

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

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DATE: FRIDAY, SEPTEMBER 11, 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 9:10 a.m. The following were in attendance:

MEMBERS

Laura Thielen  
David Goode  
Ron Agor  
Dr. Sam Gon

Robert Pacheco  
Jerry Edlao  
John Morgan

STAFF

Morris Atta/LAND  
Paul Conry/DOFAW  
Dan Quinn/PARKS

Barry Cheung/LAND  
Dan Polhemus/DAR  
Mike Donoho/DOFAW

OTHERS

Randy Ishikawa, Deputy AG  
Craig Wagnild, D-2  
Thomas Likos, D-10

Nohea Santimer, D-9  
Michael Littleton, D-2  
Mike Ramsey, D-5

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

**Item A-1     August 14, 2009 Minutes (TO BE DISTRIBUTED.)**

**Item A-2     August 28, 2009 Minutes (TO BE DISTRIBUTED.)**

Not ready. Deferred

**Item D-9 Grant of a Perpetual, Non-Exclusive Easement to Nohea Marks Santimer for Access and Utility Purposes, Waialea, Koolauloa, Oahu, TMK: (1) 5-8-001: adjacent to 055**

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Morris Atta for Land Division had communicated the easement background which is for state lands.

Member Morgan questioned where the property was on the maps provided which Mr. Atta described.

Nohea Santimer told the Board she was here to answer any questions and accepted staff's recommendations as asked by Member Gon.

Member Morgan asked how Ms. Santimer is able to access her property now where she described her calling the farm manager to unlock the locked gate. Member Morgan also asked whether there was a master plan for the area. Mr. Atta said he wasn't certain, but he could check. There was some discussion of UH's portion with a former dairy that UH was to clean-up and that people were interested in the property.

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

**Item D-2 Rescind Prior Board Action of April 24, 2009 (Item D-3); Mutual Cancellation of General Lease No. S-5264, HITV Operating Co., Inc., Lessee, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-8-01: 11.**

Mr. Atta described action and background that Hawaii Public Radio (HPR) as a non-profit is entitled to a direct lease with nominal rent rather than an existing commercial lease with rent at about \$19,000 and for HPR to seek the direct lease after staff takes care of the existing lease. As part of the process for terminating the lease, the existing lessee agreed to a mutual cancellation of obligations. Mr. Atta requested a change to the recommendations because it didn't include provisions for conducting a Phase I which is standard procedure when terminating leases. The attorney for the existing lessee had concerns about certain provisions that survive the lease upon termination, specifically the obligation to remove the tower and the litigation regarding the performance bond - how long that needs to remain in place. The attorney suggested and requested that those surviving obligations terminate upon the assumption of those very same obligations by the subsequent lessee, namely HPR, subject to Board approval.

Member Gon asked whether these details are in the submittal, which they are not and that is why Mr. Atta is bringing it to the Board's attention.

Craig Wagnild introduced himself as Attorney for HITV Operating Co., Inc. and testified that the request is primarily, that at some point, there is closure to the obligation that it survives termination of the lease. It's a reasonable obligation that you want to continue surviving a lease; any land owner would until it is either removed or another party has taken that obligation and agreed to do it. On the termination of this lease at this stage

there's not another lease starting up with HPR, which is the plan, and he supports that and HITV wants to do that to accommodate it. But, until that happens with a signed lease his client appreciates the necessity of the Board requiring that obligation on the part of HITV continue. Once HPR does take on that obligation and agrees as part of its lease that it will remove the tower and will pay the cost to remove the tower and improvements upon termination or cancellation. At that point, Mr. Wagnild asked the Board to approve terminating HITV's obligations.

Chair Thielen asked right now HITV has been assigned the lease and has the obligation to remove the tower, the bonding and everything else. In discussion with the Department staff found that because HPR is a non-profit they can do a direct lease with the Department at a nominal rent as a public entity. Mr. Wagnild is asking staff to terminate the lease and allow staff to directly negotiate and lease with HPR. Once we have that new lease in place HPR will take on the obligation to remove the tower at the ending of the lease term. And, Mr. Wagnild wants HITV to be resolved of that responsibility once the new lease is in place which he confirmed.

Mr. Atta noted that the new lease is not part of this submittal. Chair Thielen conveyed that in the event HPR doesn't follow through with this HITV retains the responsibility to remove the tower which Mr. Atta confirmed.

The Board questioned whether HPR being a non-profit can afford removing the tower. Mr. Wagnild said he understood that the reason why HPR was willing to take on the obligation was because of the reduced rent. He doesn't speak for HPR but it is his understanding if HPR weren't able to they wouldn't sign the lease then HITV would not be released and somebody has not stepped in to take on the lease. The Chair noted that during negotiations with HPR staff will require bonding and insurance to show that they can have the capacity. Mr. Atta said that those are normal standard lease provisions and subject to attorney general review where they normally ensure those types of terms are addressed.

The Board questioned whether the deposit will be returned upon cancellation of the lease. Mr. Atta confirmed that the deposit will be returned, but not the performance bond which stays in place until the subsequent lessee. The Chair pointed out on Recommendation item C., it doesn't say an obligation to remove will survive until the next lease. She asked whether it was clear in the record that HITV retains this responsibility. Mr. Atta said that those lease terms specify that those specific obligations survive any termination of the lease which includes the obligation to remove the structures and the obligation to keep the performance bond in place until those obligations are satisfied. There was some discussion whether to modify the recommendation. Chair Thielen asked whether there is specific language Mr. Atta is recommending attaching to this or can we move forward with the language as written and upon HPR leasing and accepting those provisions we could do the release. Mr. Atta said we can move forward and questioned whether it's upon or before termination. Member Gon suggested under Recommendation C, 5<sup>th</sup> line adding after ..."duly fulfilled, or fully assumed by a subsequent leaseholder" where Mr. Atta remarked that would work. Randy Ishikawa, Deputy Attorney General, suggested

adding also “to the satisfaction of the Board.” Mr. Atta said the issue with the Deputy AG is saying to make this slightly broader for whatever reason HPR, being a non-profit may not completely fulfill all of the terms that are normally required of a commercial lessee and chooses to accept something less than what would be a full performance. The Chair summarized “or assume by a subsequent leaseholder to the satisfaction of the Board.”

Chair Thielen asked what the amended recommendation for the EA is. Mr. Atta’s response was to add an additional item requiring that the environmental phase I be conducted prior to termination. There was some Board discussion that this item would already be covered under F. Mr. Atta said that this is to be more specific. The Chair agreed and suggested adding another recommendation that an environmental phase I be conducted prior to termination. And, she asked Mr. Wagnild whether this was acceptable to HITV where Mr. Wagnild replied that he just learned of this and haven’t spoken to his client, but this sounds like standard operating procedures for terminating a lease and he doesn’t expect any objections. He said lets go forward.

Member Agor asked to do away with the \$19,000 for the lease that will be presented to the Board. Mr. Atta remarked in the affirmative that this is the reason staff is taking this approach because if they went ahead with the prior Board action which was to approve the assignment of the lease and because it was a public auction lease they would not be able to change the terms of the lease and would have to require to pay the \$19,000 and this was the strategy the lessee agreed on. Member Agor was concerned with charging non-profits, but it will come back later.

Michael Littleton – President of Hawaii Public Radio was here to answer questions.

**The Board:**

**Amended staff’s recommendations by amending Item 2.C. to read:  
"Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of this board action, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled or assumed by a subsequent lessee to the satisfaction of the board, and further provided that Lessor reserves all other rights and claims allowed by law:". The Land Board also amended the staff recommendations by including an additional item requiring the Lessee to conduct and Phase I environmental assessment prior to termination. Otherwise, the Land Board approved staff's recommendations as submitted.**

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

**Item D-10 Issuance of Right-of-Entry Permit to Fireworks by Grucci, Inc. for Aerial Fireworks Display, Honouliuli, Ewa, Oahu, Tax Map Key:(1) 9-1-057:seaward of 017.**

Administrator for Land Division, Morris Atta described the permit background that the Department issued similar right-of-entries before and there are no problems with the request.

Thomas Likos representing Fireworks by Grucci, Inc. noted that this permit is for tomorrow explaining that this was submitted along with the Fire Department permit 3 weeks ago. Chief Silva is standing by with that permit awaiting the results of the Land Board. The Rotary Club has been unable to advertise that they were having fireworks because we don't have approval yet. Mr. Likos described how in the past he had submitted for a permit 3 weeks before and was approved within a few days. Now he has been told that the entire Board must meet to decide on this and he wasn't informed of this procedure until a short while ago. He was informed that he wasn't on the agenda for the last meeting and it couldn't be decided then. Now it's the day before and he doesn't know whether he can do the fireworks show. He has 40 part-time people who work for him and use these fireworks to supplement their income. And, he gets calls from wedding parties asking what the timeframe is? How much time do we need? Before it was 21 days because that was the fire department limit and that always seemed to work for DLNR. Staff informed him that the Board may meet on this quarterly and Mr. Likos is thinking of putting in all his permits for the next year. He had no idea and he is appalled. It usually takes 2 weeks to a month in advance to prepare the paperwork and his business is very specific of the requirements because they have to pay for insurance as soon as they get the policy. The State requires they be very specific of the area, safety zones required and the exact area that they are going to use and that is what they submit. This change in procedure is a little onerous to them and hopes to make this simpler and hope the Board can give him some idea on how they can make this procedure work.

Chairperson Thielen explained she doesn't know why he was told the Board would be meeting quarterly because the Board currently meets twice a month and under the Sunshine Law the Board can only discuss what's on a published agenda and under that law it must be published 6 days in advance. One of the problems was when Mr. Likos submitted the request it was too late to go on the Board agenda for the last meeting and would have to go on the public agenda for this meeting which is required by the State's Sunshine Law. Staff had some discussion looking at the State being furloughed 3 days a month that they may have to adjust the Board meetings schedule and may not always meet twice a month, but would be doing that in an as needed basis and there was no discussion of going to quarterly meetings.

In the past the commercial permits Mr. Likos discussed had been processed within the Department as a right-of-entry permit but the amount of activities on public beaches had been expanding. The Department has placed conditions on those right-of-entries to say basically "no stuff" because staff was getting requests for 150 chairs, candlelight dinners and arches taking up a significant amount of beach so those right-of-entry permits became the activities with no stuff attached to them and they can be processed internally within the Department. But, commercial activities that require tents, chairs, amplified sound, things like that have to come before the Board on a special permit and be approved by the Board and that is the process for a special permit. Staff has been

processing things like the Waikiki Rough Water Swim and certain meets where they are asking to put up certain tents and amplified equipment through the Board. It will require 21 days for the minimum, but you would have to get it in to the staff to put it on the Board agenda and move it forward. There was a change in the process from a year ago when he was processing this permit. Staff can still meet that 21 day requirement because that would fit within the Sunshine law schedule.

Mr. Likos told the Board that they don't put up tents or chairs. They put up a 20x30 and a 10x50 for the area and that is it. There is a small amount of equipment and some wires. There is no fee. The people putting on the event who are using DLNR land would have to get the permit, but he believes the land the Rotary Club is using is private land. As far as his company they have minimal impact on the area and it is closed during the period of the show like about ½ hour before and after. The show lasts for 5 to 20 minutes and has shut down the area for a maximum of 3 hours. He was wondering if he can be moved back to the old process.

Mr. Atta said he was reminded of other fireworks vendors that the typical process involves the setting up of a firing platform, but it still involves setting up something that occupies space on the beach for a fixed period of time. The reason why these types of operations have difficulty with getting into an existing quick ROE program like beach weddings is that our standard terms of conditions under those types of activities are very specific on the kinds of stuff you can have and very limited exemptions to that rule of setting up and occupying space on the beach. And, the nature of the activity being high risk to public safety which puts scrutiny at a higher level than your routine simple commercial wedding and that is the reason why staff felt these types of activities fit better in a grouping of commercial activities like large special events that require equipment, tents and chairs. Its not only stuff, but it is also a level of risk and concern for safety that staff feels needs to be brought to the attention of the Board when making these types of decisions.

Chair Thielen reminded Mr. Atta at the election of the standard conditions on the right-of-entry permits that the time is limited to two hours maximum which Mr. Atta confirmed. The Chair continued saying the complaints the Department received was exclusive use of public lands that was moving other people out of areas. The standard terms and conditions on these right-of-entry permits where you cannot reserve a specific space on the beach because these are public lands and if you have an area staked out for your choice and you go down there and people are on the beach in that location you cannot ask them to move. The public has a right to go to areas, but you can go stake out an area that is not being used and use that for up to two hours including set-up, break down and clean up and leave the area. Unobtrusive type of use - so no amplified noise, sound systems - the pyrotechnics pre-selection of an area, closing it off, having that platform for 3 hours or more has gone into this other type of review process. Under the advice of the Attorney General's Office these are content neutral where we are not favoring one type of activity over another. These are conditions protecting the public's rights to use public beach space because there are limited areas and the volume of complaints the Department received about commercial activities by staking out and

taking over areas to the detriment of the general public. If you have a 21 day lead time required under fire department review process that 21 day would work with this Board process because it would give the applicant the six day publication notice and a Board meeting will take place within that 21 day period. If that 21 day lead time works for Mr. Likos it could be something that could work in this format as well. Mr. Likos said if the Board continues to meet twice a month and if he does have the 21 days then that would be fine for him. In answer to the question whether the dates are published in advance, the Chair said it's the 2<sup>nd</sup> and 4<sup>th</sup> Friday of the month, but if furloughs were to go into affect staff would do a published notice to change from a Friday to a different day. She suggested if Mr. Likos knows events are coming up to talk to staff earlier and they could come in with something earlier which gives flexibility on the actual date and location if they know the general time period within a week and there are other ways to come in earlier without having the exact information then the Board could delegate certain things to the staff. Mr. Likos responded saying he appreciates that.

The Board questioned whether the 21 days is the earliest that Mr. Likos can go to the Fire Department where Mr. Likos corrected saying that is the last. The Board asked whether this Rotary event was approved for awhile which Mr. Likos confirmed that reiterating his earlier testimony on submitting the application to Steven Lau at DLNR and that it would be approved and he would get it back. This time it didn't make the agenda requirements for the last meeting. Where the Board asked why wait for 21 days and Mr. Likos said he has to get the insurance policy and expenses come up where the event is paid for noting had he known the procedure changed he could have submitted 6 weeks ago.

The Board asked how many permits does Mr. Likos needs per year where it changes all the time per Mr. Likos. Weddings maybe at Paradise Cove, maybe New Years, DOBOR's things where the Chair noted the Coast Guard requires those permits to be done at least 30 days in advance which Mr. Likos clarified as 60 days for new ones and they have those requirements for water permits, but those are much higher level than a Taste of Kapolei or a wedding. Mr. Likos don't know what they are going to do until they negotiate the contract for Taste of Kapolei next year. It's hard to say. They try their best to get these permits in ahead of time and get deposits it's hard to start the whole process. Member Goode commented that it would be extreme circumstances for the Board not to approve and he didn't know what that might be suggesting granting a general permit on an annual basis – grant 12 of these over the course of the year, work out the conditions so the Board can delegate to staff to work on it quicker and the Board could lighten the load on the agenda. He asked whether Mr. Likos is licensed and he is. There are a lot of checks and balances in place with the Fire Department and it's just the use of a State public resource. Maybe there is an opportunity to develop a general permit. Chair Thielen said we could look into it and staff is aware when someone is asking permission to do something in an area that is sensitive due to resources or size that could steer people in the right direction.

Mr. Likos asked he hoped that the Board wouldn't be offended if the entity employing them advertises ahead of the permit being issued and the Board commented people do it anyway.

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

**Item D-4 Consent to Sublease General Lease No. S-5975, Reduce Reuse Recyclers Services Hawaii LLC, dba RRR Recycling Services Hawaii, Lessee, to Locations Investment, Inc., Sublessee, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-7-036:004 & 016.**

Mr. Atta reminded that the Board previously authorized an issuance of a lease for the lot on Kapahulu for commercial parking purposes and the successful bidder was Reduce Reuse Recyclers Services Hawaii. Subsequent to that, staff had entered into some negotiation with the previous holder of the RP, Locations, to allow them to continue to use a significant portion of the lot for parking. Staff reviewed the request and finds the use acceptable which doesn't change the existing operation. He noted a change that the period commences September 1<sup>st</sup> and ends August 31<sup>st</sup> and staff wants to change it to October 1, 2009 and expires September 30, 2024 because it's already after the fact for the existing lease and sub-lease.

There was some discussion whether or not the sub-lessee was in good standing where Mr. Atta said that the applicant's representative is here. Chair Thielen called for Mikio Sato from Locations, but he had already left. She said that the approval of the sub-lease would be subject of Locations filing a 2009 return which Mr. Atta approved saying that it is part of the submittal, but not part of the recommendation. The Chair noted that the recommendation says "...subject to any applicable conditions cited above..."

**The Board:**

**Amended the terms of both the lease and sublease to commence on October 1, 2009 and expire on September 30, 2024. Otherwise, the Land Board approved staff's recommendations as submitted.**

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

**Item D-5 Sale of Lease at Public Auction for Pasture and/or Intensive Agriculture Purposes, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-008:071 and 4-1-027:020.**

Mr. Atta reported that this is pursuant to a request by the applicant to establish a horse rehabilitation center and the applicant is here noting that these properties have been vacant for quite awhile. He needs to amend Recommendation item 4.c., the blank is 2 years.

Member Morgan mentioned that the applicant is to conduct an environmental assessment and commented that it is an onerous thing to do for a relatively small piece of property and asked how extensive an EA they need to do. Mr. Atta noted because the property has been vacant whether or not an EA needs to be done and the way its written is if it's required the applicant must do or be responsible for any required compliance. If the determination is the EA or EIS is not necessary then the applicant doesn't have to do it,

but if there is they will have to comply where Chair Thielen said that anything under 343, dealing with state land is mandatory.

Member Morgan asked whether planting grass triggers an EA. Barry Cheung from Land Division spoke saying it depends when was the last utilization of this same parcel because it has been vacant for over 20 years and because the applicant proposes a horse rehabilitation center it is not the typical pasture and it was recommended to have an EA done to be on the safe side.

Mike Ramsey representing the applicant described what a horse rehabilitation facility is which is a pool for hydro-therapy, grassland, barn and houses for staff. When questioned by the Board about veterinarians' on-call, Mr. Ramsey noted there are only a couple horse vets on the island who requested a clean stable area for the communities' horses. There is no place in Waimanalo for the vet to work except standing in the middle of a field under the elements. It is not a big hospital. The Board questioned about residential use where Mr. Ramsey explained that someone has to be on the property 24 hours a day if a horse goes down they will call the vet in and for emergencies. Anything on the property will be towards the use of the facility and for security.

Chair Thielen asked whether we are doing direct negotiations or just approving putting something up for auction for pasture or intensive agricultural purposes where Mr. Atta answered negatively on the direct negotiations. The winning bidder would have to show they are doing pasture or intensive agriculture use subject to the land use restriction.

The Board questioned whether Mr. Ramsey knows about doing an EA where he said that he knows it's very expensive and very long that there are things they can look to cover all bases for everyone involved. The Chair noted that the Board doesn't know who the ultimate bidder will be and what the use will be, but the condition is if required, they would have to do an environmental assessment because its state land, it may trigger the 343 and that may not come up until the successful bidder puts in a building permit and another agency will decide that. Be aware of the cost associated with an EA. Mr. Ramsey acknowledged saying that will also be part of the final project when the applicant does that and there is astronomical expense that they cannot recoup from running the facility then it wouldn't be feasible to move forward.

Member Morgan moved to approve. Seconded by Member Agor.

**The Board:**

**Amended the staff's recommendations by amending Item 4.c. to specify that the period in which the Lessee is required to commence utilizing the property for the stated purposes of the lease is 2 years from the start of the lease.**

**Otherwise, the Land Board approved staff's recommendations as submitted.**

**Unanimously approved as amended (Morgan, Agor)**

**Item C-1 Authorization for the Chair to Sign a Memorandum of Understanding with the Mauna Kea Watershed Alliance**

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The Administer of the Division of Forestry and Wildlife (DOFAW), Paul Conry briefed the Board that this item is a continuation of work with private landowners and government agencies to establish watershed partnerships across the state. This is a new one on Mauna Kea which pulls together some of the partners there for increased focus and management, a good move forward. It allows staff to utilize watershed/partnership funding sources to focus management on this area which is continuing this program and providing opportunity for other land owners for increased management. He noted that the MOU was sent over to the Office of the Attorney General for preliminary review, but when making copies the last page with signatures (Parker Ranch) was missing and asked to include the second page of signatures which was distributed. Also, there is going to be a lot more land owners and reviewed and approved by the Attorney General's Office which is in the recommendation.

Member Gon asked where the U.S. Army land on Mauna Kea is. Mr. Conry said it's the lease area of Pohakuloa. How an MOU works is it targets the larger land owners and as the smaller land owners sees how it works and gets more comfortable with it, it provides a mechanism for the smaller land owners to join the partnership. Member Gon expressed his excitement for the MOU.

**Unanimously approved as amended (Pacheco, Gon)  
To include the second page of signatures.**

**Item F-1 Request Approval to Hold Public Meetings and Hearings to Amend Hawaii Administrative Rules Chapters 13-74, License and Permit Provisions and Fees For Fishing, Fish, and Fish Products, and to Amend 13-94, Bottomfish Management**

Dan Polhemus, Administrator - Division of Aquatic Resources (DAR) reported that this is a result of a process that has taken nearly two years and it amends DAR's rules dealing with the Main Hawaiian Island's Bottom Fishery to bring them into alignment with revised state and federal authorities. In January of 2007, the U.S. Congress revised the Magnuson and Stevens Sustainable Fisheries Management Act and within the context of that they mandated that federal fisheries, joint and shared state/federal fisheries should now be managed by a total allowable catch limit based on the best biological information obtained with the scientific information coupled with an assessment of the management integrity and uncertainty. In other words, how good a management structure do you have, how accurately can you track a catch, we can't get close to that. At the same time at the Legislature in 2008 a bill was passed – Act 112 that brought State authorities in alignment with the new revised Magnuson and Stevens Act, as such that this Board now has the authority upon our recommendation to set an annual total allowable catch per shared jurisdiction in the fisheries and to open and close fishing periods based on the advice of your state managers when we get to the point when the total catch has been reached. What staff needed to do was effectuate Act 112 in various ways by

administrative rules. This is one aspect of that. This is for the main Hawaiian Islands bottom fishery. It does bring the concept of a total allowable catch into the rule making process. Staff comes before the Board each year now, and explains what the scientific and statistical community of the Western Pacific Fisheries Management Council upon which the State sits as a current representative has determined should be the proper catch. The fishing year currently opens in September 1<sup>st</sup> of each year. Staff takes that catch forward, they track it. Either staff goes to the next September because they haven't reached the tack or if they reached the tack at the point before that then he'll come back to the Board and they close. For the last couple years, in 2007 when staff first tried this they ran at 178,000 lbs. and went over by 10% of that tack. The next year based on the SSD recommendation they had a 241,000 lbs. tack because they were getting some recovery biomass fishery. They missed it by 6.9% over, but given these are training wheel exercises on how to manage fisheries this way. The Federal partners and NOAA senior leadership in Silver Spring felt that these overages were reasonable and within allowances you could expect. In the current year the Chairperson sat on the WESTPAC council when the new years tack was voted it is 250,050 lbs. that fishing year opened on September 1<sup>st</sup> and staff is working on that current tack. What we've seen is that this has been a successful method of managing the fisheries. They have had less conflict with the fishers and the federal partners than they did in the past when they had divergent views on how the fisheries should be managed. And, it seems to have also gradually re-built the biomass on the tack from 178 to 241 to 250. That is the context of the rule before you. The rule sets up tack base management. Also, allows staff to ask fishers to report on a trip basis rather than a month basis because as they get closer to the end of a tack you can't see what is happening for a whole month and you could easily go over. If staff wants they can ask fishers for a trip report that revises bag limits, it makes changes on gear in terms of discriminating the kona crab net, ok, can still be utilized and the purpose and various other things. Francis Oishi who the authored the rule is here to answer any specific technical questions.

The Board questioned whether the trip reports for bottom fishing currently submitted are on a voluntary basis which Mr. Polhemus confirmed. Then the Board asked on a statistical point of view what is his feel on the accuracy of all this catch data where Mr. Polhemus said staff thinks it is good because not only does the fishers have to submit a catch report, but the dealers have to submit a report on what they bought explaining if Joe the plumber is out there reporting he caught 100 bottom fish this month and staff finds out who the dealer is that Joe sold 300 bottom fish, staff goes back to Joe to explain the disparity. All that the trip reporting really does is accelerates the rate of report. Legally, technically no one is mandated to give staff a catch report except on a monthly basis but what staff has done is they have 3 federally funded staff who concentrate on bottom fish data. They call the fishers, they get to know them, and staff would establish a pretty good rapport with many of them and asked would you be willing to voluntarily give staff the data in a more expedited fashion so they can more accurately monitor the tack. This has worked modestly well, some guys say no it's too much hassle in which case staff is fine and others are willing to help staff out.

Member Gon asked whether the purpose of this particular Board action is to not to go into details, but to request approval to hold a public meeting and hearing on these rules. Mr. Polhemus confirmed that this is for initial action for public hearing. Staff has scoped on the neighbor islands, has gone to the Office of the Attorney General for 18 months, and now its back to take to the fishers where the public may have different perceptions now. And, it's required by the Chapter 91 process.

Chair Thielen suggested that it might be helpful for the Board if in a future meeting staff scheduled a briefing on the status of the civil penalties system for the monthly catch reports, the trend information staff is seeing with the filings of that to get an idea who is shifting over to the trip reports and the statistics on that, also, the status of moving to the on-line system as well. Mr. Polhemus explained that would be best done at the end of the year. Staff is moving their commercial catch reporting to an on-line system which is in the late stages of beta testing with real fishermen testing it, coming back to see if it works or not. Staff assumes this will be fully deployed well before the end of this calendar year and he said staff can brief the Board on that. Also, with the CRVS (civil resources violation system) fishers who are delinquent in their reports are assessed a fine. If you are delinquent multiple times the fine escalates. These are \$15, \$30, etc. fines. Eventually, your license is suspended if you are a chronic non-reporter. Obviously, staff is evaluating how this is working with only 3 months of information so far. When there is 6 months of information staff can better assess how the CRVS is working and will give the Board a status and transcript.

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

**Item C-2      Annual Progress Briefing to the Board of Land and Natural Resources Regarding Implementation of the Management Plan for the Ahupua'a of Pu'u Wa'awa'a and the Makai lands of Pu'u Anahulu**

Mr. Conry introduced Mike Donoho who is the coordinator for the Pu'u Wa'awa'a Management Plan and Program on the Big Island and briefed the Board on the history that this is an annual briefing for that management plan.

Mike Donoho reported on the progress of the management plan by first giving some background history of the area and he directed the Board to the last page of the submittal showing a graph of the 62 objectives noting that although some show completion it is still on-going. There will be about 4800 acres protected once the next enclosure, Henahena Mauka is completed. He described plants, insects, and animals protected that there is a nursery for plantings and the status of reservoirs. To create partnerships with agencies and named some non-profits citing Youth Conservation Corp. He also talked about recreation (trails), a visitor kiosk, wildfires, education and organized groups and the volunteer program was described. The implementation continues.

Member Gon expressed his approval that these proposed conservation areas are ungulate free and asked how large are those areas where Mr. Donoho reported that the largest enclosure is the 3806 acre forest bird sanctuary fenced in October 2005. Since then they

implemented special public hunts, after 2 years staff initiates a trap and release which is Phase II of the animal reduction program and since February 2007 there has been 1100 animals removed from that particular enclosure noting three other enclosures are animal free. Per the Board's questioning Mr. Donoho confirmed that staff does see the Hawaiian hoary bat.

Member Pacheco expressed his appreciation for Mr. Donoho's work with the community clarifying that a community group initiated this first which Mr. Conry confirmed. Member Pacheco asked what the survival rate of the plants is. Mr. Donoho noted it depends on the location. At the Pu'u Wa'awa'a Cinder Cone Sanctuary, 70 acre enclosure, 16,000 koa seedlings were planted and a success rate of over 95%. In dryer areas staff expected 50% or even 35% survival, but it is encouraging.

Member Pacheco asked whether there was any further work on invertebrates where Mr. Donoho confirmed picture wing flies and other studies and surveyors have been documenting cave openings and all resources in them over the past several years.

Member Pacheco queried about Objective 21 whether there was any cost analysis between that and eradication. Is it more expensive to move the animals out as oppose to eradicating them? Mr. Donoho said that an expense analysis has been done as oppose to staff time. Materials and time allocated has not been significant. It has been effective, but is not complete and those animals have been relocated into the game management area which has not proven to be an excessive burden on the resources there because there are special hunts which is pretty balanced. Member Pacheco wondered whether the advisory group or plan will look at the whole ungulate removal within larger areas of Pu'u Wa'awa'a because eventually there will be fewer places for sheep on that property and the restoration of native areas. Mr. Donoho told the Board the intention in the plan is restoration of key areas of the best remnant forest on the land and there is strong contingency in favor of continuing sustainable game management which is one of the objectives of the management plan. As far as larger areas of ungulate removal, not necessarily, there are still unfenced proposed conservation units and are moving forward on those by providing adequate management. They are in because once you fence there are less elements to keep those fire fuels in check. As far as looking at other areas, the Habitat Conservation Plan is moving forward. A new coordinator has been hired and is looking at the balance of game management and protection of rare species. As far as additional areas, that remains to be seen. Some things might be revealed through the HCP and possibly in an update of the management plan because it has a 10 year life span looking to 2013. Mr. Conry summarized that in corresponding with the work at adjacent Pu'u Anahulu State Management and the HCP is covering both lands. There is a move to increase those areas. There eventually will be federal funds in answer to Member Pacheco's earlier question to get the plan together on what needs to be done and then get the funding together. It will be a costly long term effort.

Member Pacheco asked how the Pu'u Anahulu families are interfacing with the advisory council which Mr. Donoho confirmed that is what the families preferred, to appointment someone from the 'ohana to participate in the council primarily on cultural resources

referring to Objectives 48 and 49. Chair Thielen asked that Mr. Donoho mentioned a survey being done at the caves – nationally as well as locally because a lot of these areas are in remote places. The national park system has commented on this – caves being entered by people searching for things. Is that information kept confidential or is that information published when staff is going in to inventory cave openings?

Mr. Donoho answered in the negative that they are not publishing that information it is something staff is amassing because these cave surveyors are doing this at their own cost they are volunteers, but they are very high quality surveyors and are part of the National Meteorological Society. The Chair said she understands, but the burial councils in the past were reluctant to have certain cave entrances with artifacts sealed, but we had gone back and she asked State Historic Preservation Division (SHPD) to talk with staff, perhaps not a full seal but with bars put in so you can have air flow and still be protected. She hoped his surveyors are in contact with SHPD. Mr. Donoho agreed saying that these surveyors are aware and when cultural resources are discovered inside a cave they are directed to immediately leave the cave and contact SHPD which is part of their permit. There was discussion of the significance of the areas and not a lot of caves have cultural resources in them.

Member Pacheco asked whatever happened to the water pipeline at Kiholo from Kaloko. Mr. Donoho reported basically it's at a standstill that Hualalai Ranch, the lessee from Kamehameha Schools is reluctant and is looking for something in exchange – grazing lands and at this time staff is not offering grazing lands because there aren't any available and are working closely with the permittees to reduce the fire fuel in the area.

Member Pacheco asked where the funds came from to repair the main road. Mr. Donoho said it was on a rotating basis and the private land owner repaired it this time then the State the next time.

Member Pacheco inquired whether he or the advisory council had any ideas for revenue generating activities as the objectives. Mr. Donoho replied saying that some ideas have been kicked around, but its something they want to approach carefully and comply with commercial activities of the Board which is 1<sup>st</sup> is the resource, 2<sup>nd</sup> is public and 3<sup>rd</sup> is commercial and at this time they don't feel they offer enough to the public even with the 10 miles of trail. It's more focused on that as well as developing camping activities prior to value added services soon, but not quite yet per the council. Mr. Conry said that the action the Board took on the Recreational Renaissance sets the stage that if it can be developed and under the camping fee or commercial tours that foundation is in place.

The Board expressed their appreciation for Mr. Donoho's work. The Chair encouraged the Board to see these places.

There was some discussion about the number of staff which is Mr. Donoho who is full time, a part-time wildlife staff and the rest are partnerships and volunteers.

**Item D-6** Amend Prior Board Action of February 13, 2009, Item D-5; Amend General Lease No. 5498; Rachel Kuulei Haili and Rachel Ching Haili, Lessees; Waimanalo, Koolaupoko, Oahu; Tax Map Key (1) 4-1-010:080

Mr. Atta requested amending the amount in the Recommendation from \$1,072 to \$1,972.

**The Board:**

**Amended the annual rental amount in the Recommendation to \$1,972 to correct a typographical error. Otherwise, the Land Board approved staff's recommendations as submitted.**

**Unanimously approved as amended (Agor, Gon)**

**Item D-7** Sale of Remnant to Calvin Harada, Dexter Harada, Roy Harada, Janet Kapaas, Charlotte Oda and Withdrawal from Governor's Executive Order No. 1598; Waimanalo, Koolaupoko, Oahu; Tax Map Key: (1) 4-1-025:037 portion

Mr. Atta asked to amend recommendation 5. b. which appears twice and to delete the repeated line.

**The Board:**

**Amended the staff's recommendations by deleting one of the duplicative Item 5.b. Otherwise, the Land Board approved staff's recommendations as submitted.**

**Unanimously approved as amended (Gon, Morgan)**

**Item D-8** Amendment of General Lease No. S-3849 to the United States of America for the Pohakuloa Training Area, Kaohe, Hamakua and Puuanahulu, North Kona, Island of Hawaii, Tax Map Key: (3) 4-4-15:08; 4-4-16:05; and 7-1-4:07

Mr. Atta noted that OCCL suggested a CDUP otherwise, no changes.

The Board questioned where the wash facility for vehicles was and it was pointed out on Exhibit B which was discussed.

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

**Item D-1** Rescind Prior Board Action of August 28, 1998, Item D-21, Issuance of Revocable Permit to Hawaii County Economic Opportunity Council (HCEOC) at Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-05: submerged lands, seaward of Parcel 16.

**Item D-3** Amend Prior Board Action of August 27, 2004 (Item D-1), After-the-Fact Approval of Lease of Federal Property with the U.S.A., Secretary of Army on Behalf of the Department of Education for Public School Purposes, Fort Shafter Military Reservation, Honolulu, Oahu, TMK: (1) 1-1-08:005 (Portion).

**Item D-11** Amend Prior Board Action on April 13, 2004 Allowing Land Division to use an Alternative Appraisal Methodology to Determine Term Easement Consideration for Shoreline Encroachments.

Mr. Atta had no changes.

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

**Item E-1** Request for Special Use Permit from Hospice of Hilo to Use the Large Pavilion and Certain Portions of the Wailoa River State Recreation Area in Hilo, Hawaii for their "2010 Celebration of Life" Fundraiser

**Item E-2** Request for Special Use Permit to Hold the 2010 International Haari Boat Festival on a Portion of Wailoa River State Recreation Area, Hilo, Hawaii

Chair Thielen reported that staff from State Parks were out and spoke on the permit backgrounds.

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

**Item F-2** Request for Approval of Special Activity Permit 2010-1 for Dr. Misaki Takabayashi of The University of Hawaii at Hilo, Marine Science Department and Designated Assistants

Mr. Polhemus presented that this permit is to do work on coral disease at 3 different points on the Big Island which involves taking small samples.

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

**Item L-1** Certification of Election of Soil and Water Conservation District Directors

Chairperson Thielen described standard certification.

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

**Item M-1** Issuance of a Direct Lease Pa'ina Hawaii, LLC, Honolulu International Airport

Chair Thielen communicated that staff was notified that this item was not ready and requested to withdraw it.

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**Withdrawn (Gon, Agor)**

**Adjourned (Morgan, Gon)**

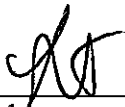
There being no further business, Chairperson Thielen adjourned the meeting at 10:52 a.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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Laura Thielen  
Chairperson  
Department of Land and Natural Resources