

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

DATE: FRIDAY, MARCH 27, 2009
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
Jerry Edlao
Taryn Schuman

Rob Pacheco
Tim Johns
Dr. Sam Gon

STAFF

Sam Lemmo/OCCL
Morris Atta/LAND
Dan Quinn/SP
David Gaud/DOCARE
Paula Hartzel/DOFAW
Dawn Hegger/OCCL

Paul Conry/DOFAW
Dan Polhemus/DAR
Alton Miyasaka/DAR
Jackie Robinson/DOFAW
Francis Oishi/DAR

OTHERS

Colin Lau, Deputy AG
Joylynn Paman, Item K-2
Greg Spencer, Item C-4
Brian Jenkins, Item D-10
Arnold Spencer, Item D-12
Josh Heimowitz, Item E-2

Mark Roy, Item K-1
Hou-Wen Liang, Item K-3
Eric Leong/DOT, Item M-3
Keith Douglas, Item D-10
Carl Meyer, Item F-3
Michael Ross, Item F-8

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

Item A-1 March 13, 2009 Minutes

Approved as submitted (Pacheco, Schuman)

Item K-1 Enforcement File No. MA-08-30 - Request for Additional Time Regarding Unauthorized Seawall Improvements, Located Makai of Shoreline at Hale Kai AOA Condominiums, 3695 Lower Honoapiilani Road, Lahaina, Island of Maui, Seward of Parcel (2) 4-4-001:042

Sam Lemmo for Office of Conservation and Coastal Lands (OCCL) reported that the Hale Kai AOA asked for extension of time to file a CDUP which was an option in lieu of removal. Staff agreed to this which is the recommendation.

Member Edlao asked whether the engineering assessment was a county requirement and whether it's for the design. Mr. Lemmo said that the county requires the applicant to meet certain civil engineering standards and OCCL are interested too.

Mark Roy from Munekiyo and Hiraga, Inc. representing Hale Kai concurs with staff's analysis and confirmed that the engineering analysis is to satisfy a county imposed condition for after-the-fact improvements. The engineering report will be included with the CDUA and thanked the Board for their consideration.

The Board:

Approved staff's submittal by adding the following Recommendation: That the Board extends the deadline 180 days to November 29, 2009 to allow Hale Kai's consultants to conduct the required engineering assessment for the seawall/revetment.

Unanimously approved as amended (Edlao, Schuman)

Item K-2 Conservation District Use Permit MA-3153 - Request to Amend Condition # 4 Regarding the Deadline to Finish Construction for CDUP MA-3153 for Koieie Fishpond, by Joplin Paman, Ao Ao O Na Loko I a O Maui (Association of the Fishponds of Maui), at North Kihei, Island of Maui, Offshore from TMK's: (2) 3-9-001: Parcels 85, 87 and 147

Mr. Lemmo described background expressing that he doesn't want the applicant constantly coming back to the Department seeking extensions to complete construction and arguing what constitutes maintenance, new construction, etc. and staff asked to delete the condition in it's entirety. It will still be subject to all other conditions in the permit.

Member Gon noted condition #12, page 2 of Exhibit 1, refers to annual reports or maybe a follow up if construction is on going.

Joylynn Paman, Executive Director of 'Ao' Ao O Na Loko I'a O Maui introduced their president, Kimokeo Kapahulehua and thanked the Board for considering the change. Ms. Paman agreed to the change and presented her report that was submitted to OCCL.

Member Gon suggested amending condition #12 by deleting “and for a period of five years after completion of restoration”.

Member Johns asked Mr. Lemmo the reason for deleting condition #4 is to do what. Why are applicants made to comply with that condition? Mr. Lemmo replied initiation is generally once people get an approval it's an incentive to complete the project. It's a disincentive to speculate on permits issued. Construction is nebulous in some ways because some applicants initiate the project, but not quite complete with the project, but it's the same purpose to get people to move on permits issued to them aside to consequences. They have a general lease and he doesn't think it is anything speculative and no reason to hold them to a strict construction deadline. He would rather not they come in talking to them every six months or every year getting an extension for something. I

Member Johns asked should this be a general policy for all fishpond permits that the Board issues. Maybe should be done uniformly if we want people to restore fishponds. Mr. Lemmo agreed and he is looking into the initiation completion deadline issue. Maybe looking at different perspective why holding government projects. A rule amendment process needed. Member Gon said in terms of construction projects usually has an initiation termination into ongoing maintenance projects. For purposes of loko i'a phase them into an initiation and determination of a set number of goals within an x year period, thereafter it turns into a maintenance project with annual reports. Mr. Lemmo said that is a rational approach, but construction deadlines are moving targets, very unpredictable, unlike other projects for approval, but he agreed.

Member Pacheco asked about Fabrao Associates who is the agent on behalf of the applicant per Mr. Lemmo. Deputy Attorney General, Colin Lau asked whether it reflects the permittee. Mr. Lemmo said he wasn't sure whether to re-visit this issue. There was some discussion and who held the lease which is applicant's non-profit organization.

Chair Thielen recommended a second amendment to identify in the conservation district permit the name of the organization who is currently managing the fishpond which Member Gon moved to accept staff's recommendation including the amendment in condition #12 to remove the clause “and for a period of five years after completion of restoration” and to identify ‘Ao’Ao O Na Loko I’a O Maui as the applicant.

Unanimously approved as amended (Gon, Edlao)

The Board accepted staff's recommendation including the amendment in condition #12 to remove the clause [“and for a period of five years after completion of restoration”] and to identify ‘Ao’Ao O Na Loko I’a O Maui as the applicant.

Item K-3 Enforcement File No. OA-06-55 Regarding Alleged, Unauthorized Grading, Tree Cutting, Benching of the Hill Side, Pushing of Soils and Debris Down Slope and into Drainage Ways, and Failure to Use

**BMP's, at Kaneohe, Koolaupoko District, Island of Oahu, by Hou-
Wen Liang, on Subject Parcel TMK: (1) 4-4-013:034**

Mr. Lemmo briefed the Board on the background and noted that the landowner's address listed is his current residence, not the address of the infraction. There were three (3) prior CDUPs giving each history. The most recent one to a Mr. Remington who failed to comply with the conditions of that permit and a change in ownership went to a fellow from Japan. Subsequently, Mr. Liang came to be the owner where Mr. Lemmo couldn't comprehend what the ownership transaction involved with respect to this property which was difficult to follow and moved very quickly. Mr. Lemmo reminded the Board that they fined the permittee of the third CDUP \$27,000 which was levied for failure to comply with a number of permit conditions from the permit issued for construction of the SFR. Mr. Liang spoke for the property and paid the fine. At the October 2008 meeting where the permittee was fined one of the major aspects of the Board's decision was the requirement for Mr. Liang to submit plans to DLNR for review and approval to do land remediation and perform emergency erosion control measures because the site was left in bad condition by previous owners. The area slopes between 40 to 70% and is nearly undevelopable with potential for slides, erosion, sedimentation which is a delicate situation. Mr. Liang wanted to fix the place up where it was recommended the Board approve an emergency erosion control remediation plan where Mr. Liang was to go back, do the plan, and submit it for staff's review and approval. Staff reviewed the plans going through Engineering Division which was approved and staff moved forward. During this time staff received complaints and went out to the site several times issuing letters to Mr. Liang because the site plan was completely ignored. Things were done that OCCL didn't approve. Mr. Lemmo presented some pictures confirming that this is CDUP 3077 per Member Johns inquiry. Mr. Lemmo described what happened to the property while the city grading inspector was there, verbally telling Mr. Liang that he has to fix this right now which is to initiate best management practices immediately. Also, remediate the areas that Mr. Liang damaged, immediately and made him re-grade the slope to cover up the bench, put in jute net, re-seed, re-mulch, etc. which Mr. Liang complied. Staff recommends five (5) fines at \$15,000 each recommending the maximum penalty per infraction because of the willfulness of the work that took place and potential seriousness jeopardy that it put people in. One fine is for unauthorized grading, another for tree cutting which Mr. Lemmo thought were exotics, the big bench cut into hillside, pushing of soils and debris down slope into drainage ways, and failure to use BMPs because when Mr. Lemmo went to the site there weren't any. Also staff wants to assess \$5,000 for administrative costs for a lot of time spent visiting the site holding Mr. Liang's hand trying to resolve the situation. And a number of conditions to regarding remediation in the report including submission of a new plan that shows the whole area that was graded including any walls that was built, a restoration plan utilizing native plants and trees, remove the rock, mud and tree debris from the drainage ways, a drainage plan that incorporates all the changes made to date, at some point staff would like to see the single family residence plans.

Member Johns asked whether the Board could require the owner to remove the house. The house should never have been built since it has been a problem every step of the

way. Major fines don't seem to be an issue which could be a cost of doing business. At some point the permit has been violated so many times, why not get rid of the house and restore the property the way it should have been. Mr. Lemmo said that it is within the Board's powers to revoke the permit which is possible to take away the house.

Member Johns communicated that Mr. Lemmo's feeling is fines are sufficient to ensure that there is going to be compliance and the harm done to the resources already will be remediated. Mr. Lemmo felt that this site has been so modified that would never be the same as when was when it began. It used to have amazing scenic qualities where some of it could be brought back. Member Johns said that the ignored BMPs were not to protect view plains.

Member Edlao asked what happens after restoration if Mr. Liang sells the property then something goes wrong and the Department is shared in the liability because the Department approved this restoration plan. Mr. Lemmo remarked that is the frustrating thing about this process because staff tells these owners to do something based on engineering analysis, civil stamp and then it goes off in another direction and Mr. Lemmo doesn't know whether the property meets engineering or geotechnical standards at this point and understands the Board's concern with liability. Chair Thielen referred to recommendation #5 where Mr. Lemmo remarked yes they are, but it didn't work out too well.

Member Schuman referred to the October 2008 Board action item #17 said that in the event of failure to comply with any of the orders here that the matter be turned over to the Attorney General (AG) for disposition. Mr. Lemmo agreed at that juncture, but said at this point staff has a new set of issues and violations before the Board in addition to the earlier concerns thinking that bringing it before the Board as an administrative body. Member Johns wondered what happens if it goes before the Attorney General which would only go before the AG only if staff wasn't getting any kind of response and there is nothing staff can do then turn it over to the AG's Office. May have to pursue another kind of civil action, but it hasn't reached that point yet.

Member Edlao asked whether OCCL requires a certificate of insurance on the insurance policy to cover us in case anything happens. Member Johns asked whether the Department has insurable interest. Mr. Lau said no because this is private property or ask for a construction bond.

Chair Thielen asked on the past permits we have a condition that failure to comply that they will be fined an additional \$15,000 per day until the order is complied with. Had we put in those daily fines in past conditions? Mr. Lemmo said in some cases, but not this case.

Chair Thielen asked referring to Member Edlao's question if the property is ever sold did staff put in a condition requiring that the permit with the conditions be recorded on the property as part of the permit conditions which Mr. Lemmo confirmed CDUAs are

standard conditions that you have to go before the conditions with the deed. Mr. Lemmo said it was done before but it would be a deviation on how it was handled before.

Member Johns referred to Exhibit 3, Item #16 asking whether the Board has statutory authority to do that which Mr. Lemmo didn't recommend it and Chair Thielen said the Board would have authority to consider it. Member Pacheco asked for clarity whether the CDUP the Board is under is 3077-B which they are per Mr. Lemmo.

Hou-Wen Liang who is the current landowner distributed his written testimony and presented his case reiterating the history, problems and spoke to the city about the citations. The city said that if he worked with them they will grant Mr. Liang an emergency remediation allowance as long as he does it in a way that public safety is the priority. During the October meeting with Mr. Lemmo, the city inspector, Mr. Liang's architect and Mr. Liang everyone understood what their responsibility was. It was always stressed that Mr. Liang and his engineers need to work with the city. Mr. Liang said he was accused of willful disregard of State law which he felt wasn't true because he was working with the city as told and was supported by the city grading inspector who was there every other day. What he did to the property was based on guidelines on what the rules are suppose to be carried out and did the best he could on the property. When doing a remediation process it's difficult for Mr. Liang to go into an office to say we have rocks falling and we need to get your approval to touch this part of the hill with the machine sitting there trying to dodge rocks and move things out of the way it's very difficult at that time. Mr. Liang did things for the safety of his workers and the community below to remediate the site which he may have gone beyond what was approved, but he didn't know he would go beyond that. Mr. Liang spoke and presented maps on each of the five (5) violations.

- Grading wider because his machines were wider than planned which was done in one (1) month to avoid the rainy months. There was no grading plan or permit issued by the City & County because the city told Mr. Liang to do it per the engineer's recommendation who told Mr. Liang to inspect along the way. Mr. Lemmo spoke to the city grading inspector. Mr. Liang knows he should have come to the Board first, but he made a lot of adjustments with tree cutting and benching. All grading is done and approved with the city with no more hazards.
- Trees were cut – about 90% haole koa trees that were termite and bee infested. Mr. Liang was cited for blocking the drainage with trees which wasn't the case because the trees fell and he cleared them when Mr. Lemmo instructed him to do so and would be happy to replant the area with native trees.
- The benching was created because the rocks were falling down on the workers and equipment. Mr. Liang and his workers did a rock fall mitigation without understanding the whole situation. They moved the benching behind the trees per the engineers' instructions to drain the water coming down the hill. But, when OCCL staff found out Mr. Liang had done this without approval Mr. Liang admitted he didn't understand he wasn't supposed to touch it, but did so because of the hazard at the time. Since then, he got rid of the bench and any irregular grading, control meshed and hydro seed the whole site to bring it back

to how it was before. Mr. Liang is having his engineers re-design the site to include no benching. The as built plans have been submitted to OCCL and the city has some comments.

- Pushing of soils and debris down slope into drainage ways which Mr. Liang said that he didn't do that because grading must be done from the bottom up which the engineers and grading inspector can testify for. The city grading inspector couldn't attend today's Board meeting because of the City's jurisdiction which has to go through attorneys, but he said have the Board call him. The debris and rocks were already in the drainage area due to illegal dumping when Mr. Liang took over which he cleaned out.
- Failure to use BMPs -- There was two rain storms which cause the ground to be saturated like quicksand where the city grading officer said to put the fence back in as soon as it dries a little bit. Mr. Liang was told by the city inspector to take the fence out from the stream because it was fully vegetated, but when the OCCL staff member came and saw that they said to put it back and he did. Mr. Liang always does whatever the Department asks of him.

Mr. Liang concluded in hindsight he should have gone to OCCL and asked permission to do everything, but the whole gist for Mr. Liang is get it done, make it safe, fix it then talk to the State, but because he was told to work with the City who was there he thought he was ok. Mr. Liang asked the Board to reconsider the fine assessed to him because there isn't much more that needs to be done and he has spent \$320,000 to do all this which he didn't expect. His family plans to stay on the land and take care of it.

Member Johns asked about a typo in Recommendation 2 which should be five not four per Mr. Lemmo.

Mr. Lemmo reported that staff did not approve any mass grading of the hillside pointing it out on the maps, but after he approved the plans Mr. Liang came in asking for additional construction then it explain to Mr. Lemmo why Mr. Liang wanted to modify and extend the retaining walls to accommodate additional uses where staff sent the plans back saying they couldn't look at it at this point. But, Mr. Lemmo had already approved the extra retaining wall functions with the assumption that it was for emergency erosion control. Mr. Liang said that it still is which is only coming out 20 feet because he is not allowed to build over the square footage.

Chair Thielen asked Mr. Lemmo that the applicant mentioned working under the direction of the City & County and he had mentioned working with them, could he verify whether that is so. Mr. Lemmo noted that this is conservation land where the Board has authority to regulate uses there; however, the city has the building and grading codes where they enforce building and grading codes on conservation lands, issue permits as well as dealing with compliance. The applicant was under a Notice of Violation from the city to fix the site, to clean it up, contain the erosion and the city placed a Mr. Reed Takai (grading inspector from the city) on the project who was there very often to verbally directing Mr. Liang on how to do various things. When Mr. Lemmo went to the site he spoke to Mr. Takai suggesting putting some jute net there or do this where Mr. Takai agreed. Mr. Takai was there more often than OCCL staff guiding and helping Mr. Liang

in implementing erosion control measures, BMPs, etc. Mr. Lemmo said he didn't understand why the city didn't take a more aggressive action on it since Mr. Liang is under a Notice of Violation already and has done this mass grading of the hillside so the position of the city is lets continue and lets tell Mr. Liang to remediate it and fix it. Chair Thielen asked aside from what was going on with the city did you (Mr. Lemmo) make it clear at the time that changes in the plan that had been approved would need to be approved by this office and this Department. Mr. Lemmo said he had already explained to Mr. Takai that Mr. Liang had already deviated and that these changes would need approval by the Department. Member Johns asked it seems Mr. Liang's position is Mr. Lemmo told Mr. Liang to work with the city and whatever the city comes up with should be ok with you. It seems like what Mr. Lemmo is saying and now the city and state are being inconsistent. Mr. Lemmo said he never told them that when he went on the site one or two times and spoke to Mr. Takai from the city who has more expertise in grading and erosion control asking him to help Mr. Lemmo understand what needs to be done to get the area secured from being a complete disaster. From the onset Mr. Lemmo never took the city's lead which led to all these modifications to OCCL's plan, it was never ending. It was after all the unauthorized work occurred that Mr. Lemmo began to look to the city grading inspector for help.

Mr. Liang said the city was fully aware of what he had done going through different channels of engineering departments explaining that and simultaneously reviewing what he had been doing. He is at the point where everything will be approved in a few weeks and the city has been rewarding him for trying to solve this by giving him a reactivation permit for the house which the city normally doesn't do saying you can have the house permit now which was revoked and he sent it to OCCL a month ago. Since then, the city said they will waive the fines that they assessed on the property because of the situation with the past owners and him that it was unfair, but the city was willing to waive all that as soon as Mr. Liang can get the permit and the city was helping him to get it. Mr. Liang was shocked by these fines, but he understands the situation that he violated the rule and overdid what he was suppose to do urging the Board to consider what he did was for safety referring back to the wall addition.

Member Edlao asked Mr. Lemmo whether the city is approving or reviewing this. Mr. Lemmo said he received a note from the planner saying the city is waiting for the state to take some action which isn't normal because usually the state takes action and the city follows. Chair Thielen noted that the city and state have different interests in these situations. The requirements the Department would put out for a conservation district use permit would be intended to protect the resources where the city would look at the grading. The authority that the Board gave Mr. Liang before was to do some emergency remediation in a particular area and the fact you were working with the city inspector going 2 or 3 times larger area the city inspector may be only looking at the grading whether it was done in conformance with grading standards which has nothing to do with the impact of the resources. Mr. Liang understood saying he did it as he went along and told the inspector the reason was for safety. Chair Thielen said the Board understands about the safety, but Mr. Liang came before the Board in October 2008 and there was extensive discussion on the safety work needed to be done then and the approval was for

a very limited area. The work done was 2 to 3 times greater area than what you have been approved to do for the safety of the term. Mr. Liang said in hindsight if he had known this was all wrong he would have stopped everything. Staff revealed that there was a complaint from a week since he had started and no from the state came out until late October. Even if someone from the beginning could have given him a little guidance it would have stopped then, not saying that staff is not doing their job that Mr. Lemmo has been more than accommodating on doing things for Mr. Liang when he asks him. Whenever Mr. Liang came to the state for anything during construction he was given less attention than a minute. Everything asked from Mr. Liang put it in writing submit it to OCCL and they will review it. While Mr. Liang was doing the emergency remediation he couldn't put it in writing and wait for three weeks, he did the whole grading in one month and it was hard for Mr. Liang to understand. Mr. Liang thought his working with the city on what to do, everything was ok. Chair Thielen said the Board understands.

Member Edlao asked why a maximum of \$15,000 as opposed to something else. Mr. Lemmo said two reasons, one is grounded in statute than the other, first being the seriousness of the unauthorized work the actual harm to the mountain and potential harm was in existence from erosion, landslide and this and that. The impairment of the drainage ways was so extensive it deserved the weight of this Board. The other is the willfulness of the infraction. Mr. Liang was given clear instructions on how to proceed, but decided to proceed on his own way for whatever decision thinking Mr. Liang made a business decision on it. That's not so expressed in statute. It's the seriousness.

Mr. Lemmo said there was a discussion one day and Mr. Liang didn't feel comfortable with the plan that had been provided by his geotechs and the one the Board approved and Mr. Liang felt he needed to do more to secure the site and went and did it without coming back to the Board to seek permission. Mr. Lemmo doesn't know why perhaps Mr. Liang didn't think he would get permission for what they did. It wasn't done by some guy on a tractor without instructions; there was intention to do the work.

Member Edlao asked whether there were any impacts or safety issue with what happened which there wasn't per Mr. Lemmo. Member Edlao said he was willing to adjust the fine, but there will be a fine.

Member Gon spoke about the images of the trees that were cut, that any cutting on conservation land is a violation he tends to weigh the nature of those violations according to whether its native vegetation depleted willfully or expanded footprint of development versus vegetation grading in the course of emergency grading. The tree cutting doesn't seem very serious to him. The benching of the hillside occurred, but was remediated afterwards. The pushing of soil down slope and into drainage ways; Member Gon is not absolutely convinced that those violations occurred willfully. The failure of BMPs is the failure to use BMPs being that it did rain would cause any BMP to fail. Attempts were made to use BMPs. It was suggested for the Board to entertain waiving four (4) of the five (5) violations. The landowner was working with a government official from the City & County on a frequent basis to do what was deemed necessary to remove a hazard those things need to be taken into account. This Board has the option of lowering the amount

for the violations and to consider the argument with regard to those violations. Member Pacheco appreciated Member Gon's comments, but there is specific language in the statute and moved to going into an executive session to consult with the Board's attorney on the Board's rights, duties, privileges, immunities and liabilities. Member Edlao seconded it.

10:30 am RECESSED for Executive Session

10:50 am RECONVENED

Member Johns thanked the deputy attorney general for pulling up the HRS showing that there has been a recent change to the statute that covers the violations and amount of fine.

Chair Thielen asked before breaking for executive session there was conversation about the five different violations does the Board want to respond to that. Member Edlao replied he would and said the unauthorized grading was obvious, cutting trees in conservation land is always a concern although some may be dead, benching of the hillside was drastic although it was fixed up, pushing of the soil into the drainage area was not a concern, and failure to use BMPs, the landowner should be well aware of implementing that from the get go. The unauthorized grading, benching and failure of BMPs should be looked at in regards of fines.

Member Pacheco asked Mr. Lemmo how to separate grading and benching which depends how one looks at it was Mr. Lemmo's reply. Member Johns asked whether the grading was beyond the benched area and the approved plan which it was per Mr. Lemmo who described it. Member Johns was inclined to support staff's recommendation and submit it because this is not the first time the landowner went before the Board which occurred five months ago and the Board made it clear if he doesn't work directly with OCCL on a specific plans and deviate from those plans the result is a fine from the Board. For the landowner to come in at this point five months later saying he didn't know because he worked with this guy and that guy the state said it was ok to deviate from the plan that was approved because it was ok to work with the city or because I think it was a good idea or because it was a safety issue, Member Johns would be more inclined to support that position from the landowner if he wasn't before the Board five months ago when the Board made it clear that this is how it operates. For that reason Member Johns supports staff's recommendation as submitted. This is not a motion.

Member Schuman noted that Mr. Liang violated the last action that was voted on in October 2008 where Mr. Liang signed and acknowledged it on November 21, 2008 which was after he already continued to violate what he was suppose to do and made a motion to accept staff's recommendation as presented with the typo correction to Recommendation 2 (from four to five). Member Johns seconded it.

Member Pacheco and Member Edlao had expressed concerns going forward with the motion. Member Edlao reiterated that Mr. Liang did sign and violated it and would tend to support proposal. Chair Thielen said she understood some of the concerns raised about

a couple of the issues whether we have the factual information about pushing the soil and questions about the trees, but she has serious concerns referring to what Member Johns mentioned that they had extensive discussion about this five months ago where there was an engineering plan that was basically ignored on the site and the city might be out there responding to their notice of violation and figuring out how to mitigate that damage. But, the impression the landowner is giving is that he should get an after-the-fact approval for ignoring his permit and to do a tremendous amount more extensive work. Chair Thielen has concerns that there will be on-going construction and additional plans to do work on the house if the Board doesn't take some strict action now Mr. Liang will continue to ignore the conservation district requirements and the permit requirements. There are serious problems with the grading and Chair Thielen sees the benching as a separate action because it is in a completely different area. The failure of the BMPs particularly because of the steepness of the slope and the impacts on Kaneohe Bay where we may be lucky this time that there wasn't any runoff, but next time if Mr. Liang ignores this in the future there could be serious damage to not just the homes below, but to the bay itself.

Member Gon said he would like to reinforce the idea that of the five violations that two are clearly valid and maybe three or four of them. It is really important especially in the conservation district that rules related to permits or actions need to be complied with because the conservation district exists to minimize adjustments to those areas.

Member Edlao noted nothing serious has happened to the neighboring property or to the environment, however when people are instructed to work with the Department and they are ignored the Board can't tolerate it because it's their job to protect the environment and conservation district areas reiterating people who go out there doing what they want knowing that they should work with the Department and called for the vote.

Chair Thielen stated the motion is to accept staff's recommendation on the five unauthorized actions. All those in favor.

Ayes – Members Edlao and Schuman.

Nays – Members Gon, Johns, Pacheco and Chair Thielen

Member Johns made a motion to support staff's violations 1, 2, 3 and 5 because 4 is the weakest and the fine be reduced accordingly. Chair Thielen seconded it and called for the vote.

Ayes – Member Gon, Schuman, Johns, Edlao and Chair Thielen

Nays – Member Pacheco

Chair Thielen said motion passes. The Board has passed a motion to support four of the five violations at the fine level and all the recommendations of the staff as written. If Mr. Liang wants to file a request for a contested case hearing he will have to make a verbal request at the meeting today before the Board adjourn and then file a written request within 10 days.

Mr. Liang asked that he is being fined four out of the five at that maximum amount at where it stands. Chair Thielen confirmed that and the other recommendations included with the staff's submittal. In addition to the violation, \$5,000 for administration costs,

requirements 5 through 13 which staff could go over with Mr. Liang which is for subsequent action repeating the request for contested case hearing per Mr. Liang's inquiry. Mr. Liang said he would like to do so. Chair Thielen asked Mr. Lemmo to work with Mr. Liang on filing a written request for a contested case hearing.

Mr. Lemmo asked for clarification on violation #4 which is the pushing up of soil which staff will work with Mr. Liang on the request.

The Board:

Amended staff's recommendation #2 changing four to five, supported violations 1, 2, 3 and 5 and for staff to reduce the fine accordingly. Otherwise, staff's submittal was accepted.

Approved as amended (Johns, Thielen)

Item C-4 Request Review for Approval to Release for Public Review the Kaheawa Wind Power II Wind Energy Generation Facility Habitat Conservation Plan, Island of Maui, Hawaii

Member Johns recused himself.

Paul Conry with Division of Forestry and Wildlife (DOFAW) spoke on background and staff that developed the Habitat Conservation Plan and the applicant was present. This is to approve for public release which will be noticed and he explained the steps after that leading up to the approval of the permit.

There was discussion about how public hearings are held where Mr. Conry explained that there is a presentation with the applicant present, informational question and answer period, then open for public testimony which staff collects and there is opportunity for written testimony.

There was discussion whether the Board should weigh in earlier in the process which they should before it comes back. This meeting and during public testimony is the appropriate time. Member Gon agreed and felt that the Board should anticipate it before it goes to public.

Mr. Conry noted that Fish and Wildlife Service is processing theirs and input came in on items they would like to see tweaked which part of what staff could do is say this is a draft open to public review. Any Board concerns can go to staff as additional items of concern which they could address before it came back for final approval. Member Gon agreed that the Board could have ideas on what needs adjusted, but they can be handled during public review process and it's not necessary to not give up ruling for public review until we're satisfied.

Member Pacheco asked what the legal basis is or what drives this. Mr. Conry said that one is keeping the Board informed and provides additional comment by the public.

Senior Biologist with First Wind, Greg Spencer was here to answer any questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item M-3 Amendment to Prior Land Board Action of November 16, 2007, Under Agenda item M-1 as Amended, Regarding Issuance of a Direct Lease to Imperium Renewables Hawaii LLC at Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key: 1st Division, 9-1-14: Portion of 24

Member Pacheco asked that Imperium paid the \$100,000. Property Manager from Department of Transportation (DOT), Eric Leong said that it's being considered.

Unanimously approved as submitted (Schuman, Johns)

Item M-1 Issuance of Revocable Permit to Theatrix Hawaii, LLC for Inconsistent Use Honolulu International Airport

Item M-2 Issuance of Revocable Permit to Elite Imaging, LLC for Inconsistent Use, Honolulu International Airport

Unanimously approved as submitted (Johns, Gon)

Item D-10 Rescind Prior Board Action of August 25, 2000, Item D-1, Grant of Perpetual, Non-Exclusive Easement to Keith Scott Douglas and Bonnie May Douglas for Access and Utility Purposes; Amend Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28000 Assigned to Keith Scott Douglas and Bonnie May Douglas; and Immediate Construction Right-of-Entry Permit to Keith Scott Douglas and Bonnie May Douglas, Located at Hanawana, Makawao, Maui, TMK: (2) 2-9-011:008 Por.

Land Division Administrator, Morris Atta described background history that there was a land court boundary adjustment that shifted the entire parcel resulting in a disconnect between the existing easement. Staff researched that the easement is a kuleana and entitled to constitutional right to access to that parcel. This action goes back and corrects that.

Member Edlao noted that a gate blocks access to state land and that it shouldn't be there. Mr. Atta agreed explaining that it is an obligation of the easement holder to not obstruct access to third parties by its very nature its non-exclusive meaning general public as well as government entities. If there is a gate the question is where it sits, on the easement area or on private hui lands. Regardless of where it sits if there is an obstruction that is a

violation of this easement the Board could take it up here. The location of the gate sits directly adjacent to the easement, but on private hui lands referring to Chapter 115 any obstruction to public access is a violation. Chair Thielen suggested remove any obstruction to the access. Mr. Atta also noted that the obstruction sits on private lands abutting the easement...Member Johns asked can the Board require a private individual to provide public access. Why can't he have a gate on his house? He understands the non-exclusive easement part, but if it's on his private property. It was Mr. Atta's understanding that the point where it connects to the public highway at the end of the road is the area to where the gate is situated which he needs to verify with staff.

Brian Jenkins representing Keith and Bonnie Douglas reported that the gate is on private property displaying a map describing the 4-wheel drive road and that the remote area could expose the private property owners and the State to liability issues and there are security concerns. The owners have given the state land agent the combination to the lock. Any government agency can contact them and they will give them the combination.

There was some discussion and concerns over a combination lock because a combination could change and might be a problem during an emergency.

Chair Thielen asked whether Mr. Jenkins felt the landowners should have an exclusive easement which is not what Mr. Jenkins is arguing and he said that anyone who needs access should have permission from this Board which is what a non-exclusive easement is. They are not saying this is an exclusive easement.

There was more discussion about access through private property and per Mr. Jenkins the hui's legal ability is to only allow access to the government. Member Edlao asked whether Mr. Jenkin's client's have the consensus of all the hui members on this which they don't. Member Pacheco asked for clarification on the map the dirt roads, hui lands, state lands where Mr. Jenkin's explained that his client's has an easement across parcel 17 that, across state land and then to parcel 18 which is his client's property. Member Pacheco asked how is this road public access if it crosses two private properties to get to the ocean.

Member Edlao reiterated the combination lock problem. Mr. Jenkins explained how steep the road is and if anyone got hurt they would sue everyone. This road is not meant for public access to the ocean, but there is a fishermen's trail all along the coast.

Keith Douglas, owner of the parcel, clarified that the previous owners built this road and in 1980 put up this gate. There are 30 to 40 owners in the hui with gates everywhere and none required permission to put up a gate reiterating the liability to the property explaining how a geologist came in and took out the top off the road which Mr. Douglas spent \$4,000 to fix. There is an area thick with hau down near the ocean which is not possible for access to the ocean showing some photos to the Board describing the foot trail has never been hindered saying that it takes 9 minutes to reach from the road and that he has aerial photos from 1940 of this same trail.

Member Edlao reiterated the problem of a combination lock and asked whether Mr. Douglas was opposed to a key lock which he wasn't. Member Edlao moved to amend the recommendations by adding a condition #4 that the combination lock will be replaced with a key lock and a key provided to the Maui land agent where the agent or staff member will call prior to accessing the property where Member Johns seconded it.

Mr. Lau asked whether this is still part of the easement which it is.

Mr. Douglas agreed with the condition explaining that DLNR has never had a problem accessing the ocean there.

The Board:

Amended staff's recommendation by adding an additional requirement to Recommendation no. 2 requiring the Applicant to replace the combination lock on the gate situated immediately adjacent to the mauka-most end of Easement 1 with a keyed lock, and requiring that a copy of the key to that lock be provided to the Maui District Land Agent to ensure that the State would have unrestricted access to the easement area. Otherwise, the Land Board approved staff's recommendation as submitted.

Unanimously approved as amended (Edlao, Johns)

Item D-12 Mutual Cancellation of General Lease No. 4913, Arnold P. Spencer and Corinne A. Versola-Spencer, Lessees; Consent to Assign General Lease No. S-4911, Charles P. Spencer Jr., Assignor, to Arnold P. Spencer & Carmela K. Gomez, Assignee, Maunaloa, Honolulu, Oahu, TMK: (1) 2-5-24:02 & 31.

Mr. Atta reported background.

Arnold Spencer, assignee spoke that he was fine with the conditions

Unanimously approved as submitted (Schuman, Gon)

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Carl Meyer, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Shark Movement Research Activities.

Dan Polhemus for Division of Aquatics (DAR) communicated that this work was previously permitted by the Board giving more background and that the cultural review support acceptance and no concerns were raised.

Carl Meyer of the University of Hawaii, Hawaii Institute of Marine Biology (HIMB) thanked the Board for their consideration.

There was some discussion whether the transmitters discern between species of fish where Mr. Meyer explained that each transmitter has a unique code and are never removed and do not cause any harm to the animal.

Unanimously approved as submitted (Johns, Gon)

Item E-2 Establishment of a Volunteer Kokua Partnership Agreement for Mokule'ia Section of Ka'ena State Park, O'ahu

Dan Quinn with Division of State Parks described background and who the members are pointing out sites on the map saying that staff would like to include in the agreement the area between Camp Erdman and the end of Dillingham Field which wasn't shaded on the exhibit. He asked to amend the recommendation to include clarification that final agreement is subject to the Office of the Attorney General and the Chairperson.

There was some discussion about the organization and its non-profit status because there is only one name listed.

There was discussion on the affected area of the Laysan albatross colony which is mostly in the Natural Area Reserve and that clean-up will be at the end of the paved road and along the coastline.

Josh Heimoitz, Chairperson of Friends of Kaena, testified that his group is working on their 501c3 status invited the Board to clean-ups, that there is an informational handout and named his Board members along with 50 paid members and a hundred volunteers.

The Board expressed their appreciation and asked whether the Friends are working with DOCARE which they are, but not in enforcement.

Mr. Heimoitz reported they applied for assistance with the River Trails Conservation Assistance Program.

Unanimously approved as amended (Gon, Johns)

Amend recommendation by adding "Final agreement is subject to the Office of the Attorney General and the Chairperson. "

Item F-1 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Native Hawaiian Practices Permit to Charles N. Thompson, Polynesian Voyaging Society, for Access to State Waters to Conduct Traditional Hawaiian Wayfinding Activities.

Mr. Polhemus described permit background that scientific and cultural reviews were all positive, no comments from the public and DAR staff approves.

Unanimously approved as submitted (Gon, Johns)

11:44 am RECESS

12:02 pm RECONVENED

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Commanding Officer John Caskey, National Oceanic and Atmospheric Administration (NOAA) Ship HI'IALAKAI, for Access to State Waters to Conduct Shipboard Support Activities.

Mr. Polhemus briefed the Board on the background all reviews report acceptance, no public comment and DAR staff accepts.

Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. George Antonelis, National Marine Fisheries Service, Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Non-lethal Shark Deterrent Activities.

Mr. Polhemus gave background that there will be focused hazing and tagging of sharks.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-5 Request for Approval to Amend a Project Agreement (Contract No. 48518) with the Research Corporation of the University of Hawaii for the Hawaii Marine Recreational Fishing Survey by Providing an Additional \$571,550 in Funding (\$467,475 Federal Funds and \$104,075 Special Funds) and Extend the Project through June 30, 2010

Mr. Polhemus reported on background.

Unanimously approved as submitted (Gon, Johns)

Item F-6 Request for Approval of a Special Activity Permit 2009-80 for Risa Oram of The University of Hawaii at Manoa, Department of Natural Resources & Environmental Management, and Designated Assistants

Mr. Polhemus described background studying disease incidence in Hawaii.

Unanimously approved as submitted (Johns, Edlao)

Item F-7 Request for Approval of an Amendment to Approved Special Activity Permit for Dr. Robert Humphreys of The National Marine Fisheries Service, Pacific Islands Fisheries Science Center, and Designated Assistants

Mr. Polhemus reported on background regarding tagging.

Unanimously approved as submitted (Edlao, Pacheco)

Item F-8 Request for Approval of a Special Activity Permit 2009-54 for Mike Ross of The University of Hawaii at Manoa, Botany Department, and Designated Assistants

Mr. Polhemus informed the Board that state law prohibits removal of marine life in this area where this applicant wants to collect regulated and non-regulated marine species describing process.

Alton Miyasaka for DAR spoke saying the main concern is the size of the study and that the MLCD is a relatively small area where Mr. Ross agreed to reduce the original area size.

Michael Ross, applicant for the permit, explained the process which is a 10 x 10 area.

The Board was concerned that the application doesn't say anything about removal which is what will happen per Mr. Ross. There was some discussion about that in the general conditions, but staff will add it.

Unanimously approved as amended (Johns, Edlao)

To add the condition regarding removal of everything used at the end of this field activity.

Item L-1 Appointment of Windward Oahu Soil and Water Conservation District Director

Item L-2 Approval for Additional Funds to Construction Contract - Job No. H10C663A, Haena State Park, New Comfort Station and Other Improvements, Haena, Kauai, Hawaii

Item L-3 Certification of Election and Appointment of Molokai-Lanai Soil and Water Conservation District Directors

The Board noted the incorrect agenda titles compared with the submittals and suggested withdrawing them.

Withdrawn (Johns, Gon)

Item B-1 Request Board Approval to Enter Into a Contract between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE), and North River Boats Inc.

David Gaud representing DOCARE requested Board approval and that the competitive bidding process is complete resulting in North River Boats with the lowest bid.

Unanimously approved as amended (Johns, Gon)

Item C-1 Amend Prior Board Action of July 11, 2008 (C-1) to Clarify Parcel Description and Site Conditions for Sale of Lease at Public Auction for Telecommunications Purposes on Lands Within Lihue-Koloa Forest Reserve, Kawaihau District, Kauai, Tax Map Key: (4) 4-2-001: 011

Paul Conry with DOFAW briefed the Board reporting that the Office of Hawaiian Affairs (OHA) raised issues regarding clean-up of hazardous materials on the site which staff agrees and will take responsibility for it and not the future lessee.

Board member Gon asked whether or not the auction has happened which it hasn't per DOFAW staff member Jackie Robinson who said staff is still developing the lease with the AG's Office. Member Gon expressed his displeasure with leaving the state with the responsibility to clean it up and suggested to negotiate in the lease a deposit for removal of hazardous material and infrastructure or establish a fund that the lessee will feed into which is already there when the lessee ceases to exist. Member Johns noted that Land Division has a bond requirement on commercial lease where Mr. Atta confirmed for the lease performance, but not necessarily for hazardous materials removal. There was more discussion on it.

Member Gon moved to accept staff's recommendation with the addition of a third condition that future lease conditions include bonds and other provisions to pay for infrastructure removal, waste disposal or site restoration needs. Member Johns seconded it.

The Board:

Approved staff's recommendation with the addition of a condition #3 That any future lease conditions include establishment of bonds and other provisions to pay for infrastructure removal, waste disposal or site restoration needs.

Unanimously approved as amended (Gon, Johns)

Item C-2 Request for Approval to Release for Public Review the Safe Harbor Agreement for Reintroduction of Nene at Haleakala Ranch, Island of Maui, Hawaii

Mr. Conry spoke saying there are no modifications or discussion.

The Board asked whether the Ranch or DOFAW does the construction. HCP State Harbor Coordinator, Paula Hartzel explained that it is a partnership where DOFAW is handling this with the Ranch supplying personnel.

There was discussion regarding raising of nene on West Maui to be released on Haleakala and the funding from First Wind.

Unanimously approved as submitted (Pacheco, Gon)

Item C-3 Pelekunu Preserve Continued Enrollment in the Natural Area Partnership Program and Authorization of Funding for FY 10-15

Member Gon recused himself.

Mr. Conry described this background and suggested that item 3b. be amended to insert at end of sentence “subject to annual available funding and annual budget execution and approvals.” To make it clear that if the funding goes away staff wouldn’t be committed to this contract then can always go back to renegotiate. Also, amend recommendation 2 by striking out the second [in the amount requested]. On the second page, second paragraph should read “the applicant may:” change many to may. Also, on that same page under (B) change that to than to read “Elect to renew for less funding than...”

The Board:

Approved staff’s submittal with the following amendments:

- **Recommendation 3.b. – At end of sentence add subject to annual available funding and annual budget execution and approvals.**
- **Recommendation #2 – Strike the second [in the amount requested].**
- **Page 2, 2nd paragraph – Change “many” to may to read “the applicant may:”**
- **Page 2, under (B) – Change “that” to than to read “Elect to renew for less funding than...”**

Unanimously approved as amended (Johns, Edlao)

Item D-1 Approval of Lease of Private Property with Mr. Robin R. K. Murayama and Ms. Lisa C. Otoman on Behalf of the Department of Health, Clean Air Branch for Ambient Air Quality Monitoring Station Purposes, Niumalu, Lihue, Kauai, TMK: (4) 3-2-02: 32.

Item D-2 Grant of Perpetual, Non-Exclusive Easement to the County of Kauai, Board of Water Supply for Waterline Purposes and Issuance of a Right-of-Entry Permit, Kapaa, Kawaihau, Kauai, TMK: (4) 4-6-14:111.

- Item D-3** Request to Extend Forfeiture of Revocable Permit No. S-6040, John K. Hashimoto and Junedale U. Hashimoto, Permittee, Anini, Hanalei, Kauai, TMK: (4) 5-3-07:5.
- Item D-4** Consent to Assign General Lease No. S-5435, Lei Mamo Kaapana Aken, Assignor, to Jake Kaawaloa, Assignee, Lot 35, Kalapana Section, Kikala-Keokea, Puna, Hawaii, TMK: (3) 1-2-43:35.
- Item D-5** Request for Approval of Special Installment Agreement for Payment of Retroactive Rent Under General Lease No. 3269 to Country Club-Hawaii, Inc., Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-05:20.
- Item D-6** Amend Board Action of June 13, 2008, Agenda Item D-1, and July 11, 2008, Agenda Item D-1, authorizing Issuance of a Request for Qualifications / Request for Proposals for lands at Waiakea, South Hilo, Island of Hawaii, TMK: (3) 2-1-12:41, and portions of 71 and 149.
- Item D-7** Amend Prior Board Action of August 22, 2008 (D-3) and November 14, 2008 (D-7) Withdrawal from Governor's Proclamation dated January 3, 1923, Waiakea, Hawaii, TMK: (3) 2-4-49:portions of 11, 12, 31 and 2-4-8:portion of 22.
- Item D-8** Consent to Assign General Lease No. S-5139, Alice Win Kuahuia Gouveia, Assignor, to Priscilla Gouveia Reyes, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:25.
- Item D-9** Issuance of Right-of-Entry Permit to the County of Hawaii on Lands Encumbered by Revocable Permit No. S-7423, Poupouwela, Kau, Hawaii, TMK: (3) 9-5-12:2.
- Item D-11** Cancellation of Governor's Executive Order No. 3066 and Reset Aside, together with Additional State Land and Grant of Easement, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, for Boat Launching Ramp Purposes, and Rescind Prior Board Action of September 25, 1992 (Agenda Item J-2), Kahului, Maui, TMK: 3-7-01:21 and 23.
- Item D-13** Consent to Assign Non-Exclusive Easement No. S-5339, Sunset View Properties, LLC, Assignor, to Kenneth V. Krebs, Assignee, Pupukea-Paumalau Beach Lots, Koolauloa, Oahu, TMK: (1) 5-9-020:seaward of 050.

Mr. Atta reported no changes. No public testimony.

Unanimously approved as submitted (Johns, Schuman)

- Item E-1 Request for Approval to Assign Lease S-5289 to Kaipolani Gorai and Debra Kawai Gorai, Ahupua'a 'O Kahana State Park, O'ahu**
- Item E-3 Issuance of After-the Fact Revocable Permit for Koke'e Lodge, Koke'e State Park, Waimea, Kauai, TMK (4) 1-4-04:73, (4) 1-4-01:13 por., (4) 1-4-04:74, (4) 1-4-04:76 por.**
- Item E-4 Consent to Assign General Lease No. SP-150, John Tenuto and Gayla C. McCarthy, Assignor, to Brent Olsen and Karen Olsen, Assignee**

Mr. Quinn said there are no changes and stand as submitted.

Unanimously approved as submitted (Gon, Edlao)

Adjourned (Gon, Edlao)


There being no further business, Chairperson Thielen adjourned the meeting at 12:26 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