

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

DATE: FRIDAY, JUNE 12, 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 9:29 a.m. The following were in attendance:

**MEMBERS**

Laura Thielen  
David Goode  
Ron Agor

Robert Pacheco  
Jerry Edlao

**STAFF**

Paul Conry/DOFAW  
Dan Polhemus/DAR  
Francis Oishi/DAR  
Ed Underwood/DOBOR

Charlene Unoki/LAND  
Patty Edwards/DOCARE  
Alton Miyasaka/DAR

**OTHERS**

Bill Wynhoff, Deputy AG  
Scott Enright, Item C-1  
Dr. Randall Kosaki, Item F-7  
Dr. Celia Smith, Item F-10

Don Bryan, Item C-1  
Randy Teruya, Item D-7  
Wayne Levin, Item F-8

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

**Item A-1      May 22, 2009 Minutes**

Member Pacheco recused himself.

**Approved as submitted (Edlao, Agor)**

**Item C-1      Amendment No. 5 of Timber Land License No. H-101 held by Tradewinds Forest Products, LLC.**

Written testimony was distributed to the Board.

Administrator for the Division of Forestry and Wildlife (DOFAW), Paul Conry reported on the background information regarding this timber land license and the agreement is Tradewinds Forest Products had requested that the Board work with them to forbear on collection of stumpage payments that Tradewinds was making under the existing agreement for seven months while Tradewinds finished their financing package for the agreement and as part of this approach Tradewinds submitted a May 15, 2009 letter attached in the submittal outlining their process identifying new partners for financing. GMO – a timber investment management organization that Tradewinds is talking with on the financing of the construction of the mill that Tradewinds was willing to do for the state, when delaying the collection of the stumpage payments, would be to pay an additional fee on top of that when Tradewinds puts all their financing together and resume payments in October 2009. Tradewinds would then provide payments for all the missed monthly payments plus an additional \$35,000 for forbearance on the collection of those fees and hopefully Tradewinds will have their package put together and they can proceed with implementation of the plan. Staff met with Tradewinds when it was apparent they were getting behind on payments and spoke with the parties Tradewinds is bringing in and staff recommends going ahead in granting this amendment. Mr. Bryan is here to answer any questions.

Member Agor spoke with concern that this project has been around a long time and asked whether there was any evidence of potential viable candidates if this should not go through with Tradewinds. Mr. Conry said that the Board is familiar with other parties looking at forest products for bio-energy noting that one of the parties Tradewinds is talking to is one of the major players in the forest products industry in the state. GMO is holding timber resources on the Big Island and one of the things staff is seeing is partnering with other interests potentially out there. The other interests are for bio-mass focused on the Hamakua Coast and this is one of the land owners that Tradewinds is partnering with. If this fell through staff would restart the process where this would take another year or more to get back up and running. There are others, but they may not have gone through the stage of due diligence project development that Tradewinds has although, there may be in the future, but right now Tradewinds is the entity to come on line the fastest.

Member Pacheco asked when staff met with the GMO partners what confidence did staff have that GMO will consummate the deal being an equity partner where Mr. Conry said he was glad that GMO was the partner Tradewinds was talking about because GMO has the timber, the staying power and is a positive step for this project. Member Pacheco asked whether Mr. Conry sees any problems with modifying the timber license with GMO as a partner where Mr. Conry said no, because it is one of the steps that would need to take place with whatever partner Tradewinds brought in and because one of the requirements of the timber license is for Tradewinds to come back to get approval to

change the ownership of the company to add new partners and they will have to come back to the Board to approve that amendment to the license.

Member Pacheco asked where did the \$5,000 forbearance fee come from. Mr. Conry explained that staff asked Tradewinds whether they would compensate the state's loss opportunity and \$5,000 was 20% where Member Pacheco asked how much stumpage fee did Tradewinds paid so far where DOFAW staff member, Michael Constantinides said \$175,000 according to the last amendment of the license that there is a pre-stumpage fee from when Tradewinds started harvesting. Member Pacheco said then in October Tradewinds will pay this money back and then start another stumpage fee in November which Mr. Conry confirmed that they will get back on schedule to continue making those stumpage fees.

Member Edlao asked what assurances do we have that Tradewinds will pay all this (stumpage fees) in October, but then earlier Tradewinds said they would pay all these previous (stumpage fees) to this and now with the economy. He suggested having a bond so that Tradewinds will come up with something rather than nothing where Mr. Conry said it depends on the status of the discussions with the partners and whether they will be able to put this together. When staff met with Tradewinds they asked what is the best way to get that assurance where Mr. Conry said staff wasn't sure there was a viable alternative for Mr. Bryan's part is the short timeline and what Tradewinds could come up with at this time. It looked like recognizing the economic situation we are in and putting together the financing. Do we try to work with Tradewinds to get them through this bottleneck? Go to completion for the project and what resources can Tradewinds put together to get there and what's our best option to get the project and have long term income that staff is most comfortable with this approach that they are recommending.

Chair Thielen asked during these discussions whether staff discussed rather than forbearance of 100% of the payments forbearance on less than 100% forbearance where Mr. Conry said staff did ask Tradewinds and this was what they proposed before them and that staff did have these options on the table. Staff needed to come to the Board to say they are comfortable with this course of action by going with half payments or take a bond approach or this approach which is a package. Chair Thielen asked in the past under the former agreement when the pre-stumpage fees were refundable did Tradewinds as for forbearance which they did not per Mr. Conry.

Don Bryan representing Tradewinds Forest Products reiterated Mr. Conry's testimony referring to the economy, GMO's proposal and that existing investors at Rockland came back with a proposal of \$10 million dollars cash which GMO matched giving Tradewinds' an equity proposal of \$20 million. The status of that agreement with both companies has gained approval from their investment committees where Mr. Bryan distributed a letter from Rockland Capital that outlines their interest. Tradewinds has developed term sheets for the transaction which both organizations agreed to. They are now in the process of formulizing structure to finalize the form noting the deal isn't final until the check clears the bank which is good business for both partners. Each partner needs one another recognizing their financial situation has improved with this

partnership. Mr. Bryan gave some background about GMO's international experience saying that this is the best partnership referring to the development of this project that Tradewinds is ready to start building, but the final step is debt where Tradewinds has a proposal from a Honolulu bank for 50-30% of the debt and Tradewinds is going to the world markets for the remainder although there are other proposals that are further behind from Honolulu and further now from the equipment manufactures in Europe and those people provide financing as well which will be helpful. The target completion and start up date is the same planned in 2009 where Mr. Bryan distributed a Tradewinds' Permitting Status/Schedule saying that it interrelates with the various permitting steps that they still have left to do and start actual work on the ground. The primary point on this schedule is the state of permitting – well permits, sanitary water permits, fire safety permits can't start until building construction is started. The building comes around next summer. What starts this year are building renovations storm water control systems, underground utility trunks, foundations and that sort of thing.

Member Agor asked whether this project needs a planning commission approval where Mr. Bryan said that there are county plan approval permits, but there is nothing like a public hearing for this type of permit explaining the eight steps of the county plan approval which they have all of, but the grading permit which is more detailed grading work that fits in the storm water permit and his company is on track with the permits noting that the building comes later in the project. Once the Board approves GMO they will come up with suitable benchmarks where 96-97% is the money which gives Tradewinds incentive to move quickly in building the factory.

Member Edlao reiterated his concern over what assurances that the Board will have that all funds will be there if not there will be criticism from the public that the Board did not do due diligence noting that people have bailed out on the state before. Chair Thielen asked Mr. Bryan that he used a term earlier "de-risking" the project by bringing in these other players, one of the concerns of this Board is in the increasing competition for state land related to renewable energy and other projects. A lot of people are coming to the Department seeking to lock up land and the economy turns outside of our control then those projects don't move forward as promised. How can we ensure that we're not allowing state lands to remain idle and locked up and not used for other things, but one of the things that was negotiated in the last amendment of the agreement with Tradewinds was these stumpage fees would be non-refundable regardless if the project went forward or not. It appears in this proposal before us, now that the economy has turned and Tradewinds' plans are amended that Mr. Bryan is asking the Department to immediately forgo that amendment and 100% of the pre-stumpage fees would stop for seven months. Now his proposal says they will pay an additional payment on that come October when he thinks he'll have the money, but if he doesn't have the money and the Board were to agree to waive 100% of those pre-payments Mr. Bryan is going to come back in October and ask that those forbearance be extended and what he is asking for is the state to take 100% of that risk of the delay in financing and if it doesn't go through what we will be forgoing are those pre-stumpage fees that are non-refundable which the Chair had concerns about because she doesn't think Mr. Bryan can guarantee he will get financing. Although, the Board knows he is trying, but it is a little unfair to come in and say the

state has to bear 100% of that cost for losing the non-refundable fees. Mr. Bryan said he understood saying that Mr. Conry mentioned that there is \$175,000 of pre-payments, the trees are still there and his company has paid \$305,000 to the state so far and if they failed it's a 100% risk which Tradewinds signed. Chair Thielen said now Mr. Bryan is asking to change that because we're suppose to under the last amendment continue to receive the non-refundable \$25,000 per month which Mr. Bryan agreed. Chair Thielen asked come October if Mr. Bryan doesn't have the financing will he come again and ask for the forbearance to be extended where Mr. Bryan said after 10 years of working if this doesn't come together he doesn't know what he will do. The Chair said he talks about de-risking the proposal that's in front of us which says the state will give up 100% of our negotiated agreement given the economy there needs to be some adjustments made, but this seems a bit one sided where Mr. Bryan said they have \$50,000 under that agreement since December so it isn't 100% reiterating the trees as pre-payments.

Member Edlao asked how far away is Mr. Bryan from financing on the equity first where Mr. Bryan said all the equity agreements in 45 days and they are targeting September 15<sup>th</sup> for financial close. Member Edlao asked what he thought about issuing a bond where Mr. Bryan said having looked at banks for bonds before, a bank or bonding company would agree a bond would ask for 100% of the amount of the bond as cash deposit.

Member Edlao asked just a thought, what if the Board were to defer until Mr. Bryan gets his financing in place, he will have to come back to get his partners on the permit anyway and at that time table, the financing, because he has no money where Mr. Bryan said he was willing to work with. Member Goode noted that we would have an existing license in default where Mr. Conry said that is why staff brought it before the Board. Member Edlao said that we are not neglecting that they are not in default all we are saying is we are going to give the applicant time to get his finances and parties on board, come back, get their names on the permit, on the license, and come up with a bond because they have the finances. Chair Thielen said what Member Edlao is proposing is we could add that in as a condition that if Tradewinds got the financing they would have to have the bond to be able to keep us from amending it, but we still have to deal with the issue of the payments under the current agreement. Member Goode summarized what was discussed above regarding equity in 45 days, we know who are the partners looking at the end of August which would mean forbearing for a couple months a shorter time period with the fees suggested where he agreed with Member Edlao to see someone standing behind this deferred payment like Rockland or one of the new partners. Not knowing where the state payments are in the payment plan Member Goode said he would like to see the payments paid by equity rather than by debt because if these partners come on line in 45days then the \$25,000/month would come out of the equity until debt comes into play. The partners are coming with \$20 million and it seems to him some should be there for the state. Also he noted that Tradewinds' main customer is not being treated very well by not making payments and not letting people know that is one way to look at it by getting these people on board with the equity and suggested starting sooner to handle something now to shorten that time period.

Chair Thielen asked what Mr. Bryan's intention was whether to pay the stumpage fees from the equity or the debt where he said typically for these kinds of financing all the money comes together in the same day and you really wouldn't distinguish, but to that he would add you would have the commitments to the debt on the first day then you have the equity which you typically spend all of the equity before there is any debt so the short answer is equity.

Chair Thielen asked whether the timetable mentioned by Member Goode is workable for Tradewinds' partners in 45 days which Mr. Bryan confirmed but the Chair said she was not 100% convinced.

Member Pacheco asked if GMO is holding all those acreage in trees will Mr. Bryan's project still need the Waiakea timber which Mr. Bryan confirmed noting that certain wood would serve certain diversified markets and Hamakua has a different stand.

There was some discussion about the sequencing of the permits which was fine.

Member Pacheco asked if those building permits were acquired by Mr. Bryan by that date based on the sequence described does that mean Tradewinds will be in violation on the last amendment come December 31<sup>st</sup> or would that have to be amended again where Mr. Conry confirmed saying part of that would be where staff was alerted to and might be an issue that needs to come back to the Board which Mr. Bryan suggested that when Tradewinds comes back they will propose new milestones to be consistent with the sequence.

Chair Thielen said the state struggles with this a lot where they are asked to take land assets and to give them to a project not looking for market value, but because it serves a public purpose. These projects are the exception rather than the rule that they move along a time frame because things change outside of people's control and this is amendment #5. In searching for things to make sure that the state is being considered the same as any other partner in a business arrangement rather than the one, ok, they are going to give us extensions we don't have to factor in the cost of whatever else. What was negotiated in this last agreement was the fact that these monthly fees were non-refundable and that shifted at that point if there was a cost to the delay for the applicant. The idea that once they have everything in play we're going to have set benchmarks and things won't be amended, but having a cost to those changed timeframes maybe gives people more motivation, more incentive to move faster particularly in the early stages recognizing what is going on in the economy now is unprecedented in the state and maybe there needs to be some flexibility, but she is not interested in the promises on what is going to happen for the future that they don't know. What the Chair is interested in right now is the first request that they're receiving when things have changed its coming where the state forgoes 100% of what was suppose to be given to retain these lands being locked up. The Chair likes the idea of coming back at an earlier timeframe that she doesn't like the seven month extension noting she doesn't want to set a precedent that right after they negotiated something with a non-refundable fee that immediately there is

a request for an amendment to forgo that, at least 100%. The Chair asked whether Mr. Bryan had any suggested alternatives.

Mr. Bryan commented that it was good to clarify the non-refundable fees with the last amendment because he never expected to get any of that money back, but it was fair to point out that it didn't say so in the documents. The Chair asked whether everyone is being treated fairly and the answer is "yes" noting that people have been furloughed or taken reduced salaries. Other payments that have come due – engineering, land payments have arrangements that don't have quite as generous of funds as these. Across the board everybody has been treated completely fairly by reducing their monthly budgets by 35% from what they were before the economy came down last summer. His company is keeping enough cash to keep things going suggesting that if it's more comfortable for the Board he can come back in August when things are accomplished with his equity partners which he would be happy to do. Between now and August Mr. Bryan will look for other forms of funding to start paying the rent quickly adding that they want to treat others equitably too because they would ask the same questions.

Chair Thielen asked Mr. Bryan that he talks about treating everyone the same, but he also mentioned that his other creditors is a reduction in payments where Mr. Bryan said no.

Member Goode asked whether Rockland is an existing partner which they are per Mr. Bryan. Then asked that Rockland is upping their equity by additional \$10 million which Mr. Bryan confirmed. It sounds to Member Goode that Rockland has capital, following Member Edlao's concern, it seemed to Member Goode that Rockland, given their existing investments will do additional investment which could either A. step up the payments or B. provide some guarantees for the bonds themselves to help secure this which would help with their concerns and would like to hear more about bonds role in this. Mr. Bryan said Rockland invests money from the management of private investors and they both manage direct investments such as this one, one at a time by private individuals, typically three or four individuals, and they also have one fund that they partially capitalize that is all chartered for energy investments because the investors allow only for them to spend that money on equity investments. So Rockland's next capital for this project is to go back to the original private individual investors and propose that they invest further and any agreements that they have with those individuals is they agreed to do so provided that others step forward and they have come to a circumstance where we have all moved finally when all people agree to move, but don't move until we have all which is where their money comes in.

Member Pacheco said he understands the concern for some kind of guarantee, but our options here are to fine Tradewinds in default of the agreement by terminating the license or sub-lease because they don't have money to pay or have Tradewinds find some way to find some money to make something which is not going to be able to make all of this pre-stumpage payments. And, agree to the staff's recommendation come August if this partnership doesn't work out and this debt financing doesn't go obviously this project is on its very last legs and the Board has to make a decision on that now. The trees are still standing in the forest and wondered what the Board is really risking here besides the pre-

stumpage fees as oppose to a longer term result in funding for this Department by not having a viable industry. Chair Thielen said that the only risk is to the state is the opportunity cost in moving forward with other options for the land and other people who may have interest or other business ventures may have interest in this area being precluded from accessing or competing for the lands which is time and other opportunities that may be offered. The Chair explained after having worked at the Office of Planning and representing the state in front of the Land Use Commission and being more familiar with those types of projects where no one asks for reclassification of a 15 year extension instead they say this is what they are doing and is making progress and over time it evolves just by best efforts into that so there has been a search to figure out how do you make sure people are moving forward. One of the methods is to have a cost associated with having those lands at the exclusive use of one entity that is trying to work through that permitting process. Everybody realizes that these things have very many complicated moving pieces to move forward and clearly this Department and previous Board felt that this is a good project for a variety of reasons and the economy is tough which the Board recognizes Tradewinds is moving forward which is still only a concern because there are other interests for these lands out there. The three month is less of a concern than the seven month. Bringing back the partners would be something that demonstrates the kind of progress.

Mr. Conry noted to the Board that we are in four months of those seven months already. When staff wrote this up it was early in the stage and a pertinent question to Mr. Bryan was can they move that up because if they did Tradewinds would pay off the financing as soon as possible to save the forbear as well where Mr. Bryan acknowledged that Tradewinds agreed to pay immediately.

Member Edlao said that it concerns him that if this doesn't work out that Mr. Bryan said he doesn't know what he'll do and that Mr. Bryan might disappear where Mr. Bryan reassured that he didn't say it to give comfort. It's how you look at things after you've worked on a project for 11 years.

Scott Enright, a Hamakua Coast resident who was the past Cultivation and Irrigation Superintendent of Hamakua Sugar, said that he supports value added forest industry noting that he was the past member of the Hawaii Forest Industry Association and that he had worked for C. Brewers Bio-energy Development Corporation that did the original study of eucalyptus growth on the Hamakua Coast where he supports a smart innovative forest industry, but this project isn't. In communications to the Board and to the AG's Office from his counsel and Mr. Enright's written testimony he gave last December 2008, he pointed out that the contract language in Amendment 3 was clear, in the second 4-year term Amendment 3, this applicant was suppose to get his permits, start construction, finish construction, but to this day, even though the Board gave Tradewinds credit in December for meeting milestones 1 and 2 there is still not an application for a building permit in. It makes the contract process meaningless to say that Mr. Bryan started construction when there is no construction. There is a history of baseless claims. In December, knowing the process Mr. Enright thought the Board would move forward on this and asked the Board to have Tradewinds substantiate the claims they have made in

the submittal, but there was not one piece of substantiating documentation in the December submittal and the Board accepted it. If the Board had looked at that it would be very clear with a minimum of due diligence that the financing wasn't in place. But, Amendment 4 went through and two months into it the applicant defaults and that is why we are here today. This over eight year process of this applicant being in default and the Board giving amendments has made contract law meaningless, a manipulation of the law. It should stop today and no further amendments should be issued. Amendment 5 should not move forward and the Board should fine Tradewinds in default because they are, terminate this contract and send this back to DOFAW to come up with a vision for the utilization of this resource, consistent with the 21<sup>st</sup> century.

Member Pacheco said that the Board depends on staff to do due diligence on this and we will have to take the information brought forward to us at face value. The building permits, he is concerned with the progress whether Tradewinds will make those milestones as far as the building part of it. Member Pacheco said he understands the sequencing of the permitting issues, but is concerned with testimony that there is no building permits submitted to the county which Mr. Bryan should respond to. Mr. Bryan said that they do not have a permit to build a building which is the same issue that was discussed awhile ago in that the actual construction of the building comes later in the process. The demolition permit is ready to go, the grading permit is next, then the storm water permit, the foundation permits and then the building permit and about now until then there is about a million dollars of engineering which has to do with the machinery.

Chair Thielen said that there is some confusion with testimony from another member of the public, Mr. Enright. It is clear that there is an authority to amend a contractual agreement and it is up to the Board whether they want to amend it. We have a list of the permits in front of us that have been obtained and she asked Mr. Bryan to confirm whether the Federal Construction Storm Water (NPDES), State DOH Air Permit, DOH Construction Consent for the Mill, DOH Process Water Disposal, Landscaping Design completed for County Planned Approvals, Lighting Design for the County Planned Approvals, Asbestos and Lead Review, Archaeological and Historical Review, Sound Study, and Ingress/Egress Plan were completed which Mr. Bryan confirmed completion for all of the above. The Chair said that the Grading Permit and Building Permit are the only ones missing, but there are county permits or approvals that have been completed which Mr. Bryan acknowledged. It is up to the Board to decide whether they want to amend it, that they are on notice, when talking about the Building Permit it consists of many permitting steps, but the building structure itself may come at the end rather than the beginning that is one issue. It is clearly noticed that the debt and equity is not locked up that there needs to be some other things done and it is up to the Board on whether they want to amend their agreement or not and that's permissible under the law. It is not required. It is at the Board's discretion.

Member Goode asked that the worst case scenario is a complete default where the Board pulls the plug on the full \$200,010 owed, what recourse does the state have on the applicant to retrieve those monies. Chair Thielen said she is not an expert, but she assumed if Tradewinds declared bankruptcy they would be treated like any other debtor

and if they weren't then like any other debtor staff would have to forfeit collecting. The way this is worded in the recommendation it says they shall pay it no later than October 10, 2009 it doesn't appear to be conditioned on anything asking Bill Wynhoff, Deputy Attorney General, if this is his understanding where Mr. Wynhoff said from what he is hearing Tradewinds promised to pay and they are required to pay whether they go bankrupt or don't go bankrupt what we should be able to do to collect it obviously depends if they have any money to pay it.

Chair Thielen said under the recommendation in front of us all amendments shall be subject to the review and approval by the Department of the Attorney General if this Board wants an unconditional promise to pay that's something they have the authority to do where Mr. Wynhoff acknowledged saying it is not a problem documenting Tradewinds' obligation to pay under any circumstances as we all know that does not necessarily correspond to money in the pocket, but it wouldn't be any difficulty to make promise conditionally enforceable to the extent they had the money. The Chair said we are three to four months out if they are to do it in August, 3 months out as far as directing Tradewinds to come back or not amend it.

Member Agor suggested another alternative is to terminate the agreement and give Tradewinds a grace period to get caught up. Chair Thielen said that would be amending it which is what this is asking for, a grace period to catch up on payments. Member Pacheco asked whether this agenda item is sunshined and could the Board terminate Tradewinds' license now or do we have to bring this back. Mr. Wynhoff said we can't terminate today. Chair Thielen said that the Board could reject staff's recommendation and at that point Tradewinds' would be left either to come into compliance or bring a separate action. Member Pacheco said he doesn't understand what that will do for the Board because this project is at its final crossroads that Tradewinds will either get the money or not and if they don't get the money they are not going to pay us and they are not going to continue with the project and the Board will terminate the license. If Tradewinds does get their money than we hold them to the buyer on these last amendments and this project goes forward on a timely manner. Otherwise, we can decide to kill the project now. But, with GMO at the table and since the first time Member Pacheco has looked at this project it seems reasonable because previous Board action set this in motion and he is here to support those previous Board decisions recommending approving staff's recommendation because denying it doesn't do anything better for themselves or the Department unless Tradewinds had some money out there to come up with it would be here.

Member Edlao reiterated his support of the agreement and his concern that the state is always on the short end particularly with the economy now saying it is his understanding that come November if Tradewinds doesn't get the financing the Board has ways to pursue what is owed the state regardless if the state "shall" and maybe they should change it to "will." Mr. Wynhoff said he doesn't think "will" versus "shall" makes a difference, but the point is Tradewinds owes it to us, but if they don't have any money we won't collect it. Member Pacheco said that we just get in line with all the other creditors.

Member Goode asked to amend stating should the applicant not make the payment as recommended that the license will terminate and the state will do what it needs to do to collect. Mr. Conry said it would be putting in an automatic termination provision in it. The one thing in getting that in October is staff would find out if the financing goes down at the last minute or something like that. The project will die if Tradewinds doesn't get the financing put together and will not be able to continue making payments without it. The financing is the trigger for the permits because it was needed to get the financing deal in place in order to finish the engineering paperwork. The automatic termination would have to come back to the Board for a termination move to actually terminate. We would go forward, October comes and staff will prepare the Board a move to terminate if Tradewinds haven't reached its milestone which will give them the opportunity to pitch their case.

Chair Thielen noted and summarized that a lot of times the Board will do an amendment to direct people to come back at a set time that way there is direction to the staff as well as the applicant so you can direct either the applicant to come back in October with their equity partners or in the alternative if that's not locked up a recommendation relating to the agenda. Mr. Conry added by saying then give it to the Board to decide.

Member Pacheco said that if this Board approves the recommendation then come October Tradewinds is where they are at today and he can't see himself supporting further continuance of this asking to restate the amendment.

Chair Thielen suggested amending the recommendation by adding a provision to direct staff to bring back to the Board in October 2009 to notify the Board that this has been complied with having received full payment and if not to prepare a recommendation to terminate the agreement.

Member Pacheco moved to approve staff's recommendation by adding an amendment E that advises staff to inform the Board whether payment has been made at the October 2009 meeting and if not to prepare a submittal for termination of license. Member Edlao seconded it. The Board approved and the motion was passed.

Chair Thielen summarized that this would be a full payment in October 2009 and if not we will have a submittal from staff that Mr. Bryan will have an opportunity at that time.

**The Board:**

**Moved to approve staff's recommendation by adding an amendment E advising staff to inform the Land Board whether payment had been made at the October 2009 meeting and if not to prepare a submittal for termination of license.**

**Unanimously approved as amended (Pacheco, Edlao)**

**Item D-7      Withdrawal from Governor's Executive Order No. 3867 and Reset  
Aside to Department of Agriculture for Agriculture Purposes,  
Kahuku, Koolauloa, Oahu, TMK: (1) 5-6-005:018 and 5-6-006:056.**

Charlene Unoki representing Land Division reported on the background and that Randy Teruya of Hawaii Department of Agriculture was present for any questions.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item F-6 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Isabella Abbott, University of Hawaii, Department of Botany, for Access to State Waters to Conduct Algal Research Activities**

Dan Polhemus, Administrator for Division of Aquatic Resources, described request and permit background noting that this was a renewal of previous permitted work, scientific and cultural reviews support acceptance with no concerns raised, no public comments, staff opinioned to allow the activity and the Monument Management Board (MMB) opinioned that the client has met the findings and a representative was present.

There was some discussion regarding how the samples are carried and micro-photography used.

**Unanimously approved as submitted (Edlao, Goode)**

**Item F-7 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Randall Kosaki, National Oceanic and Atmospheric Administration, Papahanaumokuakea Marine National Monument, for Access to State Waters to Conduct Surveys of Deep Coral Reefs.**

Mr. Polhemus spoke on the permit's background which is to study problems in deep water coral reefs and noted that the applicant was present.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item F-8 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Special Ocean Use Permit to Wayne A. Levin to Access State Waters to Photograph Marine and Terrestrial Environments in the Monument.**

Mr. Polhemus explained permit's background that there were no concerns raised, no public comments, staff and MMB support the application and the applicant was present.

Member Pacheco asked who is funding this project where Wayne Levin spoke saying that it's a partnership with NOAA and that his equipment is self funded describing NOAA using the photos for educational outreach.

Member Goode asked whether there are commercial components when the work is completed where Mr. Levin explained that there will be exhibitions and possible sales,

but no guarantees with possible commercial use outside like advertising that he would own the copyright, but NOAA would have rights for their use. Mr. Polhemus noted this is an interesting conversation about intellectual property rights referring to previous policies discussed for the Monument which has not been completely sorted out. There is some component of state and federal co-copyright on things like this and the state is allowing access into the place, but at the same time copyright looks at the creator of the work. Once you allow someone to create the work they do have that ownership and staff is hoping things like this receives an amicable arrangement and hope not to test any of this in court.

Chair Thielen noted the philosophy of bringing the Monument to the people rather than bringing the people to the Monument by sharing the images and having the Monument Management Partners the ability to use it in education and outreach, museum shows and the like are great efforts in taking it out there recognizing that there is some commercial component to that as well which Mr. Levin agreed that there is a possibility of a publication and magazine spread. The Chair added by saying a lot of that is bringing the Monument to the people and gathering an understanding and support of a protected area and the value of keeping it protected and Mr. Levin agreed.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item F-10 Request for Approval of Special Activity Permit 2009-100 for Dr. Celia Smith of The University of Hawaii at Manoa, Botany Department, and Designated Assistants**

Mr. Polhemus described the project background and said that Dr. Smith requested to include the adjacent fisheries management area which isn't reflected in the submittal, but with the Board's discretion to amend it.

There was some discussion with the Deputy AG, Bill Wynhoff, on whether this would be a problem and his response was it wouldn't be a problem.

Dr. Celia Smith explained that the purpose for this algal clean-up is to honor Dr. Isabella Abbott to celebrate her 90<sup>th</sup> Birthday which Waikiki Aquarium will fund. One of Dr. Smith's graduate students suggested working in front of the Natatorium where this student has long term research sites and this amendment would replicate a data set that started in the late 1960s from Dr. Smith's predecessor, Dr. Dottie, documenting the impact of alien species in Waikiki and help this student complete his data set. Lyon Arboretum will compost the algae.

There was a discussion about the estimated target of 100 burlap bag limit and Board members expressed their appreciation.

**Unanimously approved as submitted (Goode, Edlao)**

**Item B-1 Request Board Approval to Enter into Contracts between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (DOCARE), with Windward Boats, Inc. for 25' Hardtop Glasscat Vessel with Trailer, Security Equipment Corp. for Training and Service Ammunition, and Create an Impression and Safety & Security International for Uniforms.**

Patty Edwards representing Division of Conservation and Enforcement (DOCARE) spoke on the request background for each contract item where the last two items were inadvertently added unaware that uniform items don't have to go before the Board. Chair Thielen suggested an amendment to approve the first two contracts.

There was a discussion whether or not there were other bids which there were per Ms. Edwards.

**Unanimously approved as amended (Pacheco, Edlao)  
To amend staff's recommendation to approve Windward Boats, Inc. and Security Equipment Corp. contracts.**

**Item D-1 Set Aside to Department of Land and Natural Resources, Division of State Parks for Ahukini State Recreational Pier Purposes, Hanamaulu, Kauai, TMK: (4) 3-7-2:2, 7, 9, 10 and 11.**

**Item D-2 Grant of Term, Non-Exclusive Easement to George Tsukamoto for Access and Utility Purposes, Kapaa Homesteads, 4th Series, Kawaihau, Kauai, TMK: (4) 4-6-010:004 & 005 (por).**

**Item D-3 Grant of Perpetual, Non-Exclusive Easement; Issuance of Management Right-of-Entry to the Water Board of the County of Hawaii, for Waterline and Related Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-01: portions of 7 & 41.**

**Item D-4 Rescind Prior Board Action of February 27, 2009 (D-6), to Rescind Its Prior Board Actions of October 24, 2008 (D-7), Issuance of Revocable Permit to Mahalo Broadcasting, LLC, Permittee; Forfeiture of Revocable Permit No. S-7425 to Skynet Hawaii LLC, Kalaoa, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-3-49: 38.**

Member Pacheco asked what happened where Charlene Unoki of Land Division spoke saying Mahalo Broadcasting, LLC wasn't responding to staff's correspondence so staff went to the Board in February 2009 and asked that it rescind its approval for an issuance of a revocable permit to Mahalo Broadcasting, LLC. Right after the Board meeting the co-owner contacted staff apologizing for not responding, made all payments and staff asked the Board to rescind their rescind.

**Item D-5 Grant of Perpetual, Non-Exclusive Easements, to Department of Transportation for Highway Lighting Purposes; Kaakaukui, Honolulu, Oahu; Tax Map Key (1) 2-1-15: 009 (portion) and 030 (portion)**

**Item D-6 Amend Prior Board Action of April 12, 1996, Item D-17, Set Aside to the City and County of Honolulu, Board of Water Supply by Governor's Executive Order for a Water Tunnel and Protective Zone Together With a Waterline Easement at Waiomao, Palolo Valley, Honolulu, Oahu, Tax Map Key: (1) 3-4-22:portion of 001**

**Unanimously approved as submitted (Pacheco, Goode)**

**Item F-1 Request for Approval of a Permit Application for Mr. James K. Mawae for Netting Activities within Area 1A Only, in Kaunakakai Harbor, Molokai (7/01/09-6/30/10)**

**Item F-2 Request for Approval of a Permit Application for Mr. August Rawlins, Jr. for Netting Activities within Area 1A Only, in Kaunakakai Harbor, Molokai (7/01/09-6/30/10)**

**Item F-3 Request for Approval of a Permit Application for Mr. Albert M. Madela for Netting Activities within Area 1A Only, in Kaunakakai Harbor, Molokai (7/01/09-6/30/10)**

**Item F-4 Request for Approval of a Permit Application for Mr. Walter K. Rawlins, for Netting Activities within Area 1A Only, in Kaunakakai Harbor, Molokai (7/01/09-6/30/10)**

Mr. Polhemus noted that items F-1, F-2, F-3 and F-4 pertain to the same issue explaining the reasons for segregating net based and pole & line based fishers referring to area 1A in the schematic.

It was discussed whether each item are separate groups which they are per Francis Oishi of DAR.

**Unanimously approved as submitted (Agor, Pacheco)**

**Item F-5 Request Approval to Temporarily Close the Bottomfish Fishing Season for All State Marine Waters Surrounding the Existing Bottomfish Restricted Fishing Areas in the Main Hawaiian Islands from July 6 through August 31, 2009**

Written testimony from Marti Townsend of KAHEA was distributed.

Mr. Polhemus reported on background that a new TAC (total allowable catch) will be set

in Kona next month which is currently going through external review and that he doesn't have any guidance with the new numbers yet. But, noted that indications show that we may have turned a corner in the fisheries because even with the biomass in the main Hawaiian Islands below what they would like it, at a sustainable yield, we have stabilized the drop in that biomass over time. For example last year the TAC was under 180,000 lbs and this year it drifted to 241,000 lbs. If they kept the TAC more conservative they will rebuild the biomass more quickly at the same time they constrain extraction from this fishery at a time when we want to promote more jobs and income. In the interim they will try to keep sustainable production at the higher end of the scale while accepting the fact that they will rebuild the underlying biomass more slowly.

Chair Thielen asked that the total allowable catch, the date of the actual closer will vary, not like a traditional season so process wise DAR comes before the Board to seek opening of the fishery and comes back a second time for the closing, correct? Where Mr. Polhemus confirmed that the Chair asked if it is permissible in the next season and if the Board members want to consider this to have Aquatics come before the Board at one time to open the season and to validate the total allowable catch and say that the Department would be delegated the authority to close the season once the total allowable catch is reached. Deputy AG, Mr. Wynhoff asked how it is done now. Mr. Polhemus said staff comes before the Board at opening and again to close where Mr. Wynhoff replied saying he doesn't see why staff couldn't and wondered if there were any rules.

Mr. Polhemus said that the 2008-2009 Legislative Session passed Act 112 which is 187A-5.5 that allows staff to come before the Board in a single action to open or close fishing seasons or shared jurisdiction fisheries and it also allows action on total allowable catches, individual fishing quotas, etc. Mr. Wynhoff said that the reason he asked is because there was difficulty opening and closing the bird hunting season and it sounds like the rules are different and as far as he knows it wouldn't be a problem to do opening and closing all one time. Chair Thielen said we have to double check it with the Attorney General's Office to make sure that the statute did authorize a delegation, but it would still be before the Board at the opening of the season setting that total allowable catch allowing the Department to act quickly and the reason she is raising this is because the Board members are considering reducing the number of Board meetings over the next couple years as feasible for cost savings. Mr. Polhemus said that the division is totally amendable to this noting that the reference to bird hunting and ICA by the court of appeals was exactly the reason why they went to the 2008 Legislature and passed Act 112 so that they would not have any statutory questions.

**Unanimously approved as submitted (Pacheco, Goode)**

**Item F-9 Request for Approval of Special Activity Permit 2009-90 for Dr. Andrew Sim of The Seattle Aquarium, and Designated Assistants**

Mr. Polhemus presented this request pointing out the list of regulated and non-regulated species on the permit which went before staff including Dave Gulko, DAR's Marine

Biologist, who is passionately committed to protecting Hawaii's biota and has rinsed things down from the initial list.

There was some discussion whether all the collection is around Oahu which it is.

It was also discussed what kind of mortality you would usually get collecting these which depends on the operator because none of these are certain and that big aquariums spend a lot of money collecting and they tend to be careful air freighting straight out and that is why they want to be near Honolulu.

There was a question about 600 lbs. of live rock which is not very much because of the weight. The purpose is to have context for the fish swimming in a tank and the microfauna associated with the live rock improves the survival (of the fish). Staff has given permits out for live rock to other educational entities within Hawaii, but it was not certain how much every year. Alton Miyasaka from DAR spoke explaining that The Seattle Aquarium has several tanks for the Hawaiian collection where the rocks are spread out with enough rock structure for the fishes to each and to give the tank a more natural look. Chair Thielen said she understood what the aquarium wants, but live rock doesn't reproduce at the pace of fish. Do we want to continue to give out permits to outside aquariums to harvest every other year? Mr. Miyasaka explained that The Seattle Aquarium is not knocking rock pieces off, but are looking for rubble areas so that they won't have to break things up. The Chair said that you will have one aquarium and then another will come and ask and this is different from the fish which Mr. Alton said that they did have concerns with that especially with the live coral. Chair Thielen asked whether staff has limits placed statewide so if others come to staff you'll have a clear line of what can be taken, but staff doesn't have that yet per Mr. Miyasaka.

Mr. Polhemus explained that anything that is not live coral is to some extent live rock because most has something growing on it where by definition live rock is a substrate with other marine organisms growing.

Chair Thielen said that staff is doing a lot of enforcement action bringing forward a lot of effort at protecting these corals and live rock and this seems inconsistent where she feels uncomfortable hearing that DAR doesn't have a set limit as far as the extraction of this and what is permitted which has worked up to now because you haven't gotten the volume of the request and it seems a little inconsistent with this one suggesting not to include the live rock in the special activity permit and sending it back to staff to find out what should be the policy across the state and then evaluate future requests based on that which Mr. Polhemus agreed. It was discussed to have the live rock come back to the Board as a separate item.

There was some discussion whether staff charges for the taking of natural resources which they don't because it's used for an education benefit and it was assumed if our aquarium(s) wanted something from Seattle's natural resources they would accommodate us.

Member Pacheco asked how many of these permits go out which are not very many per Mr. Polhemus but reiterated the Chair's concern about larger aquariums coming in with a desire to do similar that staff had a lot of internal discussion. Chair Thielen said that given the efforts of the Department to protect these resources its better to have the Division have a policy even for local collection. Under what guidance are you going to follow when reviewing these permits and why these are allowed and others not because somebody who is under enforcement for damage for this is going to say its less than what you gave away to a mainland aquarium and how do you justify that. There is a need to have that explanation and some type of guidance for the Department where Mr. Polhemus noted on-going discussions like these involving the North Western Hawaiian Islands.

There was some discussion over the issue dates and whether Seattle Aquarium comes back every other year which they do to collect fish referencing Maui Ocean Center (MOC) who comes back annually because of turn over issues with the tanks. In answer to the number of aquariums with permits there is the Waikiki Aquarium, MOC and The Seattle Aquarium. When asked how many fish can be collected about 30% of Hawaii's fish population is endemic and that about half collected is endemic.

Member Pacheco said he was inclined to allow the live rock collecting, but agreed with the Chair for staff to come up with some policy. Chair Thielen reiterated that she is uncomfortable with it because of efforts going on in other matters pending before this Board with what the education and outreach staff is doing with the public and not to have something in place. Because this Board has been moving forward with those other efforts and she would be more comfortable if they had the explanation or policy in place before taking action on this.

There was some discussion about when and how long The Seattle Aquarium will be collecting which is July until the end of the month and they may come back next summer toward the end of the permit.

It was reiterated to have the policy in place noting that DAR biologist, Dave Gulko, would welcome this guidance that this is an internal matter that doesn't have to go to public meetings.

Chair Thielen said that she is less concerned about the applicant's needs than the resource needs of Hawaii and staff having clear policies and guidance in place to be able to explain to applicants and other people we are taking action against why we are treating certain live rock, allowing people to take out and in other cases where there has been damage to take action against people in order to prevent damage because we have a limited amount of this resource while live rock is reproducing faster than coral it is still not reproducing at the level that fish are and we have concerns statewide. There is a lot of effort going on in our state about stop damaging reefs because it is such a limited resource and we need something in writing to explain why you would be giving regular repeated permits to people to come and extract a large amount of that resource from the waters where Mr. Polhemus said it is the productive thing to address.

There was more discussion whether to take out the live rock or live rock contingent on the Department issuing a written policy on live rock which would take about a month and whether the Board would want to hear that policy to evaluate it is good policy for any future permit or whether to make it contingent. Or, the live rock portion could come back in July while The Seattle Aquarium staff is here, DAR staff will work on the policy and if its done they can precede if not the applicant has a problem. It's a policy in which the Board concurs.

Member Edlao moved to approve the recommendation with the amendment of removing the live rock component which will be considered in July contingent upon the Division preparing policy acceptable to the Board.

**The Board:**

**Moved to approve staff's recommendation with the amendment to remove the live rock component which will be considered in July 2009 contingent upon the Division preparing a policy acceptable to the Board.**

**Unanimously approved as amended (Edlao, Pacheco)**

**Item J-1 Recommendation to Authorize Extension of Contract 56304 Between the Board of Land and Natural Resources and Arnold T. Okubo and Associates, Inc.**

Written testimony from Glenn Shiroma was distributed to the Board.

Ed Underwood described recommendation background asking for a three year extension.

Member Goode asked about Glenn Shiroma's written testimony and whether it was accurate or not where Mr. Underwood explained that Mr. Shiroma is DOBOR's biggest vocal critic on the Island of Hawaii and he normally has a limited amount of information. DOBOR has exercised the contract and gone forward with the project according to what DOBOR's engineers and DLNR's engineers has determined appropriate and the only reason why staff needs this contract extension is because the contractor is delayed in getting out into the field and staff needs to provide engineering services while they are in the field. Member Goode spoke referring to whether this side or other side of the harbor, obviously, the Attorney General has looked at the contract accordance appropriate within the limitations authorizing legislation which Mr. Underwood acknowledged.

Member Pacheco said that Mr. Shiroma wanted to know where the funding was coming from because it's not spelled out in the legislative budget where Chair Thielen said for legislative appropriations when they issue CIP projects they will in the budget identify whether the bonds will be paid for using general fund payments, special fund payments or the type of bonding staff is going for in the Recreational Renaissance was general obligation reimbursable which is a special fund but backed by the credit of the general fund and it will have a mark on the budget appropriations as far as the source of the bond

funding and this is from Boating's special fund which Mr. Underwood acknowledged for this particular project.

Member Pacheco asked then it has nothing to do with these bills Mr. Shiroma cites in his testimony that this money is being used for this but it should be for that where Mr. Underwood explained that staff cannot do that because these funds are earmarked specifically on where this money can be used and their engineers go through this all the time with Mr. Shiroma on every project they do. These came from Representative Evans for the ADA loading dock that collapsed and staff is moving forward in replacing it. Hawaii Construction has a delay.

**Unanimously approved as submitted (Pacheco, Goode)**

- Item L-1      Approval for Award of Construction Contract for: Job No. F37B614D, Diamond Head State Monument Water System & Irrigation Improvements, Honolulu, Oahu, Hawaii**
- Item L-2      Approval for Award of Construction Contract for: Job No. B95XK70A, Maintenance Dredging at Kikiaola Light Draft Harbor, Kauai, Hawaii**
- Item L-3      Certification of Election for West Kauai Soil and Water Conservation District Director**
- Item L-4      Approval for Supplemental Agreement to Consultant Contract No. 53783, for Job No. 500BK44A, Ewa Pesticides Plant Interim Remediation, Oahu Kekaha Pesticides Plant Interim Remediation, Kauai**
- Item L-5      Approval of Supplemental Agreement for Contract No. 57415 Job No. B72DO71A, Keehi Small Boat Harbor Pier Improvements, Oahu, Hawaii**

There were no questions and no public testimony.

**Unanimously approved as submitted (Agor, Edlao)**

- Item M-1      Amendment No. 2 to Lease No. DOT-A-06-0002 Extension of Lease Term to IASS (Hawaii), LLC Honolulu International Airport**
- Item M-2      Issuance of Direct Lease Eagle Air Med Corporation Honolulu International Airport**
- Item M-3      Issuance of Direct Lease – University of Hawaii, Honolulu International Airport**

- Item M-4**      **Consent to Assignment of State Lease No. DOT-A-90-0026 Sky Chefs, Inc. to Gate Gourmet, Inc. Honolulu International Airport**
- Item M-5**      **Amendment No. 1 to Concession Agreement DOT-A-07-0012 Food & Beverage Concession at Hilo International Airport and Kona International Airport at Keahole**
- Item M-6**      **Amendment No. 2 to State Lease No. DOT-A-78-0045 Extension of Original Lease Term Gilbert W. Dela Cruz, Trustee, and Robert Y. Ota, Trustee Honolulu International Airport**
- Item M-7**      **Rescind Prior Board Action of April 28, 2006, Agenda Item M-5, Issuance of Lease by Direct Negotiation, Honolulu Fish and Seafood Corp., dba Honolulu Fish Company, Units FV7A, FV7B, FV7C and FV7D, Multi-User Building, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu**

No DOT staff was present or anyone from the public to testify.

**Unanimously approved as submitted (Agor, Edlao)**

**Adjourned (Edlao, Pacheco)**

There being no further business, Chairperson Thielen adjourned the meeting at 11:34 a.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