Member Johns queried if one of the well head protected zone permittees can't reach agreement then it would go to an auction pool then whoever wins at the auction has to upgrade their waste water treatment system which Mr. Wynhoff confirmed unless there are changes during the negotiation phase.

Member Pacheco asked to explain the paragraph regarding non-curable defaults. Mr. Wynhoff said that Member Agor was correct that any kind of default or termination of default has to go through the Board. He gave the example that the cabin can be used for only 180 days, but the facts allow use for 240 days in a year that default can't be cured. It's a fact that it was used 60 more days then allowed by the lease and you can't change that fact. You've breached the lease. It is not intended to take away the Board's discretion on whether to act or not act on the fact that there was a previous default. These things will come out in negotiations. Member Johns wondered why even say that. Mr. Wynhoff replied it is what it is. He gave an example of a default that could be cured like non-payment of rent, insurance runs out, etc.

Member Pacheco wondered what are the assessment costs. Mr. Wynhoff explained the new law says the Board needs to make an offer to the permittees for lease rent based on fair market value of land and buildings. In order to get fair market value the permittee must get an appraiser. There is an existing statute; he thinks its 171-7, which talks about direct negotiations in the broader sense that says that the Board could have an in house person or someone from outside. If someone from outside does it then the cost of the appraiser must be paid by the Lessee. Taken together those 2 statutes require permittees to pay for the appraisers. Chair Thielen asked what is the process if a permittee wants to counter an appraisal. Mr. Wynhoff explained staff makes an offer based on fair market value on the land and buildings. The permittees may make a counter offer based upon their own certified appraisal and the Board of Land & Natural Resources will negotiate in good faith based on the 2 appraisals. The Board could delegate that to the Chair.

Member Pacheco asked whether there is a requirement for arbitration if the permittee doesn't come to an agreement. Member Johns said that the negotiation would work it out.

There was discussion on what is a certified appraiser which is a licensing procedure. Member Pacheco inquired about the discrepancy in the appraisal cost per permittee and what the contract was out for. Chair Thielen said that the original appraisal was done more than a year ago which is over the 1 year deadline.

Member Pacheco asked about the State's ownership of the cabins. Mr. Wynhoff explained when these leases came up toward the end the situation was examined by the Dept. of Attorney General and determined, based on what happened in 1985, that the State owned the buildings at the end of the lease. The original lease allowed the Lessees to move the buildings off the lot. Member Johns clarified that the statute implies that there is pending litigation. Chair Thielen noted that the legislature had the opportunity to clarify the issue of ownership.

There was discussion whether the State could transfer the cabins to the permittees. Mr. Wynhoff said that any transfer of State property would require the approval of the attorney general. He did not want to say right then whether a transfer could be approved. Transfer would be approved by the Attorney General, not him, and would raise serious issues. Member Johns mentioned that the legislature could weigh in. Mr. Wynhoff mentioned there are a lot of protections built in even for the legislature to give away State property because of constitutional and statutory issues with respect to that. There might be exceptions if property was illegally taken.

Member Pacheco asked whether those draft guidelines are enforceable. Mr. Wynhoff replied that they are not considered in effect yet. Chair Thielen noted that this is a historic conservation district and any construction or repairs of cabins would have to go through the Office of Conservation & Coastal Lands for a CDUP. During the CDUP processing, OCCL would work with SHPD (State Historic Preservation Division) to ensure alterations were consistent with the historic character of the district, therefore the department would still have oversight even though the draft design guidelines were not finalized. There was discussion on the interim guidelines.

Member Gon referred to page 16, 2nd paragraph that requires a septic tank system although the current system has not had a breach of the water quality system. Otherwise leave paragraph one in. He agreed with Member Agor regarding violations occur during construction. Chair Thielen said that working with Dept. of Health she learned that once an area is contaminated it's very difficult to uncontaminate it. There was discussion regarding the depth of the wells. The military might have concerns. Member Agor suggested the Dept. look at the cost of this to get special funding.

There was discussion on security bonds which is on page 9. It's part of the lease like any other lease. Fire insurance was brought up which Lessees should have.

There was discussion on the process of negotiating rent. Chair Thielen said that if this is approved today, staff will send notice to the permittees, give them a location and timetable to mail or e-mail comments, arrange to come back to meet with the permittees

to go over those provisions that they may have comments which could go back and forth, and work towards a final agreement. She reported that the Dept.'s general fund budget has been cut this year and would be difficult for State Parks to do 40 different leases and instead will do one standard lease.

Chair Thielen asked whether to set fees at a set rate or tie it with the consumer price index to keep up with inflation so people won't have a huge jump 20 years later. Would the Board want it to stay at that set rate or follow the consumer price index? Member Agor was not inclined to go with it.

There was discussion regarding negotiations with non-profits.

The Board:

Approved staff's recommendations with amendments to the draft lease:
page 5, #7 to add all other illegal drugs manufactured or grown;
page 7, #14 was recommended to clarify during negotiations;
page 10, #21 to delete the last paragraph;
page 16, #40, during negotiations discuss amending last paragraph to require replacement if necessary;
page 20, #55, first sentence delete [first class mail] to read certified mail.

Unanimously approved as amended (Agor, Johns)

Chair Thielen summarized that the Land Board has approved staff's recommendation and given guidance to certain provisions on the lease where they would like to amend it or to look more closely during negotiations with the permittees. Staff will be sending information to all permittees in writing by certified mail, will provide an opportunity for people to make comments on the draft lease, will provide an avenue for people to post information, and discuss and sign everything by December 2008. When the revocable permits expire people can move on to the new leases. Any cabins people choose not to pursue would go to public auction as directed by legislation which would happen in 2009. The design guidelines will be discussed after 2009. The Board has to follow a scripted process.

Item F-9 Request for Approval a Special Activity Permit for Mr. William Seitz, Research Supervisor, Hawaii Volcanoes National Park, and Designated Assistants to Conduct Management-Related Activities for the Endangered Hawksbill Turtle on State Land and Marine Waters

Item F-10 Request for Approval a Special Activity Permit to Mr. William Gilmartin, Director, Hawaii Wildlife Fund and Designated Assistants to Conduct Research Activities for the Endangered Hawksbill Turtle on State Land and Marine Waters of Hawaii, Maui, and Molokai

Dan Polhemus, Administrator for Division of Aquatics (DAR), reported background on each item. Each has been issued a Federal permit.

Shannon Graham, a graduate student at U.H. Hilo, thanked the Board for accommodating her. She requested approval of Item F-10 to set up transmitters along the Hamakua coast. This information is to enable better protection of the hawksbill turtle and to complete her research project toward her master thesis. She described the process and the research.

Member Gon thanked Ms. Graham for providing the details and said that staff asked the Board to approve these.

Unanimously approved as submitted (Pacheco, Gon)

Item K-1 Conservation District Use Application KA-3454 regarding Kukui`ula Development Corporation, LLC's proposal to do trailwork, roadwork, and landscaping on 6.4 acres in the Limited Subzone in Koloa, Kauai, TMKs (4) 2-6-02:12, 2-6-03:3, 2-6-03: 20, and portions of Lawai Road.

Written testimony was received from Sierra Club, Kaua'i Group, and County of Kauai Planning Department.

Sam Lemmo, Administrator for Office of Conservation & Coastal Lands (OCCL), informed the Board on the project background. He presented written testimony from the Kauai Sierra Club and Kauai Historic Review Commission. Staff had concerns and comments about the project. 1. There were no indigenous trees in the plan. 2. There were questions to how the landscaping was laid out in discrete blocks. 3. There were issues with public access perpendicular to Lawai Road to the shore area. 4. Questions on impacts to the shearwaters nesting. The applicants addressed their concerns, but staff was not completely satisfied and added special conditions. Mr. Lemmo read those conditions and gave more details. Staff recommends approval.

Member Johns asked whether NTBG (National Tropical Botanical Garden) was notified or is aware and they are.

Frances Yamada, representing Kukui`ula Development was here to answer questions.

Representing the Kauai Sierra Club, Rayne Regush was concerned with the landscaping plan because of excessive vegetation removal and inadequate restoration and conservation plan of native plants. She presented her written testimony.

Roby Stout, project manager and landscape architect for Kukui`ula, explained his staff didn't feel the selected removal area needed a lot of clearing or re-vegetation. He noted that they will be removing ironwood trees and will re-vegetate it.

The Board asked if they could move the test site.

Mr. Stout presented a map and test site area. He explained the area has a good representation of all the zones and a diversity of plant vegetation. They could move the test site if staff requires it.

There was discussion regarding buffer for archaeological sites by Historic Preservation. Mr. Stout reiterated about the ironwood trees being invasive. Mr. Lemmo added the concern is the removal process and its impacts.

There was discussion whether the impacts will benefit the shearwaters. Member Gon suggested selecting an area further away from the shearwaters. Also, add more appropriate native vegetation. The Board suggested Mr. Stout speak with NTBG and DOFAW.

The Board:

Approved staff's recommendation, added an item 22 to read "Consult with NTBG regarding the re-location of the test area" and on page 16, item 16 change [delectations] to declarations.

Unanimously approved as amended (Agor, Johns)

RECESS 1:00 pm

RECONVENED 1:10 pm

Item F-3 Request for Approval of a Special Activity Permit for Dr. Jo-Ann Leong, Director of the Hawaii Institute of Marine Biology, and Designated Assistants to Conduct Various Scientific Research Activities in Certain State Marine Waters

Dan Polhemus for DAR gave background.

Brian Bowen for Jo-Ann Leong spoke about the importance of scientific research. This will help them respond quickly if there is a fish kill and so they don't have to keep coming back to ask again. The take is very small compared to what is listed. He asked to delegate authority to the Chair. He explained their research process.

Mr. Polhmeus said in regards to delegation to the Chair this has been going on for years.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-5 Request for Approval of a Special Activity Permit for Dr. Bruce Anderson, President of The Oceanic Institute, and Designated Assistants to Conduct Various Scientific Research Activities in Certain State Marine Waters

Mr. Polhemus presented background.

Bruce Anderson explained research project and asked the Board's consideration.

There was discussion on annual reports in the future.

Unanimously approved as amended (Pacheco, Gon)

- Item F-2 Request for Approval of a Special Activity Permit for Dr. Timothy Tricas, Department of Zoology, University of Hawaii, and Designated Assistants to Conduct Scientific Research Activities in Certain State Marine Waters, Island of Hawaii Only, on Butterflyfishes and Other Reef Fish Species**
- Item F-4 Request for Approval of a Special Activity Permit for Dr. Timothy Tricas, Department of Zoology, University of Hawaii, and Designated Assistants to Conduct Scientific Research Activities in Certain State Marine Waters of the West Hawaii Regional Fisheries Management Area, Hawaii, on Various Reef Fish Species**
- Item F-6 Request for Approval of a Special Activity Permit for Dr. Edwin Cruz-Rivera, Jackson State University, to Conduct Scientific Research Activities in Certain State Marine Waters, Island of Oahu Only, on Cyanobacteria, Marine Algae, Invertebrate, and Fish Species**
- Item F-7 Request for Approval of Two (2) Special Activity Permits to Ms. Kate Zolezzi, General Manager, Maui Ocean Center, and Designated Assistants to Collect Various Marine Life in Certain State Marine Waters**
- Item F-8 Request for Approval of a Special Activity Permit for Ms. Susan Burr, AECOS, Inc., and Designated Assistants to Collect Freshwater Animals (Gobies, Invertebrates, Damselflies) on Kauai**

Dan Polhemus for DAR described background. No changes.

Unanimously approved as submitted (Pacheco, Edlao)

- Item F-1 Request for Amendment to Papahānaumokuākea Marine National Monument Research Permit PMNM-2008-027, Previously Approved for Dr. Carl Meyer of the University of Hawaii, Hawaii Institute of Marine Biology, to Increase Shark Tags and Personnel**

Dan Polhemus asked to amend to 40 sharks instead of 20. The additional personnel will not be going now.

Unanimously approved as submitted (Johns, Agor)

Item C-1 Approval of Forms and Annual Timeframe for the Legacy Land Conservation Program

Charlene Unoki for Paul Conry of DOFAW asked the Board to delegate authority to the Chairperson to revise this.

Unanimously approved as submitted (Johns, Pacheco)

Item D-1 Rescind Prior Board Action of September 26, 2003 (D-15), Issuance of Direct Land License to County of Kauai and Waste Management of Hawaii, Inc. dba Sanifill of Hawaii for Soil Removal Purposes, Kekaha, Waimea, Kauai, TMK: (4) 1-2-02: portion 01.

Charlene Unoki representing Land Division reported background.

Unanimously approved as submitted (Agor, Gon)

Item D-3 Amend Prior Board Action of December 8, 2006, Agenda Item D-5 Sale of Remnant State Lands, Abandoned Railroad Right-of-way to Alan S. Takase, and Rescind Board Action of May 23, 2008 (D-7) Grant of Perpetual, Non-Exclusive Easement to DJAT, LLC for Utility Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-57: portion of 01.

Charlene Unoki asked to approve in principal and to amend applicant's name from DJAT, Inc or DJAT, LLC to DJAT LLC.

Unanimously approved as amended (Pacheco, Gon)

Any reference to DJAT, Inc. or DJAT, LLC should be replaced with DJAT LLC.

Item D-2 Grant of Perpetual, Non-Exclusive Easement to Hawaiian Telcom, Inc. for Utility Purposes and Issuance of an Immediate Right-of-Entry Permit for Planning and Construction Purposes, Weliweli, Koloa, Kauai, TMK: (4) 2-8-22: portion 6 and 14.

Ms. Unoki has no changes.

Unanimously approved as submitted (Johns, Edlao)

Item D-4 Issuance of Right-of Entry to the United States Army Corps of Engineers for its Defense Environmental Restoration Program of the Former Waikoloa Maneuver Area at Lalamilo, South Kohala, Hawaii, TMK: (3) 6-6-002:039.

Withdrawn (Johns, Edlao)

- Item E-1 Request from the elected Campaign Committee to Use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii, for a Political Fundraiser**
- Item E-2 Request for Approval for Mutual Retroactive Cancellation of the Mobile Food Concession Agreement SP 0053 at Wailua River State Park (Opaekaaa Falls Lookout) for the Period June 1, 2008 to September 31, 2008.**
- Item E-3 Request for Approval for Mutual Retroactive Cancellation of the Mobile Food Concession Agreement SP0049 at Diamond Head State Monument Exterior Parking lot for the Period of January 3, 2007 to May 31, 2008.**
- Item E-4 Request for Approval for Cancellation of Permit SP-0305, Lot 9, Waimea Canyon State Park, TMK (4) 1-4-003:006, Alma Zalopany Due to Non-Payment**

Dan Quinn for State Parks has no changes.

Unanimously approved as submitted (Johns, Gon)

- Item L-1 Approval for Award of Construction Contract - Job No. B10CH70A, Kawaihae Small Boat Harbor (South) Improvements, Phase 1 Kohala, Island of Hawaii, Hawaii**

Written testimony was received from Glenn Shiroma.

- Item L-2 Approval for Award of Construction Contract - Job No. F46C732C, Kokee/Waimea Canyon State Park Water System Improvements, Waterline Makaha Ridge to Puu Ka Pele, Kauai, Hawaii**
- Item L-3 Approval for Award of Construction Contract - Job No. F75C646A, Hapuna Beach State Recreation Area, Water System Improvements, South Kohala, Hawaii**
- Item L-4 Authorization to Enter Into a Cooperative Between the State of Hawaii, Department of Land and Natural Resources and the United States Department of Agriculture, Natural Resources Conservation Service, Regarding the Kilauea River/Wailapa Stream Debris and Sediment Removal Project Agreement-Locally Led Contracting**

Item L-5 **Permission to Obtain a Revocable Right of Entry (ROE) from the Office of Hawaiian Affairs (OHA) for the Plugging and Abandonment of Geothermal Well KA1-1**

Carty Chang representing Engineering Division has no changes.

Unanimously approved as submitted (Johns, Gon)

Item M-1 **Conveyance of Remnant: Portion of Federal Aid Project No. 8-B Hawaii Belt Road, Lava Flow Rehabilitation, Project No. ER 2(1), Lava Flow No. 1 Section at Pahoehoe 1-4, South Kona, Hawaii, abutting parcel Tax Map Key: (3) 8-7-3:7**

Item M-2 **Amendment No. 4 to State Lease No. DOT-A-03-0001 Traveler Services Concession Lease Lenlyn Limited, Honolulu International Airport**

Item M-3 **Issuance of Non- Exclusive Rent-A-Car Concessions Hilo International Airport**

Item M-4 **Issuance of Non- Exclusive Rent-A-Car Concessions Kona International Airport at Keahole**

Item M-5 **Issuance of Non- Exclusive Rent-A-Car Concessions Lihue Airport**

Item M-6 **Issuance of Non- Exclusive Rent-A-Car Concessions Molokai Airport**

Item M-7 **Issuance of Non- Exclusive Rent-A-Car Concessions Kahului Airport**

Item M-8 **Issuance of Non- Exclusive Rent-A-Car Concessions Lanai Airport**

Unanimously approved as submitted (Pacheco, Edlao)

Adjourned. (Johns, Gon)

There being no further business, Chairperson Thielen adjourned the meeting at 1:35 p.m. Recordings 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 H. Thielen
Chairperson
Department of Land and Natural Resources