

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

DATE: FRIDAY, AUGUST 22, 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 9:05 a.m. The following were in attendance:

MEMBERS

Laura Thielen
Robert Pacheco
Taryn Schuman

Timothy Johns
Jerry Edlao
Ron Agor

STAFF

Charlene Unoki, LD
Sam Lemmo, OCCL
Dan Polhemus, DAR
Paul Conry, DOFAW
Barry Chung, LD

Eric Hirano, ENG
Steve Thompson, SP
David Gaud, DOCARE
Kimberly Mills, OCCL

OTHERS

Colin Lau, Deputy Attorney General
Roger Harris, Item D-4
Heidi Guth, Item D-8, K-2
Joan Malama, Item E-1
Carole McLean, Item E-1
Diana Burg, Item E-1
Randy Teruya, Item D-9
Moana Keaulana-Dyball, Item D-9
Matt Poepoe, Item K-1
Poncho Alcon, Item K-1

Terrance Nago, Item D-10
Donn Eisele, Item D-8
Luciano Miverbi, Item K-2
Gene Naipo, Item E-1
Dr. Jim Anthony, Item E-1, F-1
Roosevelt Freeman, Item E-1
Merlin Keaulana-Dyball, Item D-9
Sesnita Moepono, Item K-1
Ella Alcon, Item K-1

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

Member Schuman recused.

Item A-1 Amended July 25, 2008 Minutes.

Unanimously approved as submitted (Johns, Edlao)

Members Schuman and Agor recused themselves.

Item A-2 August 8, 2008 Minutes.

Unanimously approved as submitted (Pacheco, Johns)

Item D-10 Issuance of Right-of-Entry to the Department of Water Supply, County of Hawaii, for Earthquake Repair Work to Waikoloa Reservoir #2 located at Waimea, South Kohala, Hawaii; TMK: (3) 6-5-001:20 por. And 047 por.

Member Johns recused himself.

Charlene Unoki representing Land Division reminded the Board of the October 2006 earthquake and damage as a result. She referred to page 2, paragraph 2 regarding the Governor's proclamation which is still in place. Staff asked to authorize right-of-entry.

Terrance Nago of the Hawaii County Department of Water Supply reported they are finalizing plans and specs and will be ready for construction. He asked the Board's approval. Parker Ranch has written a letter of concurrence and staff is waiting for DHHL's letter.

Unanimously approved as submitted (Pacheco, Edlao)

Item L-3 Applications for a DLNR Dam Safety Construction/Alteration Permit. Permit No. 30 - Waikoloa Reservoir No. 2 (HI00122) Reservoir Repair, Kamuela, Hawaii

Eric Hirano, Chief Engineer for Engineering Division, reiterated Charlene Unoki's background in regards to Item D-10 and noted currently the dam has been empty since 2006. His staff reviewed the proposal and recommended approval. He distributed exhibit 4 involving the seismic analysis of the water supply proposal which staff approves.

Mr. Nago thanked the department for their assistance.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-4 Set Aside to County of Hawaii, Department of Water Supply for Waterline and Reservoir Purposes and the Department of Public Works for Roadway Purposes; Issuance of a Construction and Management Right-of-Entry, Makaula-Ooma-1st, North Kona, Hawaii, TMK: (3) 7-3-10: Portions of 33, 42, 44, and 45.

Charlene Unoki of Land Division reported background.

Roger Harris representing Palamanui introduced himself and Guido Gialometti.

Unanimously approved as submitted (Pacheco, Johns)

Item D-8 Sale of Remnant to Hoku Lele LLC, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-25:abutting 51.

Ms. Unoki spoke on the background.

Donn Eisele representing Hoku Lele LLC explained the results of a wedge shape property after the road was moved. He supports this.

Ms. Unoki and Heidi Guth for OHA confirmed that this is a remnant. Ms. Guth acknowledged that this property could only have easements. OHA is concerned with the intent of the sale of the easement citing that the circuit court agreed to the sale of remnants, but the Hawaii Supreme Court decision is to hold ceded lands as long as possible until Native Hawaiians settle their claims. OHA finds it difficult with selling this easement to a private property owner because he could convey it elsewhere.

There was discussion regarding remnants, but in this case could only be used for access. The problem is if there is an accident the State is still liable. The ceded lands are always recorded.

Unanimously approved as submitted (Schuman, Agor)

Item K-2 Request for Public Hearing and Small Business Impact Determination: Petition to Amend Title 13, Chapter 5, Hawaii Administrative Rules (Chapter 13-5 HAR), to Redesignate a Portion of the State Land Use (SLU) Conservation District General Subzone to the Protective Subzone of Papohaku Beach, Kaluakoi Ahupuaa, Island of Molokai by the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) Subject Parcel TMK:(2) 5-1-006:156 (portion) owned by Various Papohaku Ranchland Subdivision Landowners

Office of Conservation & Coastal Lands (OCCL) Administrator, Sam Lemmo, gave a brief history background. He met with the Board of Papohaku Ranchland Subdivision, explained what staff is doing, and sent letters to each subdivision landowner. If this is approved staff will go to Molokai to solicit peoples' opinion. He spoke on staff's recommendations and noted that the president of the Ranchland Subdivision was not in favor.

Member Edlao was concerned that the people of Molokai will have little time to read and absorb the changes presented prior to the public meeting. Mr. Lemmo suggested forwarding this information to the Molokai Library or placing it on the web.

Chair Thielen inquired whether there are any small businesses because normally staff does a pre-consultation with the Small Business Regulatory Board where Mr. Lemmo said he will follow-up.

OHA representative, Heidi Guth said they support this. She described everyone involved in the management plan. OHA had several public meetings and mailed the plan to each of the homeowners. She was surprised to hear that the homeowner's association is concerned because they were part of the process in creating this plan.

Luciano Miverbi from the University of Hawaii, Department of Urban & Regional Planning conducted the study with his students. They met with the Molokai community before and after the study which has encouraged people to find ways to protect the dunes.

Unanimously approved as submitted (Edlao, Johns)

Item E-1 Request for Approval for a Revocable Permit for Friends of He'eia for He'eia State Park, Oahu

Steve Thompson for State Parks reported on the background. The RFQ/RFP is currently being reviewed at the Attorney General's office, but that process will not be completed by the lease expiration and therefore staff is requesting to extend the RP on a month-to-month basis until a more permanent solution is achieved through the RFP process.

Member Johns asked whether there is a curator agreement and Mr. Thompson confirmed that there is with the canoe club.

Chair Thielen related the history and that the Board opted to do the 2 year agreement. The RFP shouldn't take long at the Attorney General's office, but this should have come through sooner. Mr. Thompson explained that the staff member working on this had left and a neighbor island manager was brought in to cover. The RFP will be in place before the 1 year RP month-to-month expires. Once staff receives the RFP from the AG's Office it will take 6 to 7 months to process – publication, public and staff review, then select and finalize.

Member Pacheco didn't appreciate the 1 page submittal because it's difficult for the Board to keep up with the history.

Joan Malama for Friends of He'eia indicated that they have no money and that their executive director is doing all the work from maintenance, to teaching classes, and working with children. It's difficult to obtain grants on a month-to-month or for a year. The Friends of He'eia asked the Board to consider a more extensive timeline or longer lease.

Gene Naipo from Friends of He'eia described his work with the children for the past 20 years and expressed his desire to continue this.

Chair Thielen noted that the AG's Office said staff cannot extend the existing lease. They can only go month-to-month for up to one year until the RFP/RFQ is published.

There was discussion on whether curator agreements were cancelable which they are with notice. Also, there was some discussion on whether curators have rights to concessions which there are none.

Member Pacheco asked whether there was something in the statutes or lease documents that would provide relief when the State's business isn't done in a timely manner. Chair Thielen and Member Johns said there isn't anything. Chair Thielen apologized that this RFP/RFQ wasn't completed in time. The only option the Board has is to do a revocable permit on a month-to-month basis for up to one year. She suggested and encouraged State Parks to assist with the Friends on maintenance or anything else with the park.

Ms. Malama reported that the Friends were told to go to a maintenance person which they felt was inappropriate for their executive director to seek directions from a maintenance person except for cleaning issues. This maintenance person stays for 10 minutes to clean a toilet and take trash which isn't sufficient when there are lots of people coming to the park. Chair Thielen agreed that it isn't appropriate to contact a maintenance person for non-maintenance issues.

Carole McLean, Executive Director of the Friends of He'eia, conveyed some history and was disappointed with the treatment of her board. She noted that prior to the end of the Friend's 10 year lease they helped prepare and publish a Kaneohe Master Plan. The Friends requested a long term lease for 6 years and were told by staff that they were not eligible or did not qualify and nothing could be done. During this period, other organizations promoting environmental and cultural programs got long term leases – Hawaii Nature Center, Iolani Palace as examples. Ms. McLean related the history of their leases and that nothing has moved forward. She called State Parks administration every 2 weeks and was told reasons why it was delayed. Their banquet concession brings in \$17,000 a year which doesn't pay the bills. They can't do business as a regular concession because the park is filthy, there is no security and it's unsafe. The Friends wrote to the Chairperson asking for a 1 year extension transition time after the RFP process because of banquet reservations to April 2009. She's a volunteer and expressed

their difficulties due to lack of security resulting in vandalism, drugs, homeless, and 18 burglaries. She and her Board are tired. Her Board is threatening to quit. Ms. McLean asked why they were sent a bill for Sept. 1, 2008 to Aug. 31, 2009 rent (which they paid) when they are on a month-to-month. She was disappointed that the Land Board allowed this to happen.

Dr. Jim Anthony reiterated Member Pacheco's concern about the submittal describing non-action by State Parks giving a 15 year Malaekahana example. He indicated that he and his wife applied for an RP 2 years ago and has yet to see it. He described another incident when a Utah man was given a special management use permit within weeks, did damage to the shoreline, and left the islands. Mr. Anthony raised the contested case issue with the Windward Retreat Center, but has heard nothing. He expressed his frustration by saying that the Chairperson has failed to run this Department and that he will go through political pressure to make her step down.

Diana Burg, a Friends of He'eia Board Member, was very angry with State Parks. She thanked Member Johns for proposing a conservatorship. She suggested a possible solution under HRS 171-43 where the Board could give the Friend's an educational lease for that part of their activities. To continue that portion of the lease that allows the Friends to charge a small amount on a month-to-month or to look at a conservatorship. The current lease is for the 2 buildings on the property which could be run concurrently in the same area or do a lease for the grounds to the park.

Member Edlao asked how long a lease they would need. Ms. Burg said the RFP is for a 25 year lease. For the interim portion they would like a minimum of 2 years.

Roosevelt Freeman from the Office of Representative Colleen Meyer informed the Board that Representative Meyer is in favor of a longer term lease. He indicated that the State Parks administrator told them last year that the RFQ process would begin within 6 months. He asked what happens now that the Friends lease is about to expire. Do they wait another 6 months like it was promised before? The Friends work hard and Representative Meyer wants to see them continue that work.

Chairperson Thielen asked Mr. Thompson that the Friends are asking for a 2 year RP, but the Board can't give more than 1 year and suggested a possible 2 year kokua contract conservatorship educational lease. Under that RFP/RFQ does it include those kinds of activities? Because it is a public process and any group can bid on it. Are the Friends ok with a 2 year conservatorship to transition out while a new entity transitions in? The Friends agreed, but Member Johns indicated that it is not on the agenda today and the Board can't vote on it. It would have to come back to the Board on a future agenda.

Member Johns suggested requiring the Department from having an RFP (assuming it's issued) start before Sept. 1, 2009. He asked whether this RP will come back to the Board. The answer was no because it would have been approved by the Board. Chair Thielen noted that staff has to change the dates of the RFP anyway. Member Johns said in effect the Friends would have their RP up to 1 year month-to-month, but guarantee

them at least 1 year because the RFP will happen during that year, in proposal only. Chair Thielen assumed if the existing operator is the successful bidder on the RFP they would want to switch over to the long term lease and get off the month-to-month revocable permit. But if a new entity came in then the month-to-month RP continues to the end of the year to transition.

There was discussion on whether the RFP/RFQ covered the entire area when there is a curatorship, which includes the caretaker's cottage, and would be reconsidered in 2 years. Chair Thielen said the intent of the RFP/RFQ is to recognize that area has a curatorship.

Dr. Anthony recommended that the Land Board needs to specify a deadline date for State Parks to produce the RFP. Chair Thielen explained that the Board is limited by Sunshine Law on what they can vote on today, but the Board expressed to State Parks Division that they are disturbed by the length of time it has taken.

Dr. Anthony referred to page 2, recommendation #2 and strongly opposed to it because it gives the Chairperson the opportunity to act without any kind of public review. He felt past results were unsatisfactory and he urged the Board to delete that.

Member Johns made a motion to approve staff's recommendation, but with the addition of "up to 1 year on a month-to-month basis." Also, add to Item #2 "consistent with Item #1." He also requested that the Department provide at the next meeting a status report on the RFP/RFQ timetable and at that time for the RFP/RFQ to not commence until Sept. 1, 2009. But his motion only covers the items before the Land Board today. Member Schuman seconded.

Member Johns asked what HRS 171-43 does. Colin Lau, Deputy Attorney General, explained that it's for educational purposes within the state park area which could be a possibility and to address it at the next meeting when staff updates the RFP/RFQ process. Member Pacheco suggested including an investigation into the kokua curatorship.

Chair Thielen summarized that the Board passed a motion to approve a month-to-month revocable permit up to 1 year to the Friends of He'eia. The Board asked staff to put on next month's agenda (in 1 month) an update and discussion on whether the educational lease is an option in State Parks and if the law will permit that type of lease to include concession activities or is it limited to education work. Also, to find out whether the conservatorship contract is an option and would it permit the concession activities or not. Report on the status of the RFP/RFQ and the timetable for publication. The Board asked that State Parks work with the Friends to get them the information prior to posting of the notice.

The Board expressed their unhappiness and embarrassment with State Parks staff for not doing their job.

The Board:

Approved staff's recommendation with the addition in recommendation #1 for up to 1 year on a month-to-month basis and #2 consistent with #1.

Unanimously approved as amended (Johns, Schuman)

Item F-1 Request Approval to Hold Public Hearings to Adopt Hawaii Administrative Rules, Chapter 13-60.7, Kahekili Herbivore Fisheries Management Area, Maui

Division of Aquatic Resources (DAR) Administrator, Dan Polhemus, reported on the impacts that this is one option to the solution. Staff has had extensive public outreach and there is a lot of science to support this.

Dr. Anthony, Executive Director of the Hawaii-Laiekwai Association asked to defer and presented a Honolulu Advertiser article. He cited that the law doesn't allow experimental approaches and this is being supported by Federal funds. He recommended allowing time to research and to get legal opinion on whether we can do this. Member Pacheco clarified that this agenda item is for approval to hold the public hearings and he asked whether the issues Dr. Anthony raised should be brought there. Dr. Anthony doesn't think this is about public hearings that this is about implementing these rules. Member Pacheco explained that this item is to approve public hearings for proposed adoption of these rules. Dr. Anthony said right, but his association is saying the science is defective. Before going to that step the Board should step back and see whether this is useful at all because we don't have any science. What we have here is Dan Polhemus saying "we believe this is the cause." Belief is not good enough. Member Edlao said that this has been going on for a long time and there has been communication. He is from Maui and fishermen support this and there is no opposition. This is to hold the public hearings and there is still opportunity for Dr. Anthony to present his case. Dr. Anthony said that the Board members have a distorted view of these discussions which Mr. Polhemus refers to. Staff goes out and talk to fishermen, but we don't know what they said to them. Dr. Anthony thinks fishermen by and large, besides the knowledge that comes from their na'au, don't understand science. The place to examine science is here before this Board. Are there any fishermen here? He doesn't see any here. There was one gentleman who raised his hand, but didn't speak.

Mr. Polhemus reported that the press release was not generated or bedded by DLNR.

Chair Thielen reported that she and Member Edlao attended the Governor's Advisory Counsel on Maui. A hundred people attended with unanimous support to move on the rule making hearings and they felt there was significant outreach over the past 2 years. For the rule making public hearings it was a suggested to have the first half hour as an informational hearing to allow more dialogue then move into the formal rule making.

Member Edlao moved to approve request and Member Agor seconded.

Member Johns wondered whether this will be brought back to the Board. He doesn't agree with Dr. Anthony's recommendation, but he does agree that there is a lot of science to indicate a lot of nutrient levels coming from on shore uses that might be the explanation for this. Mr. Polhemus replied that staff can provide as much science as the Board wants. They can provide Dr. Anthony with the complete list of all the public outreach that was conducted. The science is open, peer reviewed, and anyone is open to review it.

Unanimously approved as submitted (Edlao, Agor)

Item D-9 Re-submittal, Forfeiture of General Lease no. S-4138, Merlin Keaulana-Dyball and Moana Keaulana-Dyball, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:25.

Charlene Unoki of Land Division reminded the Board that this was deferred from the last Board meeting because the Board wanted information about Act 90 which was signed by the Governor in 2003. It took DLNR awhile to work with Dept. of Agriculture (DOA) because within DLNR there were concerns with watershed areas and who would handle public hunting. In 2005 staff came before the Land Board to turn over all the agricultural leases statewide to DOA. Two from Molokai has been set aside to DOA, 10 plus leases covering Big Island, Oahu and Maui are in the process without delay. As soon as DAG's survey provides description staff will talk to DOA to confirm that tenants meet lease terms and conditions. These can be general leases and month-to-month revocable permits. If the tenants are in compliance with the lease terms staff will ask the AG's Office to prepare the executive order documents.

Member Johns asked referring to page 4, 6th paragraph, 3rd sentence "In February 2006, DOA staff inspected the subject leasehold..." Is it not in compliance with the intent of Act 90 and should not be included for transfer or that the lease was not in compliance with its lease terms and therefore was not eligible for transfer under Act 90? Ms. Unoki confirmed the second part. It was eligible to be transferred over to DOA, but the problem, at that time, was the tenant was not doing agriculture. Member Johns concluded that DOA decided not to accept the transfer of this particular lease under Act 90. Ms. Unoki said she wouldn't say DOA won't accept it. The DOA staff can go back to the Board of DOA to ask that this be one of the leases to be included because the tenant had complied. In 2006 the tenant complied with everything, but he wasn't farming.

Chair Thielen asked whether DOA is requiring that not being in arrears with taxes and payments on these leases before accepting them or is it more a DOA's concern that the tenant is doing agriculture operations. Ms. Unoki replied it's both.

Randy Teruya, who is the Agriculture Asset Manager for the Hawaii State DOA, reported that DOA had submitted to its Board some time ago a listing of leases on all islands considered unconditionally acceptable to the DOA. Site visits were made from 2006-

2007, there were meetings with the lessees, and it was determined the lessees were in full compliance. The lessees were performing agriculture on the property, they were well maintained, rents were paid, DOA confirmed with Land Division, all terms and conditions were in compliance. There was a second conditional list where leases were reviewed and determined that some or all of the terms and conditions were not in compliance. Under Act 90 which is Chapter 166-E, non-agricultural park lands, the requirement for transfer from DLNR to DOA is the lease must be in full compliance with the terms and conditions. In this particular case, the property has no agriculture on it and he presented photos taken this past Tuesday, August 19th which does not show any active agriculture.

Chair Thielen asked whether this property was eligible for the transfer provided it meets the condition of the law. Mr. Teruya confirmed that. Chair Thielen also asked in the process of transferring from DLNR to DOA there needs to be an agreement by DOA that they are willing to accept the transfer. Mr. Teruya acknowledged that. Chair Thielen added until that acceptance of transfer the property will remain with DLNR's inventory. Ms. Unoki acknowledged that. Mr. Teruya also confirmed that acceptance is made by the Board of DOA.

Member Pacheco asked if the lease is forfeited this property can't be transferred until staff reissues the lease. Mr. Teruya explained at the issuance of Act 90 the DOA had not had the opportunity to submit for approval under HRS Chapter 91, rules and regulations that govern the program. In December 2006, Governor Lingle put into affect HAR that dictate the governance of the program. DOA has the ability to manage vacant lands and there are procedures.

Chair Thielen made it clear that the DOA staff and Board would determine whether the lessee is doing agriculture or not. The Board of Land and Natural Resources does not have the ability to make that determination.

Mr. & Mrs. Keaulana-Dyball asked to see the photos Mr. Teruya presented. Mr. Keaulana-Dyball described how they had 10,000 kava plants, but their house burned down in 2000, it took 2 years to get the insurance settlement, they couldn't live on the property and had to move out, at the time of the rental increase they're family grew and they hesitated to build the house. Over the years there were excuses why they weren't being transferred to DOA and the question of who their landlord is. This is the first time he has heard that they were even considered because he thought they were being ignored. He doesn't want to develop that property if he is going to get charged \$20,000/year rent because they are subsistence farmers not fake farmers. They used to be an orchid exporter and want to get started, but they don't know who the landlord is.

Chair Thielen knows that they have a disagreement with DOA, but until DOA accepts the property DLNR is the landlord. Mr. Keaulana-Dyball understood and acknowledged that is what the governor said, too. Chair Thielen added the process is for him to work with DOA staff to make sure those conditions are satisfied.

Mr. Keaulana-Dyball said they have no other recourse but to comply with the terms of their contract. Last week he sent the DLNR – Hilo office their conservation plan, he has a certified receipt dated August 18th that they received it, he has a notarized performance bond, and he presented a check for \$4,500 for their rent for the rest of 2008. Member Johns said that the Board could approve the recommendation to defer the cancellation for 30 days so the Department can verify all that the lessee presented. If not, then move on.

Member Pacheco moved to approve staff's recommendation with a deferral of action for 30 days for staff to find if it is completely cured. Otherwise, the lease will be cancelled. Member Johns second it.

Member Johns indicated that Act 90's purpose was meant to move ag leases to DOA because people were uncomfortable with DLNR managing ag leases. This lease is a good example.

Chair Thielen summarized that the Board voted to terminate the lessee's lease, but gave them 30 days to come into full compliance with the defaults listed here. Mr. Keaulana-Dyball brought some documents here today, but she strongly stressed do not assume that what was brought here brings him to full compliance. He must work with Land Division staff to make sure that what he brought meets the requirements under the lease. If it isn't, he must get that to staff within 30 days otherwise the lease is terminated. Land Division staff was there to help them. Chair Thielen suggested, if all is successful, that the lessee work with DOA to satisfy the active agriculture and to get the transfer completed so in subsequent years the lessee will be under DOA's lease rent. As long as the lessee is under DLNR he is subject to their lease rent.

Member Pacheco wondered if this is completely cured whether it comes back to the Board which it doesn't per the rest of the Board.

Mr. & Mrs. Keaulana-Dyball thanked the Board.

The Board:

Approved and amended staff's submittal to read "Tenant has 30 days to submit payment of rent, performance bond and conservation plan to Land Division. If the three (3) items are not submitted to Land Division within 30 days (September 22, 2008), the lease will be cancelled."

Unanimously approved as amended (Pacheco, Johns)

Item K-1 Conservation District Enforcement File MO-08-28 Regarding the Alleged Unauthorized Construction of a Cement Pad Within Coastal Waters by Hui Malama O Mo'omomi (HMM) on Submerged State Land Makai of TMK (2): 5-2-005: 006/019, Mo'omomi Bay, Ho'olehua, Island of Molokai

Sam Lemmo representing OCCL distributed a letter from Captain Miller Maioho explaining the importance of the boat ramp for rescues. Mr. Lemmo reminded the Board that this item was deferred from the June 13, 2008 Land Board meeting pending a site visit on June 18th. He met representatives from Hui Malama O Mo'omomi (HMM) and Senator Hee. Mr. Lemmo described the site on submerged lands; he confirmed that it is on conservation lands, and that the slab is not impacting the area. Its sole purpose is for launching boats. Because it is unauthorized it is in violation. Staff offered recommendations and proposed a fine of \$2,000 plus \$300 for administrative costs. HMM was recommended to either remove the boat ramp or come in to apply for an after-the-fact CDUP. If HMM is successful with the CDUP they will need to talk to the Maui District Land Office to get a land disposition for the ramp, probably an easement.

The question was raised whether after-the-fact CDUPs had been issued in other instances which they have in Kaneohe Bay.

Member Edlao asked why a \$2,000 fine. Mr. Lemmo explained that the violation occurred under the old statute which recommends a single maximum penalty. Under the new statute it's \$15,000.

Sesnita Moepono, a Native Hawaiian and staff attorney for Senator Clayton Hee's office, introduced Matt Poepoe, President of Hui Malama O Mo'omomi, Ella Alcon, and Enchock Alcon. She conveyed that HMM obtained a lease from DHHL for 380 acres in 1993 to exercise their Native Hawaiian gathering rights and has continued to work 190 acres since then. She reiterated the use of the slab for ocean rescues by Maui Fire Dept, clean up of debris and subsistence living by the residents. Ms. Moepono indicated that the \$2300 fine would be a hardship for HMM because their members are unemployed and it would be impossible to raise that kind of money. She asked if there is a process for organizations to claim their exercise of Native Hawaiian gathering rights to please inform HMM of how to go about claiming that. Mr. Poepoe was informed about this the other day and did not have time to notify members or put this in writing.

Matt Poepoe described his background on Molokai and expressed his dismay with being treated like a criminal because he didn't do anything wrong. No State agencies ever came to do anything at Mo'omomi. Molokai residents support his caring for this place. He explained how special Mo'omomi is, it's well managed, he does Hawaiian science, and that he educates everyone from around the world. He disagreed with staff's recommendation because he is being fined without a court and this is the first time. It depresses him that he has to listen to someone who doesn't know about Mo'omomi and it's not fair. He would hate to put up a gate because he'd rather leave it open. Because of one complaint this has happened. Mr. Poepoe isn't hiding anything. He would be willing to educate our staff (about Mo'omomi).

Member Johns explained that he visited Mo'omomi 10-15 times when he worked at Nature Conservancy to buy those lands from Molokai Ranch and had worked with DHHL. He wants Mr. Poepoe to know that HMM's work with the kids is appreciated

because they are a model for the rest of the state. HMM has a set of rules that they follow and the Board has a different set of rules they are figuring out how to deal with.

Chair Thielen echoed Member Johns sentiments. She explained that there are a lot of people putting things on the beach. To allow one group to do this and not another would cause friction with the other group. Sometimes the Department has to do a formal recommendation because they have to be even across the board. Staff changed the recommendation from removal of the slab to allow an after-the-fact permit. She gave the example of a hotel putting in a boat ramp. Mr. Poepoe described the damage to the beach before the slab was put in. Chair Thielen explained the reason for the rule is to allow staff to make sure the slab is going in the right place.

Member Edlao reiterated Mr. Poepoe's comment of "feeling junk" because Mr. Poepoe does good work for the community and to have this happen. He hopes to resolve the fine.

Ms. Moepono reiterated the question is there a DLNR process where people can make a claim for exercising their Native Hawaiian gathering rights and to have an exception or be recognized for the slab because without it they would not be able to exercise those rights. Chair Thielen described groups working with Forestry to gather koa trees in a manner that maintains the stewardship of the resources. She reiterated that the process, in this case, is the after-the-fact permit to keep the boat ramp. The reason is for staff to marry the cultural rights with staff who are making sure it's in the right place and the sand isn't moving for example. If harvesting koa trees staff may want to harvest in one area and not another. In this case this was put into place many years ago so this would be the after-the-fact permit. Member Johns indicated that there are policies in the Department that recognizes constitutional and traditional customary gathering rights. But he doesn't think there is a separate policy that says file for permission to exercise those rights. Chair Thielen confirmed that she doesn't think there is a special permit for that, but staff does work with groups to exercise those rights. Ms. Moepono differentiated between a hotel and HMM which is a non-profit to exercise their Native Hawaiian gathering rights. HMM wants to pass down their knowledge and wasn't aware of any rules when this happened. Member Pacheco noted that the process of an after-the-fact permit is the same as if you were applying for one. Chair Thielen added staff works closely with HMM on the permit.

Poncho Alcon, a Molokai resident introduced himself and his wife Ella. He described the use of the ramp and agreed to a fine. He suggested, like the courts, fining with community service to use Matt's expertise to go into the schools because HMM is a non-profit and they don't have any money. He knows Matt folks saw a problem and fixed it. It's not like someone building their new house putting in a wall, getting a fine and paying for it because they can.

Ella Alcon sits on the Maui Fire and Public Safety Commission representing Molokai. She reiterated the issue of no where to launch their jet skis and public safety.

Member Edlao discussed that the slab is doing good, doesn't affect the shoreline, but it is still a violation. He wanted to waive the \$2,000 fine, pay the incurred \$300 administrative costs which could be accommodated, and come for the after-the-fact permit. Chair Thielen noted that it is important for public access and maybe adding a condition. Mr. Lemmo wasn't sure how DHHL would feel about mandating public access.

Member Edlao moved to approve staff's recommendation, but to waive the \$2,000 fine. Go with the \$300 fine (which could be discussed). And proceed with the rest of the recommendation. Member Johns second it.

Chair Thielen summarized the vote was to accept staff's recommendation except eliminate the \$2,000 fine. We keep the \$300 fine and within 180 days HMM file an application for an after-the-fact conservation district use permit. If that is not done HMM must remove the slab. She suggested HMM work with OCCL staff on the CDUP.

The Board:

Approved staff's recommendation, but amended to waive the \$2,000 fine.

Unanimously approved as amended (Edlao, Johns)

Item F-4 Request for Approval of a Special Activity Permit for Mr. Damien Kahekili Cie, Scripps Institute of Oceanography, and Designated Assistants to Conduct Scientific Research Activities in Certain Hawaii State Marine Waters, on Live Rock

Dan Polhemus representing DAR explained the background. Staff indicated that there will be disturbance of live rock, requires a department permit, and no live material will be transported out of state or inter-island. The project is attempting to access nutrient loads from current and ancient aquaculture facilities which involve coring fishponds to get a time sequence and comparing them.

Damien Kahekili Cie described being from Keanae, Maui and that his family has fishponds. He is also in touch with people who run the He'eia fishpond and fishponds on other islands. This is toward his dissertation to learn from the historical record and to have more productive, environmentally friendly fishponds.

Member Pacheco asked how the nutrient data is obtained from the coring. Mr. Cie displayed a 1" x 2" sample core which is non-invasive. He gets the calcium carbonate from the coral and dates when these ponds were developed. He has sites from other Pacific islands to compare with.

Member Johns asked whether State Historic Preservation Division (SHPD) had any issues. Mr. Polhemus was not sure because these fishponds are private property and he suggested speaking to SHPD.

Chair Thielen suggested that the recommendation be specific to what activities were taking place and maybe adding a condition to obtain a review or permits from other divisions including SHPD and to comply with other state agency requirements because we don't want Mr. Cie to assume approval of this today means you have state approval to do the work. There may be permits required by Department of Health for water quality purposes. She asked staff to be aware of this and to interface with SHPD. Mr. Polhemus noted that DAR is overhauling the special permit process and will take this under advice. Chair Thielen suggested revising the language. Mr. Polhemus suggested it say "This permit is subject to compliance of all the general and special conditions as noted in the attached permit." As for the recommendation lines 2 to 4 of the 2nd paragraph of page 1 provides permission to drill into Hawaiian fishpond to collect x,y,z and no live material will be transported out of state or inter-island. Member Johns noted it's not described in the special permit application. Mr. Polhemus agreed and he indicated to staff that the actual applications weren't attached to these submittals. Chair Thielen suggested he rework the language to come up something more specific and come back later in the meeting.

Mr. Polhemus directed the Board to General Conditions, D and read it. He amended the current recommendation by adding after "...collection of live rock by coring fishpond walls on Oahu, Molokai and Maui subject to the general and special conditions listed in the attached permit." He spoke to Dave Gulko who will amend the permits appropriately before finalizing.

Unanimously approved as amended (Pacheco, Agor)

Add to staff's recommendation by coring fishpond walls on Oahu, Molokai and Maui subject to the general and special conditions listed in the attached permit.

Item B-1 Request Board Approval to Enter Into a Joint Enforcement Agreement between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the National Marine Fisheries Service, Office of Law Enforcement

David Gaud representing DOCARE asked for approval and he described background. He indicated that DOCARE has had a JEA with NOAA since 2006 and they would like to continue it to support their operational budget with federal funding which will help offset budget cuts.

Unanimously approved as submitted (Johns, Pacheco)

Item C-1 Request for Approval to Enter Into A Memorandum of Understanding with the Natural Resource Conservation Service Pertaining to Mineral Rights and Conservation Easements

Division of Forestry & Wildlife Administrator, Paul Conry reported background.

Chair Thielen mentioned that the federal program can't continue without this.

Unanimously approved as submitted (Pacheco, Johns)

12 noon Member Johns departed.

- Item D-1 Cancellation of Governor's Proclamation dated April 11, 1917 for Panaewa Forest Reserve, Puna and South Hilo, Hawaii, TMK: (3) 1-6-3; 2-2-46; 2-2-48; 2-2-52; 2-2-56; 2-2-61; 2-4-4; 2-4-49.**
- Item D-2 Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Waiakea Forest Reserve and Issuance of a Management Right-of-Entry, South Hilo, Hawaii, TMK: (3) 2-4-8:22 and portion of 1.**
- Item D-3 Withdrawal from Governor's Proclamation dated January 3, 1923, Waiakea, Hawaii TMK: (3) 2-4-49: portion 31.**
- Item D-5 Consent to Assign General Lease No. S-5131, Shonna Rosalie Nani Kuahuia Taetuna, Assignor, to Cheyenne Kuahuia, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:17.**
- Item D-6 Cancellation of Governor's Executive Orders No. 535 & 1429 and Reset Aside to Department of Accounting and General Services for Washington Place Purposes; Amend Prior Board Action of December 10, 1999, Item D-19, Addition to Washington Place; Honolulu, Oahu; TMK: (1) 2-1-018:001.**
- Item D-7 Grant of Perpetual, Non-Exclusive Easement to the Department of Defense for Emergency Civil Defense Siren, Waikiki, Honolulu, Oahu, TMK: (1) 2-3-37:12**

Ms. Unoki explained that items 1, 2 and 3 are housecleaning items due to Act 90. No changes.

There was no public testimony.

Unanimously approved as submitted (Agor, Pacheco)

- Item E-2 Request from the Good News Jail and Prison Ministry to use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii, for a Fundraiser Luau**

Item E-3 Issuance of Right-of-Entry to the United States of America, Department of the Army, U.S. Army Engineer District, Honolulu, for Investigation/Inspection over a Portion of the Former Waikoloa Maneuver Area at Lalamilo, South Kohala, Hawaii, Tax Map Keys: 3rd/6-6-02:31, 32, 34, 35,40, 41 and 42

Item E-6 Amend Prior Board Action of July 25, 2008, Under Agenda 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

Steve Thompson of State Parks had nothing to add.

There was no public testimony.

Unanimously approved as submitted (Edlao, Agor)

Item E-4 Permission to Solicit for Bids and Enter into a Services Agreement for Entrance Fee Collection at Diamond Head State Monument, Oahu

Item E-5 Request for Approval for Reinstatement of Permit SP-0305, Lot 9 Waimea Canyon State Park, Tax Map Key (4) 1-4-003:006, Alma Zalopany

Item E-7 Request for Approval of the Placement of Hazard Warning and Management Signs on Improved Public Lands at Various Locations Under the Jurisdiction of the Division of State Parks on Kauai and Oahu Pursuant to Act 82, Session Laws of Hawaii, 2003

Mr. Thompson said these stand as submitted.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-5 Request for Approval of a Special Activity Permit for Mr. Ranjan Muthukrishnan, Department of Ecology and Evolutionary Biology, UCLA, and Designated Assistants to Conduct Scientific Research Activities in Certain State Marine Waters of the Island of Oahu, on Live Rock and Coral

Mr. Polhemus suggested amending the recommendation to read at the very end after Oahu, subject to the general and special conditions as listed in the attached permit. This is a phrase that staff used on the NWHI permits which should be on all permits.

Unanimously approved as amended (Edlao, Pacheco)

Add to the end of the recommendation subject to the General and Special Conditions as listed in the attached permit.

Item F-2 Request for Approval for a Permit Application for Mr. James K. Mawae for Netting Activities within Area 1A only, in Kaunakakai Harbor, Molokai (8/22/08-6/30/09)

Item F-3 Request Approval to Extend the Temporary Closure to Bottomfishing from August 31, 2008 until November 14, 2008 for All State Marine Waters Surrounding the Existing Bottomfish Restricted Fishing Areas of the Main Hawaiian Islands

Mr. Polhemus indicated that the Legislature passed Act 112 which allows the Board to open and close seasons, set total allowable catches, set individual quotas, etc. contingent upon several conditions where the fishery is a joint fishery which it is. The fishery has to be officially declared over fished. Chair Thielen added and consistent with Federal regulations. Mr. Polhemus clarified Member Pacheco's question that rules implement statutes.

Chair Thielen asked Mr. Polhemus to explain about the limits on fishing. Mr. Polhemus reported that there has been a problem with the bottom fishing for years due to a decline. The fisheries are highly depleted and have been on the Federal declaration for years. As a result staff needed to put controls on the fishery and he explained the federal act. He stated statistics which is still going down. This is a precautionary measure while the risk analysis is being rerun. He doesn't think the fisheries will recover.

Mr. Lau asked whether the fisheries act was consistent with Act 112. Mr. Polhemus said it was revised by Congress in December 2006.

Unanimously approved as submitted (Pacheco, Edlao)

Item L-1 Appointment of West Maui Soil and Water Conservation

Item L-2 Approval for Award of Construction Contract - Job No. F46C602A, Kokee State Park, Kokee Road Widening Waimea, Kauai, Hawaii

Unanimously approved as submitted (Schuman, Edlao)

Item M-1 Amendment No. 12 to Lease No. DOT-A-92-0018 (Lease) Restaurant and Lounge Concession Lease Host International Inc., Honolulu International Airport

Unanimously approved as submitted (Edlao, Schuman)

Adjourned. (Pacheco, Edlao)

There being no further business, Chairperson Thielen adjourned the meeting at 12:18 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 H. Thielen
Chairperson
Department of Land and Natural Resources