

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

DATE: FRIDAY, OCTOBER 23, 2009  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Ron Agor called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

MEMBERS

Ron Agor  
John Morgan  
Dr. Sam Gon

David Goode  
Jerry Edlao

STAFF

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

Ed Underwood/DOBOR  
Sam Lemmo/OCCL  
Deputy Russell Tsuji

OTHERS

Linda Chow, Deputy AG  
Michael Trotto, J-2  
Kai Markel, D-1  
Puanani Rogers, D-1, K-1  
Waldeen K. Palmeira, D-1  
Michael Kumukauoha, D-1, K-3  
Randy Vitousek, K-1  
Bill Spencer, K-3  
Dr. Rick Greg, K-3  
Kale Gumapac, K-3  
Dexter Kaiama, K-3  
Donna Burns, K-3  
Puanani Rogers, K-3  
Rick Kaimi Scutter, C-5

Robert Luuwai, J-2  
Kimo David Frankel, D-1  
Palikapu Dedman, D-1, K-3  
Kihei Soli Niheu, D-1, K-3  
Sandra Hernandez, D-1  
Robert Harris, K-1, K-3  
Steve Montgomery, K-2  
Dr. Paul Lucas, K-3  
Rocky Jensen, K-3  
Henry Curtis, K-3  
Marti Townsend, K-3  
Rob Parsons, K-3  
Randy Cates, K-3, D-11  
Keola Lindsey, C-5

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

**Item A-1      September 11, 2009 Minutes**

**Approved as submitted (Goode, Morgan)**

**Item A-2      September 25, 2009 Minutes (TO BE DISTRIBUTED.)**

**Item A-3      October 9, 2009 Minutes (TO BE DISTRIBUTED.)**

Not ready.

**Deferred.**

**Item C-2      Re-Submittal for Amendment No. 2 of Timber Land License No.  
2007-H-01 Held by Hawaii Island Hardwoods**

Paul Conry, Division of Forestry and Wildlife (DOFAW) Administrator spoke on the re-submittal which the Board discussed last month where the Division supported amending granting an extension in time for Hawaii Island Hardwoods (HIH) to initiate the construction of their mill for the timber license and this is to clarify what the timelines are for constructing the mill. The Division is in support of that and asked the Board to approve it.

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

**Item J-2      Request to Cancel Revocable Permit B-94-55, Terminate Holdover  
Status of Lease H-86-6, and Re-issuance of a New Revocable Permit to  
Maui Boat and Fishing Club (MBFC) at Ma'alaea Small Boat Harbor,  
Island of Maui**

Representing Division of Boating and Ocean Recreation, Ed Underwood reported that the club has been in the harbor since 1947. Staff spoke to the club from February 2009 because they need to prepare for ferry construction and to relocate their harbor master's office and share a space below the Buzz's Steak House which the club occupies. Since then staff needed to move the Maui District Offices to the bottom floor of the Buzz's Steak House building. Staff had talked to the club and wants to offer them space at the existing Sea Flight building gratis. The club will pay some of the utilities and there will be new RP for the haul-out so that they can continue operating the haul-out. After the improvements staff will go back to the club and discuss to work something out with the bottom floor of the Buzz's Steak House.

Member Edlao asked whether it would be a month-to-month RP which it is per Mr. Underwood.

Robert Luuwai representing the Maui Boat and Fishing Club (MBFC) described the history of the club and its role in the community. The current administration is hurting his club. Mr. Luuwai wants a better lease than what they have now.

Michael Trotto explained that the club operates a self help dry dock assisting the State and Coast Guard without charging this service. He finds the staff's recommendation problematic because of the month-to-month lease which makes it difficult to upgrade winches and make improvements in getting any loans or grants. The club had started the process for a lease since 2001 and had a month-to-month lease ever since. They want the ability to retain the dry dock and haul-out because it's the only one on Maui.

Member Edlao said that staff is working with them and the haul-out will not be taken away which is misinformation reiterating Mr. Underwood's report that the club will be moving into their new office under gratis that the club will be saving in rent alone. Mr. Underwood said that the club will still pay the \$2,000 for the haul-out, but will be saving on the office rent. Also he informed that Maalaea haul-out area to go to long term lease as one of the properties identified to move forward in the Recreational Renaissance Plan noting that whether staff can offer or work with the club on direct negotiation or it may have to go out to a public auction. If it goes out to public auction and if the club is not successful in getting the bid for that staff will reserve half the bottom floor of Buzz's that the club could still use after that fact.

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

**Item J-1 Amend Prior Board Actions of September 26, 2008 (J-3), Grant of Perpetual, Non-Exclusive Easement to the County of Kauai, Parks and Recreation Department for Access and Maintenance of County of Kauai, Park Facilities and (J-4), Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes, Kapaa, Kawaihau, Kauai**

Mr. Underwood explained that this was supposed to be gratis to another state agency.

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

**Item D-8 Consent to Refinance Certificate of Participation (COPS) for the No. 1 Capitol District State Office Building and Approve the First Amendment to the Lease Purchase Agreement and Related Documents (e.g., the Accompanying Memorandum of Amendment of Lease Purchase Agreement) between the Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, Honolulu, Oahu, Tax Map Key: (1) 2-1-17:1; and, (Renumbered - formerly Item No. 9) Consent to Refinance Certificate of Participation (COPS) for the Kapolei State Office Building, and Approve the First Amendment to Lease Agreement and Related Documents (e.g., the Consent, Joinder and Agreement forms and the Memorandum of First Amendment to Lease Agreement) between The Bank of New York Mellon Trust Company, N.A., Lessor and Department of Accounting and General Services, Lessee, Kapolei, Oahu, Tax Map Key: (1) 9-1-88:5**

Morris Atta, Land Division Administrator, reported that Budget and Finance (B and F) is in the process of refinancing the COPS to take advantage of the better interest rates at this time for debt service. In addition to consenting to this act there are amendments to the leases that need to be made to enable the refinancing to go through. B and F require these amendments to these acquisition documents. Scott Kami from Budget and Finance is here to answer any questions. Mr. Atta requested that the Board authorize the Deputy to sign on behalf of the chair because the Chairperson is not always readily available and this is time sensitive.

**The Board:**

**Amended the staff recommendations by including the express authorization for the First Deputy Director to execute all necessary documents in the event of the Chairperson's unavailability.**

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

**Item D-2 Set Aside to the Board of Regents of the University of Hawaii for Addition to Kauai Agricultural Experiment Station, Wailua, Kauai, Tax Map Key:(4) 4-2-1:5 and 6.**

Mr. Atta described that some lands being used by the Kauai Agricultural Experiment Station was not set aside to the University of Hawaii and to rectify the use of these parcels staff requests a set aside be granted to the University of Hawaii to rectify these disposition issues to show that the University has authorization to use these parcels

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

**Item D-1 Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative and Hawaiian Telcom Inc. for Utility Purposes; Issuance of a Right-of-Entry to the Department of Transportation, Highways Division for Construction, Staging and Work Area Purposes; Cancellation of Revocable Permit No. S-7444, Issuance of a Revocable Permit to the Department of Transportation, Highways Division for Field Office, Staging and Work Area Purposes, Kawaihau, Kauai, Tax Map Key:(4) 4-1-3:portion of 44, 17 and 4-1-4:portion of 21, 22, 24.**

Mr. Atta explained that this project discovered that some utility lines needed to be moved onto State land to accommodate the road widening project. Several parcels are identified in the submittal and these are measures necessary for DOT to complete the road widening in Wailua.

David Kimo Frankel, an attorney with the Native Hawaiian Legal Corporation asked whether the Board received the FONSI, but it looks like they didn't because it is 560 pages and he read from it. "The previous archaeological research has identified pre-contact cultural layers and human burials in the immediate vicinity of the project area

suggesting there is a probability of encountering sub-surface cultural deposits and/or human burials during the project relating to ground disturbance.” That is on page 122 in the last appendix of the FONSI. It also says “The underground electrical alignment has the potential to affect sub-surface cultural resources including human burials which may be located within the project area of potential affect.” Mr. Frankel pointed out that Hawaiian burials are a sensitive issue to Native Hawaiians and can get dragged on in the courts for years. There is clear notice in the Board documents that this project is going to affect a burial site. In the archaeological assessment there is a discussion of burial grounds being located in this area. DOT’s assessment that there is no significant impact is not valid and they (the Native Hawaiian Legal Corp.) are filing suite today in court challenging this environmental assessment (EA). The Board has a duty to protect natural resources including human burials and it requires you to investigate prior to action, which hasn’t occurred, citing under Kapa’akai standards you need to make findings regarding what Native Hawaiian traditional practices took place in the area, what are the impacts to these practices from this project and what you can do to ensure these practices are not adversely affected. That analysis has not taken place. State Historic Preservation Division (SHPD) commented that this area was previously disturbed therefore they aren’t concerned. The Walmart area was previously disturbed, but dozens of burials were found. The Ward Villages area was previously disturbed and 62 burials were found. This Wailua area has clear documentation that this is a burial ground. When the Coco Palms was built 85 burials dug up and reburied. Mauka of that site are 35 burials that were re-buried showing that this whole corridor is full of burials.

Mr. Atta said staff did consult with SHPD and confirmed that was their response. As for the cultural resources and burial sites, as part of our standard terms and conditions for RPs and documentation, there is the requirement upon discovery of cultural resources or artifacts that they comply with SHPD and work with Land Division staff to address those issues. Staff has precautions in our documentation where they did a preliminary inquiry to find out whether or not there was an issue. He was not aware of the FONSI language. Since these dispositions don’t initiate the active work it’s merely a disposition of the authorization to go on the land and do what DOT is doing. He is not certain that this issue is not covered.

Chairperson Agor asked whether the standard procedures for addressing construction that has findings, is that not enough for Mr. Frankel. Mr. Frankel explained that if a burial site is identified prior to decision making it is considered a previously identified burial and the jurisdiction is with the Burial Council who would be able to make a deliberate critical decision and if it is not and the so called standard terms and conditions occur which is problematic. What happens when construction occurs? An archaeological monitor is there, the burials are found they don’t contact the Burial Council they contact the overworked SHPD worker and SHPD routinely say take it out. That is a problem and it’s not appropriate. You know there are burials here you cannot go ahead and do your construction knowing that. What you have to do is a proper investigation, involve the Burial Council and you need to go through that decision making process. Or, we’re heading into a Walmart and Ward Villages disaster situation which will keep on coming.

Chairperson Agor asked whether Mr. Frankel would be satisfied with the stipulation that the applicant is to map out and come up with a construction plan to address that at a public information meeting on it. Mr. Frankel answered negatively saying that the problem we continually faced is decisions are made and considerations of burials are always put off to the end and we get a crisis situation. Chair Agor clarified to develop that plan up front where Mr. Frankel said the Board should not approve anything today and to send this back. Chair Agor said we can approve it pending the approval of the plan. Mr. Frankel noted that this is exactly what happened with the Brescia case on Kauai where the Kauai Planning Commission was faced with the same issue and they said you guys go to SHPD and the Burial Council to figure things out. Because the land owner was given the Planning Commission's approval they went ahead and started construction and it didn't matter what the Burial Council had to say. Chairperson Agor disagreed saying the Burial Council made the decision on what the developer could do. Mr. Frankel said the Burial Council voted to preserve the burial in place and yet a house was constructed on top of the burial site contrary to the Burial Council's voting which is the problem. There is a systematic problem with the State in regards to burials. Decision makers make a decision first and hope to deal with the burial issue later and you get a crisis. The legal duty is to investigate first before you make a decision which is required by the Kapa'akai analysis and as a good public trustee to make an informed decision.

Member Gon asked an archaeological assessment was undertaken in this case was a cultural impact assessment undertaken in this matter. Mr. Frankel explained there are several related projects in this area and his recollection was there was a cultural impact study done that he believed was associated with the bike path. The trenching done in this project is a greater concern, but Mr. Frankel could not remember if a cultural impact study was done for this project per Member Gon's questioning. Member Goode noted that a cultural impact assessment is required under 343 if you read the EA. Mr. Frankel said that the AA is under appendix D that he recalled, saying he assumed the CIS is in there, but he couldn't say. Member Goode asked whether an archaeological assessment was done in this area of question today. Mr. Frankel confirmed it was with some trenching work, but he couldn't say if it was in these parcels. Member Goode said there was a likelihood of finding something, but not a certainty where Mr. Frankel said the archaeologists used the word "probability." Member Goode summed up that Mr. Frankel's concern has to do with the FONSI and the procedures that happen should something be found and whether or not that goes to SHPD and when the Burial Council gets involved, if they get involved. What he hears from Mr. Atta is there are procedures within our permits to make sure those responsibilities happen to the best of our abilities without having to stand over the project and watch it. Member Goode is comfortable with that because all of the land permits conceivably have the same issues. The process isn't perfect and there are cases where it doesn't work well, but there are many cases where it works the way it should so he is comfortable knowing that there is no specific finding in this area and there is a process available unless, of course, the process is not adequate for the area we have to follow that as well.

Kai Markell with the Office of Hawaiian Affairs (OHA) testified that this is not like any other project. All the kupuna are very sacred, but we are talking about Wailuanuiaho'ano

- the very sacred place where the whole ahupua'a was kapu. No one could go there, it was only for ali'i. The sand dunes are Pu'uone 'O Mahuna that mahuna is finely scented kapa and reserved for ali'i where he asked why those sand dunes would be named for that kapa. It's because the ali'i iwi there is wrapped in this kapa. It's ok to bust up our kupuna because we don't know they are there, but he is telling the Board they are there. What is the Kapa'akai analysis? What is your responsibility on the affects on our people not just the affects on our kupuna – psychological and spiritual effects citing Pu'ukohola and Pu'uhoonua 'o Honaunau are very profound. Holoholoku, the birthing stones connected with their amount of kapu are connected to their amount of kapu above Palehua down to Kukaniloko, Oahu's birthing stones which are very profound connections which our people are desperately trying to reconnect today to find out what the future is for all of us who love Hawaii. What is the nature of aloha and the healing of our kupuna and Ke Akua so that they can help the rest of the world? That is what Wailuanuiaho'ano stands for, but everyday everything is bust up. Describing the sands of that area comparing it to Mokapu on Oahu where all the kupuna were dug up where you can go home and sleep, but the Native Hawaiians cannot sleep because the uhane (spirits) come asking what are you doing for the future for your mo'opuna (grandchildren) and that is what this is about.

Member Gon greeted in Hawaiian saying he appreciated Mr. Markell's statements and glad he did because when he looked at Exhibit D which was OHA's official response. It talked about native landscaping and the topic of cultural sites and native kupuna there which was the standard statement of contacting SHPD and that wasn't as strong a statement as Mr. Markell's before us today and, mahalo for reminding us the importance of Wailua as a wahi pana and a very ancient area.

Palikapu Dedman, representing Kanaka Council described the history of the Burial Council since Governor Ariyoshi's time and today the same problems. He suggested making laws when doing assessment on property before you buy it that you find these burial sites before digging them up instead of playing the good guy with how you treated it afterwards. He deplored how outsiders came to Hawaii never to be Hawaiian and never supported the Hawaiian. How insensitive outsiders are. Mr. Dedman decried the exploitation of Native Hawaiians by government agencies by taking advantage of Native Hawaiians starting with the desecration of their spirituality and the spirituality is the sacredness of our iwi. He expressed his disdain for allowing non-Hawaiians on the Burial Council which is racist because it involves Hawaiian iwi which wouldn't happen if it were Japanese bones. Find the proper people to make the proper decisions and this Board doesn't have the koko (blood) to make decisions about their iwi asking not to bring in university educators who don't have the understanding of traditions.

Puanani Rogers, from Island of Kauai in the ahupua'a of Kealia communicated that she supports the testimonies before she came up. She opposes the way DOT is doing the widening of the Kuhio Highway. The worst thing is there are 2 or 3 projects happening simultaneously inundating the entire Wailua corridor affecting traffic from one end of the island to the other. Besides the widening there is the restoration of Coco Palms, building a bridge, a bike path which she is totally against. She hopes she can discuss more about

the cantilevered bike path on an old railroad bridge. Also, she speaks as a kupuna and as a Kanaka Maoli and will always come forward to speak in defense, protection and preservation of our cultural values, cultural beliefs because there is not enough knowledge of our culture in any of the decision makers who have no clue suggesting forming a sub-committee in the planning commission made up of cultural practitioners. Native Hawaiians are not western thinking people and are trying to keep alive what our ancestors taught them.

Kihei Soli Niheu, a subject of the Hawaiian Kingdom, gave official notice to this committee and described the graveyard at Moiliili owned by Kawaihao Church who decided to build the Contessa high rise. He disagreed with Mr. Dedman about putting only those with koko (blood) on the committee because Kawaihao Church was unduly influenced by the white man's religion. DLNR has a history of oppressing the Native Hawaiian people -- taking away their rights as the first nation people many times over again that the books are full of examples starting from our kupuna. The government of the State of Hawaii is a racist government who has no idea of the Hawaiian spirituality. The problems of going to the ocean fisheries saying that the first rule of the land is hewa no mate and your future generations will suffer and to start the process now of negotiating with the beneficiaries of Kapaiaina o Hawaii Loa because there will come a time when it will be too late.

Waldeen K. Palmeira testified saying she is from Wailuanuiaho'ano, the great and sacred Wailua, which traditionally has been the religious, cultural and political center for the entire Hawaiian Islands. She voiced her opposition to specific aspects of this Kuhio Highway widening project in conjunction with 2 other projects in the area as mentioned earlier. The segmentation of these projects has avoided looking at the significant cumulative impacts and adverse affects to significant historical properties and of the Hawaiian people and culture of Kauai at Wailua. The area of Wailua is known as a place that is sacred and kapu and for a place of such significance it was very inconsiderate of the projects approach to the people of Wailua in terms of a lack of sufficient Section 106 consultation as well as the archaeological aspects which require monitoring. This is the area of our ali'i. It is not a place where DLNR and SHPD can require only monitoring because you will have inadvertent finds of our kupuna. The specific area on the agenda concerns the Kuamo'o slope area of Kamuali'i Park and one of her concerns is Huinamakaiwa o Wailuanuiaho'ano having to do with the drainage system. For example the system they reviewed which requires an NPDS permit is not clear of the significant impact to the class A waters. That is a problem with an EA rather than an EIS because we have significant waterways in Wailuanuiaho'ano and these waterways are connected to the Hawaiian culture and the future of their culture. It is the critical point of the history of our people. For this drainage system to run through Queen Kapule Fish Pond, if that is true, which is one of the waterways listed on the NPDS permit that is not culturally appropriate and whether it is environmentally appropriate, in addition to their comments on the permit they wanted to know how many other NPDS permits are in the area as well as the levels of pollutants since there is a sewage system there that does not work because it is in a SMA coastal zone.

Chairperson Agor stated that he believes this permit entails utilities where Mr. Atta said he believes that, but he wasn't sure to what extent. We are talking of degrees of inquiry which Mr. Atta wasn't sure how extensive the inquiry was.

Ms. Palmeira said that they would like a public hearing on this which they had asked the DOH for. Other concerns with this specific permit are the traditional auwae that connects to that historical fishpond because culturally they would like that restored when we have the opportunity in the future. Chair Agor noted that is not on the agenda where Ms. Palmeira agreed saying the culvert on Kuamo'o is part of today's permit. Additionally, that is a National Historic Landmark area and she is concerned and would like to know more about DOT's partnership with National Parks from here on which is noted in her documents which would have some impact on those uses.

Member Gon thanked Ms. Palmeira for her testimony and asked whether she had a chance to see whether or not any cultural impacts assessments relevant to this area have been conducted. Ms. Palmeira replied saying not for this specific project and not for the bike path which is part of this permit although not specific to today. What they (DOT) attempt to do is have a bypass on the beach adjacent to the Kuhio Highway widening and another bike path mauka of that which is located on the Coco Palms SMA. Originally this Kuhio Highway project was located in the Coco Palms SMA as well as their own SMAU 2008-2, but yes, there was no cultural impact assessment, no archaeological inventory surveys. All the historical properties and all the cultural practices were not identified. When you go ahead and turn forest lands over without identifying the usage by Native Hawaiian people then that is where you have problems. This is significant. This is not a project concerning no adverse affects and no significant impact. The FONSI is not adequate.

Member Goode asked reiterating his earlier question whether the archaeological survey had been done as part of the EA and FONSI that included these areas of State lands. Ms. Palmeira said originally they began an EIS which maybe involved 10 trenches on the southwest area of the project not on the more specific areas concerning the traditional burial grounds that was avoided. At that point they turned it into an archaeological assessment and Wailuanuiaho'ano has been studied extensively. There was an EIS for the Coco Palms redevelopment in which there were 99 trenches and she was not sure what the purpose of that was, however, that did not cover the grounds regarding the road widening. Also, the Kuamo'o Road did not contain any subsequent specifications. And, OHA in their additional 106 letter asked for this and they asked for burial treatment plans and protocol which they feel is important for them to show their respect and aloha for their kupuna.

Member Goode asked whether she feels an additional EIS should be done for the State plans in the areas that propose trenching or doing roadwork that an EIS should be done for State parcels where Ms. Palmeira acknowledged and agreed to that.

Sandra Hernandez from Kauai testified her concern with the processes affecting Kauai. E-mailing the DOH to hold a public hearing on the permit to discuss the wastewater

permittee's project and where that is going. That area right now stinks with the sewage and the drainage is not good. The more construction and less taken into consideration the more problematic it becomes. She would like this Board to take another look and possibly and choose another path because the cultural impacts are a necessary consideration as stewards of our resources.

Michael Kumukauoha Lee introduced himself as one of the last kilo hoku of the 400,000 Hawaiians that are alive. He knows the 300,000 Hawaiian stars, 240 Hawaiian star constellations, the winds, the, 42 cloud signs, 244 sub-cloud signs and a practitioner of limu o ke kai describing his background. Kuamo'o is the genealogy of those ali'i naming the connections as far as Big Island describing the most sacred Mahi clan and Kamehameha marrying into this very kapu family. As far as our cultural practices they have a right. Even death is not even in the statement. He is against the way this is done referring to the ali'i bones in Ewa.

Member Goode said he learned a lot from the speakers that there are significant probability and findings. He is not convinced that an EIS was done that incorporates the Land Board's statement and suggested if this was approved today to add a condition that an EIS be done that these parcels be accepted by SHPD so that the Board knows before any construction happens that if there is something there staff probably have identified it and mitigated or change the project on what they (DOT) needs to do. It will make for a better project and better respect for the culture.

Member Gon noted that this area is an NHL and unresolved issues of the cultural impact assessment and burial treatment plan and the fact we haven't seen whether or not those important steps were dealt with in a way in the FONSI appendix which is premature for the Board to go with staff recommendation at this time. He doesn't have the necessary information he needs to weigh in on that kind of decision at this point suggesting that we defer until we do.

Member Gon made a motion not to go with staff recommendation and to defer until we have the information that we need and was seconded by Member Goode.

Mr. Atta said he will refer to the minutes to get the information that is requested of the applicant. Member Gon noted that the applicant wasn't here to answer and without that opportunity to question them it's a major piece of information for this case.

Member Edlao commented he was disappointed by the statement that the Board doesn't have any Hawaiian blood, but it is this kind of meeting that will help them make decisions. He related being born and raised in Hawaii that he cares for Hawaii and grew up with Hawaiians. The Board is not insensitive to the Hawaiian people, but often times their decisions is based on law and what is before them from staff. It is important that the Native Hawaiian community come out to provide them more information and hoped that they can appreciate what the Board is doing.

**The Board:**

**Deferred this matter until such time that the Applicant is able to provide the information requested by the various testifiers and recommended that an environmental assessment or environmental impact statement be prepared for the affected parcels if any of those parcels were not included in the original EIS prepared for the road widening project.**

**Deferred (Gon, Goode)**

**Item K-1 Conservation District Use Application (CDUA) KA-3509 for the Malerich Single Family Residence, Located at Haena, Kauai, TMK: (4) 5-9-005:025**

Written testimony was received and distributed to the Board.

Office of Conservation and Coastal Lands Administrator, Sam Lemmo reported on the CDUA background where the applicant proposes setting the structure back 50 feet from the certified shoreline which is as far back as you can set it. Mr. Malerich is seeking a variance for the side yard set-backs which typically is 15 feet and he wants to go down to 10 feet to fit the house and he requested a height variance to meet the FEMA flood standards noting that the area is a high velocity flood zone. A FONSI was issued on October 2009. The CDUA is a little bit conceptual because staff doesn't have architectural plans for the house. The house drawings show the bottom of the house enclosed where staff requested it not be enclosed because it would be considered living space which would violate the maximum developed area standards. Chair Agor asked whether that area is exclusive of the garage and storage where Mr. Lemmo said he believes it is.

There are complicated issues with an old sandbag revetment along the shoreline. His staff tried to separate the issues because the actual authorization for the sandbags were authorized by the County of Kauai in 1996 and was designed to be temporary not 10-15 years later. Staff is putting pressure on the owners of these structures and the County to come up with some long term solution. The County wrote saying that the applicant is in compliance. Staff asked these property owners to do a study to assess the impact of the structure on the sandy beach to determine whether or not maintaining the status quo is appropriate or not. Those property owners have hired a firm and are working on the study where that information should be forthcoming. There are several houses in this area and this is the last lot to have a home built on it. Staff recommends the Board to approve the permit subject to a number of conditions.

Mr. Lemmo had one technical issue with the height variance which was brought to his attention by their flood program that there is a statement in the document that may not be correct regarding the base flood elevation. This may result in going a few feet higher which Chair Agor agreed and Mr. Lemmo was glad he saw that suggesting if there is language in the condition that needs to be changed they should do that. Chair Agor suggested instead of 4 feet to give them 6 feet. Also, Mr. Lemmo referred to condition #16 which he read. Chair Agor asked as far as the set-back when you go into the County

for a building permit the County has a set-back requirement of half the distance of the grade to the pipe height which maybe a little bit more where Mr. Lemmo agreed complying with the County's building envelope would be appropriate.

Chairperson Agor asked Mr. Lemmo to expand his comments regarding the area under the house. Mr. Lemmo said it needs to be left open because typically when they approved houses in Haena staff didn't allow people to enclose the sub areas unless they have a large enough lot in which they can meet maximum developed area standard. Its 3500 sq. feet for the allowable size and by enclosing the bottom they would exceed that and perhaps they could enclose a portion if they were to come back to ask, but they cannot enclose the entire section.

Member Edlao pointed out there was "no commercial use" condition which staff normally has for Haena. Mr. Lemmo apologized that it wasn't there and he'll use the standard language.

There was some discussion regarding the surrounding homeowners who sponsored the sandbag revetment project in 1996 that this area is subject to severe erosion and tsunami hazards. If there was a tsunami the houses in this area will be taken out. Whether there is beach accretion throughout the year a study was done by SOEST calculating the erosion rates that there is a long term erosion trend depending where you are on the beach. Right now the beach appears to be in a semi-stable state where you get beach accretion in the summer and sand loss during the winter, but the sand comes back. That is the reason for the study to find whether or not there is an impact to the active public beach with the presence of these structures. It is staff's concern which is they are responsible for the protection of. The Board is not considering the sandbags today.

Grant Arnold from OHA testified saying he appreciated Mr. Lemmo bringing up some of the issues in this area and asked the Board to condition the CDDA permit under not being a permanent hardening of the shoreline since there is no house there. Member Gon asked the hardening is essentially the sandbags. Mr. Arnold said that it's essentially a wall right now. They didn't want the owner to think if there was a house there to claim the wall if a tsunami came. Member Gon asked whether this issue will come back before the Board where Mr. Lemmo replied that it may but wasn't sure.

Mr. Lemmo explained that there is a timeframe. At some point the temporary structure will degrade impacted by storms or long term erosion. Some time in the future people will talk about shore protection at this site including the issue before this Board, he just doesn't know when. Mr. Arnold noted that some of the sandbags are falling apart where Mr. Lemmo said that those residents maintain them. Member Goode wondered whether only condition 15 is being proposed. Mr. Arnold said he thought they could amend that too - "Require no permanent shoreline hardening" it legitimizes the sandbags, but protects the shoreline from a seawall going out. Member Morgan asked whether he was opposed to in the future a erosion condition a temporary solution to that. Mr. Arnold said well, we've defined temporary as 12 years and he is opposed to that asking what is temporary.

Member Goode asked how many seawalls were approved over the past 5 years. Mr. Lemmo explained in some places it would not be inappropriate to build a seawall citing Kamehameha Highway where the road is going under in places that there is no significant beach action going on right now so you might consider protecting the road which is an important infrastructure and the impacts to the beaches are probably negligible. A place like Haena is a different situation. Staff would have very, very significant concerns about somebody building a seawall at Tunnels Beach on one parcel because this entire shoreline is almost entirely unarmored with permanent shoreline structures. It is in a quasi-natural state and he would be hesitant to approve one seawall because it would start a Lanikai type situation where one wall then another before long the entire shore is armored and the beach is completely gone. This is a beach we cannot afford to lose. Whatever it takes to protect the beach would in his mind be worthwhile even if that includes purchasing the property and getting the people out of there. Member Goode reiterated the earlier question whether Mr. Lemmo had a problem with adding language no permanent seawall which Mr. Lemmo said he didn't have a problem with it. Mr. Lemmo wanted to separate the sandbag revetment issue from the house. A separate condition – no hardened permanent shoreline structure is a different issue. Mr. Arnold said it is vacant property and the applicant would assume the risk.

Robert Harris, Director of Sierra Club – Hawaii Chapter, communicated the unreasonableness of separating these two issues confirming that they submitted to staff photos of sandbags that had broken up and washed into the reef creating a marine hazard as well as when it is high tide there is a problem with public access making it hazardous for people with no where to retreat to mauka. The temporary structures are designed to protect physical houses or structures and going ahead to allow that physical structure gives justification for that temporary structure built 10-12 years ago. You would have to look at both situations. He would hardly endorse the proposal to make a mandatory condition that there will be no permanent when you walk into the situation that there should be a permanent hardening suggesting deferring on this for a few months until the study is complete to get a better idea what the coastal hazards are. One foot of erosion occurring in this area which is very significant and is one of the highest in the state. We really do need to know where the shoreline really is, but for this permanent revetment and wait a little bit we could study and would get better information which fills the Board's obligation to protect conservation land, help with the idea of what should or shouldn't go there and helps with the discussions later on permanent or temporary revetments.

The attorney for the applicant, Randy Vitousek spoke saying that the applicant was present to answer questions and noted that the revetment was built years before Dr. Malerich bought this lot and had nothing to do with applying for it. The revetment described by Mr. Lemmo fronts 5 different lots and this one is in the middle. When Dr. Malerich bought this lot he asked to be involved with the other owners, County of Kauai, the coast research engineers and they are in the process of doing a year long beach profile. As one of the conditions from the County to help them assess what is the best way to address the issues there. The proposed house meets the Kauai shoreline set-back ordinance and is set-back as far as they could on the lot. The other houses already there are within 10 feet of the shoreline where this house is set quite a ways back. The only

request he and his client has is the conditions are acceptable as proposed including the no rental condition. Mr. Vitousek noted that another CDUA was granted 3 doors down for another home that is also fronting on this revetment referring to the Bartlett's CDUA where the Board took the position to separate the issues. They appreciate Chair Agor pointing out the height issue that this is at least a 34 foot base flood elevation that the house has to be elevated. They understand Mr. Lemmo's position on under the house that they interpreted it as an unimproved crawl space as not being a living area and didn't think Mr. Lemmo would count it and they are happy to not enclose it. Chairperson Agor suggested moving the enclosure and moving it back pointing it out on the house drawings. Mr. Vitousek agreed saying that the intention for the enclosure was so people wouldn't see under the house from the road. If the revetment weren't there and there weren't 4 other owners involved they wouldn't have any problem with the condition on no shoreline hardening because Dr. Malerich doesn't contemplate doing any shoreline hardening. They don't want the Board to do anything in the context of this CDUA that would prejudice the other owners. It's hard to remove one section of revetment because it creates scour on the edges and can impact other owners. They asked that they do be kept separate. On the set-back issue, Dr. Malerich had spoken to both of his neighbors, the Ekerts and the Downs and they have no problem with the set-back probably because of how close they are. Dr. Malerich thanks staff and the Board for their prompt consideration.

Member Goode asked that the purpose of the study with the County is to figure out the future of the revetment and how to do something in some way shape or form that is acceptable to the County, the public and OCCL. Mr. Vitousek confirmed that saying the interesting thing is he doesn't know the science well enough to debate it, but the initial results show that after the revetment was put in the beach went back to a 1950 configuration in terms of where the beach toe and vegetation was located. He wasn't trying to pre-judge the results, but the initial results show that the beach is now acting in its usual seasonal pattern relative to the revetment and he is not trying to argue that because they see those as separate issues.

Member Edlao asked if they would share the study results with the Department. Absolutely, said Mr. Vitousek. Mr. Lemmo said staff has all of that and it depends on who you talk to with erosion. Mr. Vitousek said they don't want to argue on erosion. They did erosion rate study on this application as well and they went with the County standard set-back rather than the one determined by the coastal engineer and Dr. Malerich recognizes the rift having had a property at Haena since the 1960s. Mr. Lemmo cautioned Dr. Malerich that this is a risky spot to develop where Mr. Vitousek confirmed that he does know that.

Puanani Rogers of Kauai read Caren Diamond's (Sierra Club - Kaua'i Group) written testimony whose primary concerns are the substantial negative impacts from the temporary emergency armoring, the potential harm to the natural resources and marine environment and any future need to armor this stretch of beach at Haena's Conservation District. Should first remedy the temporary sandbag structures and make a condition prohibiting any future armoring of the shoreline before giving out a CDUP and to protect

the public use and access. Sierra Club believes the revetment is part of the building development and cannot be separated because the parcel is subject to known hazards and the revetment stretches across five contiguous lots as part of a larger development. Sierra Club agrees that the shoreline setback complies with the Kauai setback ordinance, but the applicant used a minimum depth based table without using erosion studies or erosion based setback. A Dr. Fletcher's erosion studies were cited resulting in the house located another 60 feet back which is not allowed in this small lot. The risks associated with the building close to the ocean be borne by the applicant rather than the public by making a condition that prohibits shoreline hardening, sandbags or other structures to artificially fix the shoreline during the life of the residence and related development. She related the neighboring Bartness CDUP had an 80 foot setback where the property is now for sale and the structure was never built. Dr. Malerich's is 30 feet more seaward and in comparison, the Jacksons next door received a 100 foot setback. The true location of the shoreline is masked by the sandbag revetment, to the detriment of the public beach. The removal of the existing temporary revetment should be a precondition for the approval of any permits and any shoreline certification, as the natural shoreline needs to be established in the absence of the revetment, prior to citing any development. Mitigation – Condition 1: Removal of Revetment, Condition 2: Dynamic Shoreline Easement, Condition 3: Prohibition Against Shoreline Armoring. Adverse Impacts on the Resources from the Sandbag Revetment that Fronts this Parcel – describes what happened during last winter swells when sandbags dislodged from the revetment. The revetment has been reinforced by sand pushing increasing the steepness of the beach and causing beach loss. She reiterated the condition statement and suggested adding “No commercial uses, including transient vacation rentals, shall be permitted on the property.” And, Ms. Diamond said that if the Board should approve this they will be filing a contested case.

Member Gon asked for clarification that Ms. Diamond asked that if an approval is given that it be done with certain conditions and if the conditions aren't added then they will contest it. Ms. Rogers confirmed that.

Member Gon said to not miss any of the conditions discussed earlier one of them was an adjustment from 4 foot to 6 foot, adding the statement “No commercial use of the property,” and there was one on no permanent hardening. Mr. Lemmo confirmed there was discussion about whether or not to include a condition prohibiting permanent shoreline hardening during the life of the structure and he didn't have a problem with that. He suggested the language that there would be no permanent shoreline hardening fronting the subject parcel and not knowing whether to add “for the life of the structure” because no hardening is no hardening. Permanent would distinguish it from the current temporary structure. There is a numbering problem where there is two number 14s.

Member Goode asked that definition Mr. Lemmo came up with permanent hardening, are sandbags considered permanent hardening. Mr. Lemmo agreed that one could get mixed up in that discussion. This is why he said no permanent structures, even permanent sandbags. He understood his concern if the government wanted to come in and do a beach restoration project or something. Member Goode confirmed that those projects are

successful with that, but he wanted language that clearly defines hardening. Mr. Lemmo suggested that the landowner be prohibited from installing permanent shore protection structures. Chair Agor said that any protection structure will have to come through OCCL anyway. Mr. Vitousek noted on a commercial use condition it says "No commercial or rental use unless approved by the Board." You could put in "No shoreline hardening unless approved by the Board" and that would give you the requirement anything to come back for approval if that is ever necessary for anybody. If that is acceptable to the applicant. Mr. Lemmo said he understood what Mr. Vitousek is saying it doesn't really matter because if the applicant wants to put in permanent shore protection they would have to come to the Board anyway. Member Goode said it also means you can't do anything for the public's benefit. It does state exactly that. If they can't do it, the lay of the law changes its still there its permanent. If the applicant is ok with that language he is ok with it. Mr. Lemmo said that if you do the language without the Board you are committing this property to its fate in the future which is going to go away in the future. You don't want a seawall ever. He is proposed that there be no shoreline protection.

Member Gon moved to amend staff's recommendation and Member Edlao seconded it.

**The Board:**

**Moved to amend staff's recommendation by deleting the second #14 and renumbering it #15 and renumbering all following numbers 15 to 16, 16 to 17, 17 to 18 and 18 to 19. Add a condition #20 to read "No commercial use." Also, under condition #17 change [four] foot to six foot. And, add a condition #21 - The landowner be prohibited from installing permanent shore protection structures.**

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

11:07 AM RECESS

11:20 AM RECONVENED

**Item K-2 Conservation District Use Application (CDUA) HA-3514 for the Hale Piula Haina Native Forest and Bird Habitat Restoration Activities and Research Facility by Henk and Akemi Rogers, Located at Pu'u Wa'awa'a, North Kona, Hawaii, TMK: (3) 7-1-001:003**

Mr. Lemmo briefed the Board on the CDUA application background. The catchment system is no longer operational. The applicants want to demolish remnants of the catchment system, remove alien plants, plant native trees and shrubs, install a fence and install a 570 square foot research station. This project went through the CDUA process, environmental assessment; OCCL issued a FONSI in September 2009, and was sent out for agency comment where DOFAW commented referring to page 12, 2<sup>nd</sup> paragraph. Because this project is within an area DOFAW is responsible for managing which is an important asset to the Department this did catch staff's attention. The concerns are road

easement which gives access through state lands, concerns with the seed stock for the reforestation on where it might come from, concerned with pest control, fire management, legitimate research and whether the property will be used for non-research activities. There was interaction with DOFAW staff where OCCL staff took these concerns and memorialized them in conditions to make sure everyone is happy with this. He referred to condition #3 dealing with access where DOFAW asked that the applicant install an 18-foot cattle guard and any repairs/maintenance to this road require prior State review and approval. Mr. Lemmo went over conditions #4, 6, 8, 9 and standard conditions. Member Gon asked for clarification for #6 whether it's Hawaii Department of Agriculture which Mr. Lemmo confirmed saying he received a letter from DOFAW that they are happy with the conditions.

Steve Montgomery, a biologist from Oahu, testified that he had the privilege to do research in this area in 1971 under the previous State lessee both as a student coordinating a plant ecology project and as an insect ecologist where this project found many new species of insects in this area. Even after a long period of grazing the area retains many of its original native invertebrates. He is impressed by the willingness of this applicant to invest private funds to do an intensive management of this especially a predator proof fence which would be the first of its type to be built on the Big Island. It is important with the economy now to support private land owners who are willing to do habitat restoration and the applicant expressed a willingness to cooperate with researchers. Also, Hawaii's dry land forests are neglected compared to the wetland forests and he speaks favorably of the conditions.

Member Gon thanked Mr. Montgomery and said he was impressed by the proposal reiterating the applicant's willingness to agree to the conditions on their permit.

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

**Item K-3 Conservation District Use Application (CDUA) HA-3495 for an Open Ocean Fish Farm (12 Oceanspheres, covering a 247 acre area of sea) located 2.6 Nautical Miles/3 Miles Due West of Malae Point, North Kohala, Island of Hawaii (coordinates at 20°05'40.00" N 155°55'40.00" W) (the "Project"), by Hawaii Oceanic Technology, Inc. and Approval in Principle of a disposition to Hawaii Ocean Technology, Inc. for the Project.**

Numerous written testimonies were received and distributed.

Mr. Lemmo explained that this item has a lot of moving parts and staff spent a tremendous amount of time on this to the point where Mr. Lemmo did his own independent research and talked to people with knowledge on this topic. Staff tried their best to meet the process requirements and provide the Board with a reasonable analysis and go from there. He thanked the applicant, Mr. Spencer and his investors for making it this far. It's an amazing feat what they've put together – they've gone through an application process, environmental impact statement, responded to many concerns on this

project and Mr. Lemmo respects that this is an innovative approach to deal with the issue and its important to have these people around. Our society is built on innovation and technology and we wouldn't be here without these types of things. These things come with a cost and there is some level of environmental degradation, resource impacts, social impacts, economic impacts and spiritual impacts. He respects all the people who had commented and participated in this process who does not support this process or this project – yet, staff took their comments and considered them in the analysis of this issue. Mr. Lemmo doesn't think anyone will agree on what is right or wrong or what is true or not true. With scientific speculation on these issues it's always a he said, she said kind of thing. At the end of the day you never know the absolute truth of situations. There is a certain amount of risk that you must deal with in making decisions on these types of issues.

Staff received a lot of comments/letters in support of the project and a lot in opposition. A lot of these letters are form letters coming via the internet and Mr. Lemmo can't vouch for the veracity of these but someone took the time to put them together whether they were individuals or someone sitting at the computer popping them out, there was an effort behind it. There were some very good comments that elaborated on the concerns that people had on this project that he did go over. Staff is still receiving comments as Mr. Lemmo speaks and he hasn't had an opportunity to review all comments in detail. Although, they've come along so far through this process that the issues can be baked down to some salient points because people are repeating the same thing over and over again showing a pattern in terms of what the problems with a project like this might be. He will go over those types of issues briefly and Mr. Lemmo will be available for any questions the Board might have regarding those issues.

Mr. Lemmo described the background of the CDUA which is an open ocean fish farm located about 3 miles due west of Malae Point, North Kohala, Big Island. The depth at the proposed site is 1300 feet, area of use 247 acres and the applicant is looking for a 9 acre exclusive use and that is being sought because these ocean spheres are very large structures and they want a 100 foot buffer around each sphere which adds up to about 8 acres looking at 12 spheres which would be evenly distributed within the 247 acres. Each ocean sphere is 165 feet high by 165 feet wide. There are photo exhibits in the report showing how large one sphere is next to a diver. The spheres would be held at a depth of 180 feet at the center of the sphere. The top of the spheres will be held 65 feet below the surface of the ocean. At the surface people will see a set of buoys and navigational lights which will be visible for up to 2 miles. The feeder buoys and accessory antennas will be the only visible portions breaking the surface. The applicant wants to culture yellow fin tuna or bigeyed tuna known as ahi. The 12 ocean spheres would be deployed over a period of 4 years – one by 2010, two by 2011, four by 2012 and five by 2013. In terms of raising the fish, they are not talking about taking wild fish out of the ocean and stocking the catch with wild fish, they are talking about growing eggs collected from a few captured brood stocks to produce enough eggs. Another way is to go out in the wild and strip wild ahi of some of their eggs, take them back and grow them. There is one facility in Hilo and the other is NELHA (Natural Energy Laboratory of Hawaii Authority) where the applicant proposes to raise the fish. Fish feeding is a big issue. The applicant

proposes to replenish the fish feeders once every two weeks. Automated feed canisters would be located in the surface buoys where the feed would be dispensed down to the ocean sphere via a feeding tube which is the tube that goes down the center of the sphere. Each sphere production is estimated at 1,000 tons of ahi per year which is a total of 6,000 pounds of ahi per year maximum production. The applicant said this amount will stagger every other year.

Public input and public notification – when staff received the CDU application originally they sent out a notice to the newspapers which was published 3 times in the West Hawaii Today and the Honolulu Star Bulletin back in February 2009. Also, staff issued notices for public hearing in the Hawaii Tribune Herald, West Hawaii Today and Honolulu Star Bulletin in March 2009. The hearing held at Kawaihae had about 18 people who testified on the matter bringing up issues like job opportunities, engine technology – where the applicant proposed a modified OTEC (Ocean Thermal Energy Conversion) engine, concerned with tuna spawning, they were interested in training and research opportunities, there was concern with the fish feed content, concerns with genetically modified fish, concerns of impacts to wild organisms, concerns of impacts to wild fish stocks, an operation plan to remove mortality, will they use antibiotics in the feed and concerns of fish escapes. In the meantime, staff gathered agency and public comments which staff incorporated into the staff submittal and asked the applicant to address these comments by responding directly to those who commented and copying staff which was included in the staff report. A lot of comments came in after the report went out and noted that they are not in the staff report. All the major issues are encapsulated in the report discussions.

Staff went through an Environmental Review Process. There are two existing fish farms in Hawaii – one off of Ewa Beach, Oahu and one a mile off Keahole Point near the airport. Both did environmental assessments and this was the first farm that staff asked to do an Environmental Impact Statement (EIS) because of the enormous size of the farm and there were questions whether the applicant could do this type of farming. It is like science fiction – talking about un-tethered ocean spheres, raising ahi from brood stock is not a well tested science and talking about OTEC, we don't have any major operating OTEC facilities in the world to provide energy but here the applicant proposes to run their engines on their spheres. Member Gon asked about the current fish farms. Mr. Lemmo said that those currently approved are using different technology where they are anchored and moored to the bottom and they don't have engines on them that the Keahole Point farm is in a 100-150 feet of water. The Ewa Beach facility is successfully growing moi from brood stock and the Kona kampachi is grown from juveniles as well. The draft EIS was published, there was a 45 day public comment period and based on the comments received staff decided to issue a final EIS which was published in July 2009.

When staff issued the FEIS staff identified some unresolved issues which became a significant issue in the comments where people were saying they don't support the project because there are all these unresolved issues. He clarified staff has done this before where it is acceptable to issue environmental documents with unresolved issues. There is a section of Chapter 343 HRS in the administrative rules that basically identifies

its own section regarding unresolved issues and it talks about Chapter 211-17N provides for unresolved issues. The draft EIS shall include a separate distinct section that summarizes unresolved issues and contains either a discussion of how such issues will be resolved prior to the commencement of the action or what overriding reason there are for proceeding without resolving the problems. Staff believes the applicant met the requirements of 343 with respect to these unresolved issues where there are 4 unresolved issues that staff set aside.

1. Engine design – Staff knew that the applicant would propose an OTEC type system and staff didn't have any details which were due to proprietary issues. Now staff has additional information on what the OTEC system will look like and the applicant is calling it a SOTEC system which is a modified OTEC. Instead of taking deep ocean water and mixing with ocean water the applicant is going to put a solar water heater on there, heat water with solar energy to make it hot, then take the cooler surface water and use that to drive the OTEC system. Mr. Lemmo was so fascinated by the technology he went to see a 30 year veteran of OTEC at UH and Mr. Lemmo asked him whether the applicant can do this. His UH contact confirmed that it is theoretically possible that you just need to have a lot of water to pump through the system. Mr. Lemmo is sure the engine design will continue to evolve, but for purposes of the EIS process staff felt it was sufficient to issue a determination.
2. Fish feed components – The applicant didn't have a lot of details in the EIS and indicated that they hadn't selected a supplier of fish feed and didn't know what exactly the fish feed components would be. They did agree that this fish feed component would not include antibiotics or GMO (genetically modified organisms) soy and would need to be approved by the DOA (Department of Agriculture) prior to being used. Staff felt they could manage this issue adequately when the time comes. There are two farms in existence that feed fish regularly and any standard staff uses for these farms will be used for the applicant if not higher. It seems the next new guy on the line gets more regulated than the previous one. Staff can talk more about the fish feed component when that issue comes up.
3. Lack of benthic information – Staff wrote to the applicants saying that they didn't do a bottom benthic survey and that staff has a problem with that because they want to know whether the fish feces, excess feed, ammonia and material that accumulate on the cages like algae or mollusks growing on it falls to the bottom. The applicant explained that because its 1300 feet of water that there would be very little if any impact to the bottom substratum because of the currents that all these material will mineralize and will be consumed by the environment and the applicant is saying based on studies that were done previously this type of depth does not have a rich flora and fauna community providing studies explaining that situation. This is one of those issues staff juggles with all the time and basing their experiences with the other two fish farms which they have a lot of data regarding the impact of these farms on the bottom. There are human impacts, but these impacts are not thought to be a problem at this point and this is information for Division of Aquatic Resources (DAR). Staff didn't feel totally comfortable and included a condition in the

permit that should the applicant get approval that they would at least go out and do a photographic survey of the bottom to create a base line. It would be nice to know what's there because it's a safer approach. The Board will find agreement with the experts that there is no real threat to the bottom at this depth as a result of these farms.

4. Marine Mammals Plan unresolved issue. -- When staff approved the Kona Blue Water CDUP staff had a condition that they complete a Marine Mammals Plan which Kona Blue had done. Staff included a similar condition to work with NOAA and DAR to create this Marine Mammals Plan to include that you don't impact marine mammals, endangered species and noted sharks could be a problem around catch cultures because these spheres look like fish aggravating devices. The applicant needs to look at all the possible issues, give staff a plan and get it approved.

After crunching all the numbers and looking at all these comments and concerns, positive and negative, staff decided to recommend the project move forward. And, should the Board approve the project today, this project still has to go before the Land Division to get the lease and there will be a whole reiteration of conditions regarding the disposition of the State land. Staff included a lot of conditions in this application which increased the protection level of the natural resources referring to condition #3 which talks about doing bottom imagery so staff can create a baseline. Condition #6 – the applicant will have to submit plans to staff before the applicant can deploy anything. Staff will look at the details of whatever the applicant deploys in the ocean. They will have to follow all mitigating measures as identified in the EIS. Any feed containing supplemental hormones or antibodies shall not be allowed. The proposed feed shall be provided to the Department with pre-approval of the DOA. The applicant can only grow yellow fin and bigeye, mark the cages with buoys and submit all monitoring information to OCCL and DAR – Kona Branch. If the ocean sphere fails, if there are major fish escapes, if there is a disease outbreak or any other unusual event the applicant will have to report it to OCCL. Staff had experiences with existing farms where incidences occurred and pushed them to submit a written report; staff took the information and sent it to DAR to find out what they think about this.

Condition #19 is a condition that comes from both previous permits which talks about sampling the ocean fish, examining for parasites or disease. Mr. Lemmo thought of adding something because diseases are unknown and the reason is it's hard to predict an outbreak until it happens referring to H1N1. Disease is a real difficult topic to deal with and those against the project will talk about the problems with disease in other locations where there are fish farms, most notably the salmon farms in British Columbia and the problem with sea lice. He will let the experts or DAR representatives talk about that. It is a difficult issue to find an answer for. The applicant is taking as many precautions as they can to reduce the potential for disease outbreak. Mr. Lemmo recommended that this condition be modified that the sampling of fish should occur. If you are really serious about disease lets have the fish sampled by a qualified independent third party at the expense of the applicant and have that information sent to the appropriate authorities whether it's DAR or DOA or an someone who can assess if there is a problem with this

fish and that could give them a better assurance that things are going like it should or if its not and there is a huge disease outbreak staff can jump on it. He doesn't want to ignore it and say it can't happen because that is not true. In summary, Mr. Lemmo wants to modify this condition with a sampling done by a third party and the results provided to the government for independent inspection.

Staff is asking the applicant to come back after deploying a couple cages to brief the Board and to remove the spheres at the conclusion of the operation. Condition #28 talks about the Marine Mammals Plan which the applicant has to work out with staff and NOAA. The Board can revoke the permit if it doesn't like what it sees in Condition #29. And, there are conditions regarding the OTEC system to protect any federally listed endangered species from impacts. From Mr. Lemmo's perspective the major issues are disease and possibly economics, whether it is positive or negative to our local fishermen.

Member Goode asked Mr. Lemmo to address whether Sunshine Law notices were done properly. Deputy Attorney General, Linda Chow said staff did notify her that question raised in some e-mails. She looked at the procedures staff had done and checked it against what is required under statute and the notification was perfectly fine. Mr. Lemmo asked the Board Secretary, Adaline Cummings whether the check list enclosed was used and she confirmed it was. Ms. Chow said it was developed by the Lieutenant Governor's Office. Mr. Lemmo said that they are all in agreement that staff met Sunshine Law.

Bill Spencer, CEO of the Hawaii Oceanic Technology, introduced Dr. Paul Troy who is the Chief Technology Developer and they are co-founders. Mr. Spencer testified that their goal is to find a better way to farm seafood in an environmentally responsible and economically sustainable manner that ocean aquaculture is the best new source for ocean protein which meets the demands for fish and reduce pressure on ocean resources. Hawaii's economy, well-being and the ability to sustain ourselves may depend on such innovations. Mr. Spencer gave some of his background history and introduced some of his board members. He thanked Big Island residents for supporting them and DLNR staff for their assistance. Entrepreneurs are in the business of reducing and mitigating risk. Regulations are a challenge and their goal is to work with DLNR to find the right balance to move forward. Hawaii is known for it's aquaculture around the world citing the Ewa Beach and Kona Blue farms as examples. We all have a stake in building on the success of these projects. Staff recommends that this project be approved and their recommendation includes conditions to ensure his project is implemented in a careful and responsible manner. Mr. Spencer and his board shares staff's objectives and look forward to continue working with staff and to report to this Board on their continued progress. Some conditions need more attention and fine tuning. Mr. Spencer's company is the first to prepare an EIS and cultural assessment where their final EIS was over 900 pages, 500 of those addressing comments and concerns. The project has cost thousands of dollars so far, required 2 years and undergone an extensive review and vetting process.

Mr. Spencer and his board agreed that the ocean sphere technology should be deployed carefully and phased in through incremental steps. Staff recommends the Board approve

two spheres for initial deployment; approval of the Chairperson shall be obtained for each additional ocean sphere deployed and no fish or feed be introduced into the system for 6 months until the effectiveness and reliability of the system is validated. These conditions may interfere with testing the concept behind their plan citing studies and concerns people had on the fish. They need fish in the sphere because they are part of the system and the applicant carefully analyzed and developed a phased deployment strategy which is incorporated in the CDUA Management Plan. A prototype ocean sphere will be tested before more ocean spheres are deployed. The actual construction plans will be submitted to the Chairperson for review and approval. There will be an adverse financial consequence for delaying the introduction of fish that could affect the viability of the project. Mr. Spencer needs to know whether they can meet their milestones. Also, HOT needs at least 3 ocean spheres producing tuna to be cash flow positive. It is a critical financial milestone required by their investors which must be reached before any additional ocean spheres can be deployed. Mr. Spencer asked to consider removing the condition entirely and instead follow in accordance to the management plan that is already incorporated in their application.

With regards to the benthic habitat, the seabed is more than a 120 story building from the surface. What must be done to meet State and water quality standards is addressed in the Department of Health (DOH) Clean Water Act National Discharge Elimination System (NDES). EPA has delegated the authority for assessing the water quality impact of their project to the DOH which issues the NDES permit. As part of this process, HOT must analyze the zone of mixing to determine how any effluent from the ocean sphere would mix and dissipate into the ambient ocean current. Our EIS already included a comprehensive zone and mixing analysis that indicates effluent from the project would be mineralized and dispersed before reaching the border of their lease area, not deeper than 500 feet. The EIS concluded that there would be no significant impact and this finding was not challenged. The NDES permit will provide for monitoring where they will do the testing and submit reports to DOH and DLNR and to the Board.

Mr. Spencer introduced Dr. Rick Greg, Professor of Oceanography at the University of Hawaii, whose career analyzed the benthic waters in North Kona and Kohala in deep ocean submersibles and had been to the benthic waters below this site. Mr. Greg communicated that he has been diving in submersibles for 40 years studying corals going as deep as 1500 feet. He confirmed that he has dived to 2000 feet below the proposed site in 1975 searching for precious corals. They went for about a half mile where the ocean bottom was flat with a 2 degree slope with uniform sand and few rocky outcrops. The rocky outcrops were low and were covered with an inch or so of silt. The bottom current at that time was about 5 centimeters a second which is a tenth of a knot. In order to get sediment you would need very weak currents all the time. Even if you had strong currents once a month or once a year that kind of sedimentation is swept away. This area is very old and there are no lava flows because Kohala is dormant. The area doesn't have land slides because of the 2 degree slope. This is a very still environment that hasn't changed in the last hundred years. A deep water camera could be lowered to see the current benthic environment. Mr. Greg doesn't see any potential possibility of any negative environmental impact to the benthic habitat at this site. The likelihood of

nothing ever reaching the bottom might settle in the water column because of the mixing and the currents in the mixed layer range between .2 and 1.5 knots and any fecal matter would be carried along shore or off shore and never reach the bottom. If it did it would provide a nutritive source for the benthos that lives in the sand.

Member Edlao inquired of Mr. Greg's comment regarding fecal matter moving to the shoreline. Mr. Greg said he didn't study the currents at the ocean surface, but he did read the EIS and he recalled the currents along the coast are driven by tidal changes. There is a swirling eddy that comes along Upolu Point that eventually works its way to Keahole and out to sea noting that surface currents change with the winds, tides and storms where you'll get a mixed regime as far as currents go which wasn't part of his study. The surface currents are different from the bottom currents.

Member Gon said that it is unusual for him to see an approval for a use application for the ocean spheres and asked are there any prototype of any size. Mr. Spencer explained that the technology that they plan to use to build the ocean sphere both for geostatic positioning and the concept itself of having a large platform in the ocean that can be managed remotely using telecommunications is something that has been done by the United States military and the oil industry for several years. Almost everything about their technology is commercially available and that is why they went to Science Application International, a defense contractor, and had their best ocean engineers vet their project to confirm that this technology that they developed for the Navy and NOAA could be applied to this project. The first step of the project is to build and test a prototype where no previous prototype has been done. A Cliff Gaudy at MIT who is a re-known ocean scientist had taken another company's product called an aquapod, which is a tenth of the size of the proposed ocean sphere, attached thrusters to it and had it move in the ocean because Mr. Gaudy's theory is to someday have sphere like technology floating with the currents opposed to being geo-statically positioned. The concept of having thrusters on a fish cage has been tested successfully, but not their implementation using thrusters to keep the cage steady in currents.

Mr. Spencer agreed that water quality is a concern that they will address in their NDES permit managed by DOH. They did a thorough zone mixing analysis as part of their EIS that indicated the effluent will never reach the border of their lease area. Dr. Lucas did a comprehensive study on currents in the area and that is one of the reasons why this is 3 miles out so that effluent will not go on shore if there is any. He reiterated the request to remove the condition regarding imagery of the benthic habitat.

In regards to the standard permit condition that the project begin 1 year after approval noting that it may not be possible because HOT still needs to get other State and Federal permits before proceeding. Mr. Spencer asked to amend the condition to 2 years and requested authorizing delegating to the Chairperson to set a construction date after reviewing progress reports, construction plan and other factors.

With regards to material from bio-fouling, the management plan indicates that the ocean spheres will be taken out of the ocean for cleaning and maintenance annually. Until

testing begins Mr. Spencer's company doesn't know the extent of any bio-fouling which is the reason why the spheres are submerged 65 feet below the surface away from sunlight. Condition #1 is sufficient for removal of debris that fouls the ocean sphere. Debris from bio-fouling occurs naturally in the environment and any structures like buoys or boats are subject to bio-fouling and are not restricted by any laws for setting any debris free in the ocean. No open ocean aquaculture company in Hawaii has been required to comply with such a condition. He requested that condition #27 be removed.

Mr. Spencer concluded that the primary design of the ahi/aquaculture project is to demonstrate a new and better way to farm fish in the ocean without harming the environment. Every aspect of this project is measured against this objective. His company is as concerned with the environment as anyone and that is why they created this business. They believe moving fish farming away from bays, estuaries and shorelines into deeper and larger volumes of water will minimize the environmental impacts and reduce the carbon footprint associated with traditional fishing and reduce the demand for threatened wild species such as tuna. Hawaii has the potential to develop models for good open ocean aquaculture and to seek new economic engines. His company knows the challenges and is willing to work hard.

Member Gon asked whether Mr. Spencer is free to say if anyone else is vying for an open ocean fish farm. Mr. Spencer responded that he wasn't aware of anyone else. Member Gon said that the reason he asked was the application for the permit speaks to a full scale implementation of the ocean sphere technology within the framework. Since there aren't a lot of folks vying for this he doesn't detect any urgency in regards to the timeline on this project, but he is concerned of not having seen a demonstration or prototype of any scale of the concept that Mr. Spencer is proposing which is exciting. But, one would think if you are going to apply for a conservation district use application you would have something ready to deploy that already demonstrated its abilities, has already assessed all the potential impacts and have analyzed some of the on-going questions. Member Gon understands the law allows for outstanding issues and to deal with them as they come forward, but the process also allows the Department to be really careful when dealing with new technologies in an open ecosystem environment. When dealing with fish farming and disease in a closed system on land you have the potential to make sure any disease outcomes or any unwanted biological outcomes don't occur from the environment from which surrounds it. As a steward for the environment and the natural resources of this archipelago he has to be really concerned with an open system prototype. Mr. Spencer reiterated that the two existing fish farm companies have demonstrated without a doubt that the impact to the benthic environment is minimal or no impact. They have no disease issues and demonstrated appropriate stewardship being tethered to the bottom in less than 250 feet of water that the open ocean environment will promote fish health. His company is building the ocean spheres big to have a low stocking density, 4 cubic meters per ahi. He noted that ½ the seafood industry is in bays and estuaries, enclosed near shore environments and there is no comparison with the water flushing and volume of water that this project can achieve in the open ocean which is the reason for going out 3 miles. This is the only State that could do this project. In

the next 20 to 30 years we are going to run out of fish and if we don't double aquaculture we won't be able to meet demand.

Member Edlao reiterated concerns with this pristine area and the need to be careful. Mr. Spencer agreed saying they share the Board's caution and that is why they will do this step by step reiterating building and testing a prototype that will take at least a year. His investors need to know that his company can fulfill the whole project. Member Morgan said it's safe to say that if the prototype doesn't work his company won't move forward. Mr. Spencer confirmed that. Member Morgan said that he read some of the written testimony and one referred to tuna farming in Australia where Dr. Lucas explained that operation goes out to catch and fatten small tuna in a small cage for 3 months. Mr. Spencer noted that is done to get under the quota because it is weight based then the fish are put in surface cages. Member Morgan said that the article noted the disease had some negative impacts, but it was written in 2002 and he wondered if the predictions had any negative impacts. Dr. Lucas reported that there has been a more extensive report that has come out and it has been found because they are using pellets for feed it's better than 4 years ago where the science is progressing to make it more environmentally friendly.

Member Gon asked what would Mr. Spencer characterize his ocean sphere as – a ocean going vessel, submarine – what is the appropriate permit for a device of that size in the open ocean off of an island. Mr. Spencer explained that “ocean sphere” is a trade name, but they originally characterized this project as a fish farming platform and the closest thing to it are modern day oil rigs which Mr. Spencer detailed. Also, they don't consider an ocean sphere a vessel. They are vying for their Section 10 permit with the Army Corp of Engineers and they do consider this to be structures in the ocean. If it were a vessel it wouldn't be considered for the permit.

Member Goode asked how the ocean sphere would be cleaned where Dr. Lucas described an A-frame would go out, pick it up, disassemble on the boat and brought to the harbor.

Member Morgan asked as remote as it may seem what is the worst case scenario, aside from the economics, but in the Board's perspective with regards to protecting the public resource. Mr. Spencer said the worst case scenario is it doesn't work. In terms of other impacts they are confident because of the size and placement of the spheres in a large volume of water. There would be minimal environmental impacts. They don't see a worst case that can't be avoided or mitigated. After speaking to Big Island fishermen our tuna fishery is 90% flat out that long liners go 1500 miles from Hawaii for two weeks to catch tuna using up gas and ice which is not sustainable and that is the worst case.

Member Edlao asked about affects from a tsunami. Mr. Spencer said that as most people know boats will go out to open ocean during a tsunami and the impacts are felt on the shore and not on the water because the spheres will be 65 feet below. They anticipate minimum impact of a tsunami event and the same for hurricanes or big swells since their site is protected and their design mitigates against these problems.

Mike Kumukauoha Lee testified that he was insulted and he brought his great grandfather's lease for the He'eia fishpond explaining how the Hawaiians did things. Molokai has 80 fishponds not being used and these fishes were all grown in the Hawaiian fishponds. The scientists at UH don't know how to stop the diseases and this is what the protocol is. To stop the disease to internal coastal areas is to stock the fishponds with cleaner fish – wrasse or other cleaner fishes and invertebrates. The mother of pearl invertebrate, which no one knows about, two weeks before the water spoils it turns color and it was monitored all the time. These were his family's survival strategies. In the Kumulipo chant 1, all those limu talked about is how Hawaiians coastally did their fishponds and they feed those fish with moth larvae, not pellets, but multiple types of food. Hawaiians built heiaus for different limu that brought different kinds of cleaner shrimp. This information is in no book, but only passed on by families. This company needs to employ the people on Molokai who are growing this kind of fish. Two thousand five hundred years ago Hawaiians were growing tons of fish. If you aren't familiar the ocean is just not an ocean. There is a spring out there 10 miles out that shoots 6 feet of fresh water sometimes and there may be morphology of fish because of too much fresh water.

There are thousands of years of knowledge that kept a million Hawaiians alive in the 1700s. The reason this knowledge never came out was the way Hawaiians were treated which is a touchy issue, but some of these things have to come out. You look at stress management and even after the babies are born with the full moon one bushel per is 10 gallons. Some of that la'au is at the top of Mauna Kea which is mixed and is a gift because Hawaii was the only place doing it. For Hawaiians if you didn't do it right you died this was survival strategy. They (Hawaii Ocean Technology) are playing with a lot of peoples' lives and they don't know the answers. Mr. Lee lives at Ewa and the Ewa fish farms had problems with viruses suggesting the Board ask for Mr. Lemmo's report. Mr. Lee requested a contested case if the Board passes this on the grounds that our cultural resources that they (HOT) cannot tell him what the long term affects are going to be because their EIS doesn't have it. He brought his great grandfather's royal deeds from the Kohala area.

Rocky Jensen, an artist, opened in Hawaiian and appealed to the Board his concern that HOT doesn't live there and he stays home hoping the Board would protect the communities' concerns. He cannot live with these kinds of stories by HOT. Mr. Jensen related the Hawaiian children's poor education. That he hasn't cut one log in his career because of the natural resources. Mr. Spencer has not mentioned one word toward respect and balance. While Mr. Jensen was growing up on Molokai he was taught to care for Puako fishpond, but was later destroyed. When something is gone what do you have for your grand kids? Mr. Jensen asked to rescind this until further time until we know what HOT's true intention is we would be better citizens. He would rather work with them than oppose them, but they didn't come to him. To say they are speaking on behalf of the Hawaiians, that is painful. Mr. Jensen is afraid HOT will destroy Hawaii's beauty.

Palikapu Dedman spoke saying pointing out that Mr. Greg has been exploiting Hawaiian coral for how long. He asked who does the cultural assessment in the EIS and who

analyzed it because it is an assessment against Hawaiians. Mr. Dedman bemoaned the poor representation by the Department/Board because he pays taxes only to be desecrated noting a history of Hawaiian social problems. Does the EIS protect him as a Hawaiian or do you even look at it with a Hawaiian perspective? He decried the pollution and every hotel on the beaches of Hawaii was approved by this Board where he lost his beach, his resource, his culture and lifestyle and got nothing. That Hawaiians are abused and oppressed that the Board is supposed to protect his traditional customary rights which were not in the EIS. He asked to exempt him from taxes.

Kale Gumapac representing himself and the Kanaka Council opened with a chant. He described his kupuna, David Malo who built many fishponds and the technological understanding his kupuna had of the environment. It is difficult to listen to HOT's representatives when they never came to seek their counsel or advice on aquaculture and instead come with this technology to experiment in our waters. Mr. Gumapac reiterated previous testimony that Hawaiians farmed fishes environmentally for hundreds of years. He questioned that HOT never came to any of their Hawaiian fish ponds to learn or see what was done. Kaku or barracuda were put in the fish ponds to prevent people from stealing fish and to eat all the diseased fish. HOT doesn't have anything but chemicals to wash off the diseases. Turtles were in the fishpond to produce seaweed for the fish to eat. The CDUA should not be approved. Law of 1842, chapter 3, section 8 – a free and prohibited fishing ground states his majesty the King hereby takes the fishing grounds from those who now possess them from Hawaii to Kauai and gives them to the common people. A portion to the landlords and a portion he reserved to himself. Mr. Gumapac described which fishing grounds and their names. The Law of 1842 cited and quoted in part about gifts, grants and leases recognize any right of any kind belonging to DLNR in this fishery. This vested fishing right is not a part of any property, corporeal or incorporeal belonging to the State of Hawaii, but belonging to the people of Hawaii. The vested fishing right is private property and was upheld by the US Supreme Court decision by Oliver Wendell Holmes and he read this decision in 1904 and it still applies. It has not been rescinded or changed – The Organic Act of the Territory of Hawaii repealed all laws of the Republic of Hawaii which confer exclusive fishing rights subject however to vested rights and require actions within two years of those who claim such rights. He continued reading the rest of the Act. Because of ancient Hawaiian practices it establishes by law where Mr. Gumapac reminded that a Supreme Court Justice is writing this. The Board is condemning every Hawaiian's right without ever giving them notice and that right is to gather which is vested. What HOT has here violates the Hawaiian's rights without giving them notice. Mr. Gumapac put the Board on notice that if they ignore this right they will come back with Oliver Wendell Holmes.

Henry Curtis of Life of the Land disagreed that adequate fish for food is more important than climate change which is a serious issue. He wanted to discuss the hybrid ocean thermal solar energy conversion power system HOT presented. Mr. Curtis met a Richard Cowen who was head of the US Ocean Energy's Program and the project manager who headed OTEC on the Big Island giving some background about OTEC. Mr. Curtis said he couldn't understand what HOT is doing and they talked in vague terms on what the system will look like. He went on to describe the OTEC process, but here the water

discharging will be at a higher temperature which is not discussed. There will be interaction with plant life beneath the ocean, but there is no mention in HOT's document. Mr. Curtis reiterated the concerns about the impacts by SAWTEC.

Robert Harris, Director of the Sierra Club- Hawaii Chapter, noted there are some strong community concerns regarding diseases and whether there was enough community outreach. If the Board considers proceeding, he suggested going for the smaller project and asking the applicants to come back after the prototype has been built and reviewed with more community input. Sierra Club has had no interaction with the client pointing out that Sierra Club is the largest environmental group in Hawaii and to consider them when going out for public comment.

Kihei Soli Niheu testified about the oppression of Kanaka Maoli (Native Hawaiians) since 1898 reiterating previous testimony regarding their rights. Native people are angrier due to the rest of the world infringing on them and cutting them off their lands.

Dexter Kaiama presented a timeline of salmon aquaculture which confirms that these fish cages promotes the growth of diseases reiterating concerns of fish escapes, decline of wild fish population citing examples around the world. He had concerns of impacts to cultural access rights and was disappointed with staff who continue approving these measure even with known problems which guaranteed will happen and its disappointing that staff finds it acceptable.

Marti Townsend representing KAHEA suggested to the Board some precautionary principles that she has been trying to get the Board to enforce for a very long time. She asked how long does the lease last? Ms. Chow said there is no lease up for approval today. Ms. Townsend asked does the CDUA have an expiration date to come back to the Board. Mr. Lemmo said they don't put expiration dates on CDUAs. Ms. Townsend asked with October 27<sup>th</sup> being the deadline if the Board were to defer decision making does that mean the permit is automatically approved. Mr. Lemmo acknowledged that. Ms. Townsend said your choice here is to either to grant or deny and she strongly urged the Board to deny and have the applicant come back when you have additional information. The testimony received today will outline all the concerns with open ocean aquaculture in Hawaii reiterated issues with fish kill, chemicals, fish food, and farmed fish with wild stocks which could affect other mammals like humpback whales, lost of public resources and access, irreparable harm to the natural and cultural resources of Hawaii. One condition limits liability to the State for anything that happens. The public doesn't feel safe enough that enough thought has been given to the worst case scenarios out there that they will be protected. What aggravates Ms. Townsend the most is the applicant proposes to use our public trust resources to make money for him and his company! He is doing this strictly for investors and any harm done by him will be borne by us (the public and State) and not by him. Mr. Spencer is not thinking of the external risks, only the financial. Ms. Townsend urged the Board to act with caution and reminded that in the State of Hawaii protection of Native Hawaiian cultural practice and the environment is a right. Making a profit is not a right. She echoed the Board that there is no urgency to this project and reiterated to take the time to make an informed

decision asking to deny this application and to do testing in a tank and not in our open oceans.

Donna Burns spoke giving some of her background distributing and summarizing Mikahala Roy's written testimony where Ms. Burns gave some background on the Roy family who are fishermen. She found it uncomfortable with the DOCARE officer in the room and ended her testimony.

Rob Parsons representing Sierra Club – Maui, Maui Tomorrow and liaison for Food and Water Watch which is a consumer advocacy group based in Washington, D.C. He has done a great deal of research on this subject which is in his written testimony. Mr. Parsons questioned whether or not this submittal was posted in a timely manner for review because Mr. Parsons wasn't able to see it until Monday morning when it normally is posted by Friday or Saturday. He asked did this comply with the spirit of the law to make the agenda and submittals available for public inspection at least six days in advance which is a concern for neighbor island people. Mr. Parsons related that he submitted comments on the items in the submittal that weren't covered in the EIS, things changed in the EIS and things were added that the public didn't see as part of this public review process and he asked to deny this request. The folks from Big Island wouldn't be here today if the applicant had done a bonafide community outreach effort and he hopes this meeting can be held on the Big Island.

Unresolved issues with waste on land, lease cost referring to Item D-12 where Mr. Parsons asked what percentages of the \$100 million revenue will the applicant pay the state for exclusive use of the ocean. He referred to concerns of noise affects to marine mammals and reiterated issues with cage fouling, mortality disposal, untried and untested aspects, a question of why so big, uncertainty of the amount of fish produced, and public trust. They would need an enormous amount of fish food with references to bait fish and soy also ahi will not grow as quickly with land based feed and that HOT didn't say they wouldn't use GMO products. He suggested the language of using bait fish oil/meal be "required." Where to store the feed? Mr. Parsons has a problem with the applicant's numerous claims of creating a sustainable aquaculture operation and recommends taking back the word "sustainable" because the applicant is using it as a marketing tool. HOT does not address using local resources to create benefits for local people without depending on imports and exports to balance. It is now described as 100% imported of 12 million pounds of fish food a year and 90% of the product would be exported which does not equal sustainability. Economics – Projected large revenue expected, but small number of jobs created. Qualifying for Act 221 High Tech tax benefits means large chunk of state revenues will be avoided. Detailed analysis of expected revenues through taxes should be disclosed. Farm the ocean like we farm the land is not what this is. It is an industrial feed lot analogous to the problems found in feed lots for cattle, chickens or pigs and those are pollution, pathogens, disease and the need for antibiotics because of so many of one species in one place in proximity of their own waste. Even the applicant noted that commercial output is a long ways away so why the rush to approve while questions remains unanswered. Mr. Parsons recommended addressing questions be it economic, scientific, cultural and environmental concerns and

address inconsistencies through further dialogue, research and outreach. Ensure the vested rights of Big Island residents by scheduling meetings in West Hawaii. Be certain that the ability to mitigate potential problems and impacts before approving any permits to allow the proposal to move forward. There is greater merit and sustainability in reviving historic Hawaiian coastal fish farms or pursuing land based re-circulating aquaculture and aquaponics systems that utilize nutrient rich fish waste to grow vegetables. The applicant would go a long way by going to the community and asking how can we work with you.

Puanani Rogers of Kauai asked to reject this proposal reiterating previous testifiers' concerns, to be cautious, that this will set a precedent, and to work with nature by going back to the Hawaiian fish ponds.

Randy Cates representing MAYFAC testified that he is the one responsible for the 2 current fish farms and this potential applicant. He is not here in support of the applicant, but to give the Board guidance. Mr. Cates is a member of MAYFAC which is a 21 member panel that advises the President and NOAA on all our fisheries for the nation. It's like a think tank. He has been involved in aquaculture for over 10 years and was a former fisherman, born and raised in Hawaii. He has traveled all over the world looking at farms. There is a need for aquaculture that in the United States 82% is imported, in Hawaii over 90%. Hawaii exports 90% of its wild caught, but imports 90% of our fish which doesn't make sense to him. It does bother him that the applicant is targeting export and Mr. Cates doesn't think that is correct. You should grow fish in Hawaii to support Hawaii first which is Mr. Cates' company model and what he strives for. He isn't totally against exports, but we should take care of jobs and feeding people in Hawaii first. There is a lot of misunderstanding about aquaculture and ocean farming and there is some misuse of the issues, but there is something to learn from every speaker.

A couple comments he can share that were incorrect. PCBs and mercury is an issue with all the foods we eat. There are more PCBs in butter than there is in farmed salmon. If you want to find something you can find it. The issue of disease and aquaculture is a real issue. The problem is when you take an animal and put it in the ocean it's in the environment already. It's not us introducing it, it's there as part of nature. It's not a bad thing. It's something you need to understand and you can mitigate. All the issues we've heard are issues any farmer or industry has to address. As an industry there are safeguards in regards to the biological aspect of a fish farm. Sometimes too big is not good and Mr. Cates wholeheartedly agree. Too many farms are not appropriate. He agreed a lot on what was said about the cultural aspects, that you can't thread lightly on and encouraged the Board to look at that. Not to go against the applicant based on that, but it's important to Mr. Cates personally and to any business in Hawaii. Fish farming can be done in a culturally sensitive manner and there are a lot of positive aspects. Mr. Cates gave the example of his business when he sat here 9 years ago that a lot of the same arguments were thrown out, that a lot of bad things are going to happen. In reality, they didn't happen. He has been able to support our community by putting fingerlings in fish ponds, helping to revitalize fish ponds and he did try other things that are by products. But, Mr. Cates saw potential down sides on things that he doesn't agree with like

bringing in labor to your farm, not creating jobs and exporting your entire product. He suggested the Board ask is the technology safe, are there enough safeguards on the technology. The growing of fish, he wasn't worried about because Mr. Cates knows what the safeguards are. The reality of the environment and things - is the technology there? This is not for him to decide.

Member Gon asked whether Mr. Cates is one of the principles at Keahole or Ewa existing farms. Mr. Cates responded Ewa giving a brief history on what his research project came up with regarding sub-surface fish farming and the technology developed in Hawaii is prospering around the world. Member Gon asked what is the scale of the container at Ewa and how does it compare to one of the prototypes being discussed today. Mr. Cates related when he started, being the first, his company knew that it was something the community wouldn't have anything to base it off of and would be hard to put it to scale. His company applied for 4 cages, 3,000 cubic meters and they did that not because of what they thought was appropriate for the ocean, but what the community would accept. Since then they wanted to expand to 8 cages with 6,000 cubic meters and they are closer to shore than the HOT project reiterating that this project has its own issues with benthics which he didn't think would be an issue. Mr. Cates related how large the ocean is that you can raise a lot of fish in a small area, not in a bay or estuary.

Mr. Morgan mentioned the technology being science fiction and that it's a nice concept, but there are concerns. Mr. Cates says he supports aquaculture reiterating he isn't talking against or in favor of Mr. Spencer's project. The real issue is the technology of the apparatus. The biological impact is a concern and he doesn't minimize that, but the laws in place in the United States are adequate. He is here to support the process that this is a good process. You should go out in the community and get support, you should have disagreements, you should talk about these issues because they are important reiterating to getting a better understanding of the opposing issue.

Member Gon asked when the Ewa project started and if there were prototypes. Mr. Cates said the first cage went in 1999 that the cage design was bought off the shelf. It had never been applied in the manner that his company applied it. All fish farming done at that time was all on the surface. Since Mr. Cates was a diver he knew underwater was a better place to be and took an existing cage and adapted it.

Member Gon assumed that Mr. Cates must feed his fish with volume, storage, technology and management issues of the kind people are discussing here in terms of potential problems and impacts. The number battered about was 12 million pounds of food and asked are you near that volume? Mr. Cates answered in the negative that he was not. The feed is a commodity like a poultry farm that there are companies that produce fish feeds. They use feed from a company called Moore-Clark and he had 3 companies supplying feed over the years. The fish meal comes from a sustainable resource and has been certified sustainable for 30 plus years. The fish meal goes more towards chicken farming than aquaculture, but aquaculture is gaining in its economics. The desire to get away from fish meal is purely an economical issue. There are some consumers who don't like the idea of feeding fish to fish and would pay more money. Member Gon

noted ocean fish eat fish. Mr. Cates agreed that he advocates that there is no fishery in the world that doesn't use fish to catch fish either using bi-catch or bait giving the example of Maine lobster which is a 2 to 1 ratio.

Member Morgan asked if the first prototype proves itself affective in the technology and animal culture point of views then HOT will have the confidence to put more money into the next two ocean spheres that Mr. Cates concern was the technology would have proven itself as time goes along. Mr. Cates said he encouraged the Board that the issue to be decided on is on the technology side reiterating he is not here for or against. When he started out people said that the technology he was using was going to fail. This issue we deal with all the time. At his office there is a wave energy buoy in the boat yard. This is the perfect example. Some of the groups here support wave energy. They have one buoy that had the technology approved on, if it works they will put more out. There is a risk with putting one buoy out. Could it break loose? Yes. Is that risk worth the chance of success to be more energy independent? That is the way life is, but you can mitigate risk. There is a financial risk to the company and the Board is looking at the risk to the environment. There are things in 190(d) that could mitigate the risk. For example, he has to have a bond on his operation if one of his cages breaks loose. There is a bond in this that goes there and cleans it up. Those are the issues that need to be made and he hadn't gone through the submittal in detail to give advice on whether it is risky or not and encouraged the Board to look in that area.

Member Edlao asked there were some discussions that had some problems with disease. Mr. Cates said a lot of things have been said about him. Some of the groups referred to Food and Water Watch that made the assumption that he used helicopters in his operation. He has never used helicopters. There was a message on his phone from a former employee of Food and Water Watch apologizing for a lot of the misstatements. He had never had a disease outbreak and had never had to use antibiotics. If he had to use antibiotics he would have to get State approval. Having said that aquaculture has to be prepared because it is farming like farming on land and Mr. Cates encouraged research in that area because it is farming. There are always things in the environment that we are always concerned about coming onto our fish. Before his company puts any fish in the ocean they test every single batch. Disease is an issue in aquaculture in other parts of the world. Some people mis-understood this disease, for example skin parasites; there are all types of these issues. You want to choose a fish and have the technology that minimizes your best chance that is a business decision that you make. Mr. Cates concluded that there is something to learn from every comment today and that he would be available for questions.

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Member Morgan said to look at the worst case and best case scenarios on a global and local level that there is sever over fishing and something needs to be done. If the utopian view actually works we would provide an economical, environmentally, sustainable way

providing fish to a good part of the population then this is scaleable. Maybe keep this going along but not at the scope it is at. It would be very worthwhile.

Member Gon reiterated his concerns about no demonstrated prototype, concerns with mammals, access rights, the engine system and a lot of untried and untested elements to this, but on the other hand these are always painful first steps to projects with many issues to explore asking whether the scope of something that is before them now can go forward.

Member Morgan asked whether if they made a motion to scale it back without approving 12 spheres is that possible. Mr. Lemmo acknowledged it is possible. It depends how much you want to scale it back and there are other conditions they need to talk about. Member Morgan pointed out the condition that no fish go in for 6 months and that he couldn't find it in here.

\*Member Goode moved to approve as submitted and member Edlao seconded it.

Member Gon said he would have a problem with this motion. He would have the applicant demonstrate a prototype first and if it doesn't work there is no reason to continue. If we go with 1 prototype there is no need to go with the amount of acreage discussed all there is needed is a test bed, an application and permit to test your device without any long term, exclusive jurisdictional basis. Member Morgan asked if HOT wanted to scale up would they have to go through this process again. Mr. Lemmo said that if the Board accepts the conclusions of the EIS and at that time if the Board is still ok then you could move into a second CDUA process for the broader project. Member Gon noted there were unresolved issues in the EIS and this smaller level of permit would allow the applicants to work in resolving those issues on a number of levels – environmental, cultural and others.

There was some discussion about condition #23 where Mr. Lemmo asked what would the Board like to do, grant 1 cage now and come back to apply for a second permit for the rest or grant 1 cage for now then come back to the Board because there is a whole process issue.

Member Goode said that we can't defer and our other option is to approve with amendments and asked whether the EIS is final and that the final date was July 23, 2009. Under Chapter 343 if someone was to contest that in court they had so many days to file. Mr. Lemmo confirmed that it's over. The EA was done first then the EIS. Member Goode said there were all kinds of opportunity for people to comment on that whole process and all the various things discussed during that process. He is comfortable to know that there was a lot of potential there for the public to participate and perhaps more so than what this process has. He reiterated the need to get a clean water permit from DOH, an Army Corp of Engineers permit related to the structure, DOA permit on the product. Mr. Lemmo mentioned the Coast Guard, CCM consistency review, 401 water quality certification, National Pollution Discharge Elimination System permit and others. Member Goode asked that the applicant has to satisfy all the agency's permit conditions

which Mr. Lemmo agreed. Member Goode is comfortable with 2, possibly 3 spheres otherwise bring it back to the Board or Chair.

Member Edlao suggest a bond on the applicant should this not go through or something should happen. Mr. Lemmo noted that is on the land lease and there is no harm doing it here, but it would be redundant. Member Agor said that there is potential to approve the project, but to rephrase it.

Member Gon asked to limit the footprint of the area of the permit to just 2 or 3 largely due to the issue of exclusivity referring to and reading condition #9 and suggested adding especially pertinent to traditional access. Bill Tam who represents this project explained that exclusivity issue has to do with other projects in the area. It doesn't have anything to do with access of boats or fishermen going through that area. It doesn't interfere with any fishing area. The only area of no fishing is 100 feet around each sphere. Mr. Lemmo gave the example of Atlantis Submarine where you don't want people dropping anchor on top of a submarine. It is a free transit area where people can swim and dive there.

Mr. Gumapac spoke saying that these ocean spheres will impact their koa or fishing grounds. That he hasn't heard the Board discuss any of the Native Hawaiian issues.

Member Morgan said that he understands that the applicant wants to delete condition #3 regarding benthic imagery based on Dr. Greg's testimony which sounds reasonable to Member Morgan. And that the applicant asked on condition #7 for two years instead of one and Mr. Lemmo agreed that was reasonable.

Member Edlao referred to condition #19 in regards to disease. Mr. Lemmo said that was his suggestion that sampling shall be conducted by qualified third party entity at the expense of the applicant and the results shall be provided to the appropriate government agency.

There was some discussion over whether to give 1, 2 or 3 ocean spheres that if one doesn't work the project is dead. If it does work the applicant wants three at a minimum. Member Goode said he was comfortable that there was a lot of oversight.

Member Gon asked that the recommendation doesn't talk about the size of the test bed and that staff's submittal talks about an open ocean fish farm located in given coordinates, but it doesn't mention the size. The size is given is for the interior of a full system and he is not willing to grant that. Member Morgan suggested an open ocean fish farm consisting up to 3 spheres and that allows it to go forward assuming if 1 sphere works. Member Edlao asked if that was reasonable for Member Gon to scale back the 247 acres to hold up to 3 spheres where Member Gon agreed. Per Member Edlao's questioning Mr. Spencer explained that he needs 247 acres for 3 spheres because if HOT is approved for 3 spheres they don't want to have to go through another EA process for the rest of the project. Mr. Lemmo suggested doing the math.

Member Goode asked if they did it prorata basis suggesting around 20 acres per sphere would the applicant have to come in for a supplemental EIS. Mr. Lemmo said if the applicant decided to go for 12 in the future and no changes to the site or technology or operations or type of fish then the EIS is still good. There is no time frame on an EIS at this time although there have been efforts to change that which he doesn't say he agrees with. That's the law. Member Goode suggested that there is a lease coming up and say 60 acres for the first 3 spheres could be handled in the lease. Upon successful deployment the lease expands. Mr. Lemmo said have the applicant come back and re-do it. If you want to give them 60 acres and 3 cages, do it, then they come back and do everything over – a new CDUP, a new lease and just go through the process again.

There was some discussion about if there are substantial changes to the 3 spheres there is no need to do another EIS. Mr. Lemmo pointed out that the EIS covers the 247 acres and 12 ocean spheres reiterating that the applicant files a CDUP, publish it, have public hearing and go through the whole process again.

Deputy Russell Tsuji asked that the CDUA has its own process which has gone through for the 247 acres and say the Board doesn't approve the entire 247 acres in the CDUP does that mean after the sphere is successful and the applicant wanted to expand to the full 247 acres is that going to require the entire CDUP process to be done compared to it coming back to the Board for presentation for Board action. Mr. Lemmo said it is because what you are going to do is the BLNR approves the CDUA application as amended subject to the following conditions for 3 cages and don't even have to mention acreage because we have a lease. That is what the Board approves and nothing more. The applicant cannot come back 5 years later saying they have a CDUP for 12 cages which they don't because it was approved for 3 cages and the applicant would have to do a new CDUP. Deputy Tsuji asked whether the CDUP can be phased in where Mr. Lemmo said the applicant doesn't want to do a phase they want the Board to give them an approval and come back and get another approval. Deputy Tsuji said he is presenting it for the Board to decide.

Member Morgan said he is comfortable that there is disclosure of everything the Board will see if it is a good or bad project. He felt phasing is an unnecessary step. Member Agor mentioned that he could support amending in phases. Deputy AG Chow explained that you would approve for the 12 ocean spheres, but change condition #23 by putting in how many the Board wants – 1, 2 or 3 and in order to put in more cages the applicant would come back to the Board for further approval to put in more cages with approval of the Board instead of Chairperson. The Board agreed and discussed this.

The Board discussed the amendments to delete condition #3, # 7 – one to two years, #19 - sampling shall be conducted by a qualified third party entity at the expense of the applicant and the result shall be provided to the appropriate agency for review analysis, #23 – two to three, Chairperson to Board.

Member Gon noted that because of numerous testimonies received of unresolved issues and if still unresolved when the applicant comes back he may not want this project to continue.

Mr. Lemmo referred to condition #27 that the concern was that the material fouling on the nets would have to be taken on shore and he didn't think the current fish farms do that. It's cleaned and gets assimilated. His issue is if the net breaks and that the applicant has to take it off and not let it go to the bottom. The Board agreed to leave it in.

Chairperson Agor asked the applicant to do a public informational meeting and Member Edlao said he strongly supports that.

The Board voted as amended and seconded. All ayes except Member Gon opposed. Motion passes.

Mr. Gumapac and Mr. Lee spoke asking for a contested case for each of them.

**The Board:**

**Approved staff's recommendations with the following amendments:**

**Recommendation 3 – Delete.**

**Recommendation 7 – Change from [one] year to “two year.”**

**Recommendation 19 – Amend [;] after ...year with a . and add Sampling shall be conducted by a qualified third party entity at the expense of the applicant and the result shall be provided to the appropriate agency for review analysis;**

**Recommendation 23 – Change [two] to three and change [Chairperson] to Board**

**Approved as amended (Morgan, Edlao)**

**All Board members approved except for Member Gon.**

**Item C-5 Request for Approval of a Memorandum of Agreement Between Ahahui Malama I Ka Lokahi and the State of Hawaii Department of Land and Natural Resources**

Member Gon recused himself. Written testimony was received and distributed.

Mr. Conry described that this item is to establish a cooperative working relationship at Kawainui and Hamakua Marshes in Kailua, Oahu. Ahahui Malama I Ka Lokahi will provide the cultural outreach and education activities by working with the community and will assist them. Staff is waiting for the Memorandum of Agreement to come back from the AG's Office.

Rick Kaimi Scutter, Administrator for Ahahui Malama I Ka Lokahi, testified that they are an environmental organization since 1994 and worked at Kawainui since the late 1990s. They have curatorship agreements approved by the Board for Ulupo Heiau and Na

Pohaku 'O Wahine which are in the area. He described the type of work his organization has done in the area, that they represent the cultural and environmental aspects. They are part of a network of community organizations that have representation with the Kailua Neighborhood Board. This MOA will solidify working with DOFAW who is a major owner/manager of Kawainui Marsh. Also, this MOA will help with funding. Mr. Conry acknowledged Mr. Scutter's testimony and that they are getting funding from the Castle Foundation who wanted DOFAW to get this cooperative agreement with Ahahui because of the cultural aspect.

Keola Lindsey representing OHA urged the Board to authorize the Chairperson the sign this MOA. They applaud the efforts of staff and Ahahui for their efforts on Kawainui and are pleased with the stipulation to allow additional parties to become involved which reach out to the broader community.

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

**Item C-1 Request for Approval of Expenditure of Funds and Authorization to Negotiate and Sign Contracts to Implement the Watershed Partnership Program**

Member Gon and Morgan recused on a portion of this item.

Mr. Conry briefed the Board on the 9 projects that there is \$965,000 going out to various watershed partners that applied, RFP process and these are the partners selected. To start he asked to approve everything, but the Kaua'i Watershed Management Plan, the East Moloka'i Watershed Partnership and the Ko'olau Watershed Partnership.

Member Goode moved and Member Edlao seconded.

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

Mr. Conry asked to approve the Ko'olau Watershed Partnership Plan.

Member Edlao moved and Member Goode seconded it.

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

Mr. Conry asked the Board to approve the Kaua'i Watershed Management Plan and the East Moloka'i Watershed Management Plan.

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

**Item C-3 Request for Board Action to Establish the Laupahoe Advisory Council to Provide the Division of Forestry and Wildlife and the United States Department of Agriculture Forest Service Guidance and Consultation Relating to Management, Research and Other Activities**

**in the Laupahoehoe Unit of the Hawaii Experimental Tropical Forest,  
Laupahoehoe Natural Area Reserve and Laupahoehoe Section of Hilo  
Forest Reserve , North Hilo, Hawaii**

Mr. Conry reported that there was a numbering sequence problem in staff's recommendation where there were two b's and he suggested numbering them b.1. and b.2.

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

**Item C-4 Approval in Principle of Direct Lease to United States Department of Agriculture Forest Service for Research, Education, Office and Housing Facility Purposes at the Puu Waawaa Unit of the Hawaii Experimental Tropical Forest, Puu Waawaa Forest Reserve, North Kona, Hawaii, Tax Map Keys: (3) 7-1-001: Portions of 004 & 006**

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

**Item D-11 (Renumbered - Formerly Item No. 12) Authorization to Enter Into a Memorandum of Agreement Between the Department of Land and Natural Resources and the Department of Agriculture on Behalf of the Aquaculture Development Program**

Mr. Atta requested this item be withdrawn that there are some issues with the Deputy AGs and will have to re-work the language. He alerted that the agenda had a mix up where one item was split into two items. Items 8 and 9 is a single item 8 and all following items moves up a number. The Department supports the aquaculture program, but the way the submittal was written it directs the money from the leases to go directly to the ADP. The necessary housekeeping statutory amendments to allow ADP to accept the funds directly were not made when ADP was formally with DLNR and went to Dept. of Agriculture. The statutory changes never happened. Staff is allowed to accept funds in Land Division then transfer it over to ADP. r

Randy Cates representing Cates International explained that he was involved with Chapter 190D trying to change the law where you couldn't lease the ocean. He got together with John Corbin and supported changing the law to allow the lease. During discussions at that time there was the question of what would happen to monies with the lease rent. Mr. Cates supported the concept of creating a special fund where aquaculture would use to support all aquaculture not just off shore. Today, he wish the fund was a lot bigger but he thinks the concept is still there to take this funding and use it to promote a more sustainable industry and kick start it. From the industry side he has no reservations with ADP managing it as long as it's for all aquaculture. That program went from 8 positions down to 2 and there is not much they can do with 2 positions. The investment is there with over \$40 million dollars in aquaculture off shore that people like this idea.

We need a commitment from the state and from the community in management and ADP is the right place.

### **Withdrawn**

**Item D-9 (Renumbered - Formerly Item No. 10) Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu.**

**Item D-12 (Renumbered - Formerly Item No. 13) Request Permission to Re-Issue New Revocable Permit Documents to 159 Land Division Tenants located on Oahu, Maui, Molokai, Hawaii and Kauai.**

Mr. Atta said this item is due to last minute information on people bringing their rents current and curing their defaults.

### **The Land Board:**

**Amended the staff recommendations by: 1) Correcting the title of the submittal to reflect the correct number of revocable permits from 159 to 144; 2) Conforming the body of the submittal to reflect the change in the number of affected revocable permits from 151 to 144; and 3) Deleting the following items from Exhibit A of the submittal – RP 5285 (Hana Ranch, Inc.), RP 5384 (Mauna Kea Broadcasting Co., Inc.), RP 6047 (Duro, Trav), RP 6121 (Kahakuloa Protestant Church), RP 6392 (Waimanalo Polo Club), RP 6596 (Coatney, Clyde) & RP 6703 (Kona Queen Hawaii. Inc.). Otherwise, the Land Board approved staff's recommendations as submitted.**

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

**Item D-3 Consent to Assign Perpetual, Non-Exclusive Access and Utility Easement [LODS-28422], Zachary G. Shuman and J. P. Morgan Trust Company of Delaware, Successor Co-Trustees of the Cyril Thomson Mitchell Trust, under that certain unrecorded Trust Agreement dated August 19, 1983, as amended, as Assignor, to Kiholo Bay, LLC, Assignee; Amend Land Office Deed No. S-28422, Puuwaawaa, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-1-02: portion of 8.**

**Item D-4 Issuance of Revocable Permit to William Latham for Agriculture Purposes, Koolau, Hana, Maui: Tax Map Key: (2) 1-1-003:092.**

**Item D-5 Cancellation of Revocable Permit No. S-6602 to Misha Bowman, Sam Butterfly and Charlie Butterfly, and Issuance of a Revocable Permit to Samadhi Butterfly for Agriculture Purposes at Kipahulu, Hana, Maui, Tax Map Key:(2) 1-6-009:017.**

**Item D-6** Issuance of Revocable Permit to John and Yvonne Medeiros for Pasture Purposes, Waiakoa-Alae 3 & 4 Homesteads, Makawao, Maui, Hawaii, Tax Map Key: (2) 2-2-013:029

**Item D-7** Issuance of Revocable Permit to Moses K. Kauhaahaa Jr., for Agriculture Purposes, Kahakuloa Valley, Wailuku, Maui, Tax Map Key:(2) 3-1-004:009 and 014.

**Item D-10** Approval for Holding Public Hearings and Appointment of Hearing Officers for the Purpose of Amending Hawaii Administrative Rules Section 13-1-5

Unanimously approved as submitted (Morgan, Edlao)

**Item E-1** Request for from the Puna Men's Chorus to Hold a Fundraiser at the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii

Unanimously approved as submitted (Morgan, Gon)

**Item E-2** Request from the Naalehu Theatre to Use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii, for their Ho'ike A'o Kanikapila

Dan Quinn, Administrator for State Parks Division noted mis-spelling on the first page, last paragraph first sentence. Change "...Ko'ike A'o Kanikapila,.." to "...Ho'ike A'o Kanikapila..."

Unanimously approved as amended (Morgan, Gon)

**Item F-1** Request for Approval to Amend/Extend a DLNR/RCUH Agreement for the Division of Aquatic Resources' Aquatic Invasive Species Project, Contract No. 52850 (Amendment No. 7), that Provides \$209,677 in Added FY10 Funding (\$175,000 Special Funds, \$34,677 Federal Funds) and Extends the Agreement through June 30, 2011

No staff was here to present.

Unanimously approved as submitted (Gon, Edlao)

**Item L-1** Approval for Award of Construction Contract for: Job No. F00CF54B Individual Wastewater System Improvements at Wailua River State Park, Old Smith Landing and Kaumualii Comfort Stations Wailua, Kauai, Hawaii

**Item L-2 Approval to Execute Supplemental Contract No. 1 to Contract No. 50017 for Job No. H45C804A, Sacred Falls State Park Master Plan and Risk Assessment, Oahu, Hawaii**

Mr. Atta reported for Carty Chang from Engineering that there are no changes.

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

**Item M-1 Issuance of a Direct Lease U.S. Department of Commerce National Oceanic and Atmospheric Administration, Hilo International Airport**

No staff present.

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

**Adjourned (Gon, Morgan)**


There being no further business, Chairperson Thielen adjourned the meeting at 4:00 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:

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Laura Thielen  
Chairperson  
Department of Land and Natural Resources