

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

DATE: FRIDAY, NOVEMBER 19, 2009
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

Laura Thielen
David Goode
Jerry Edlao

Ron Agor
John Morgan
Dr. Sam Gon

STAFF

Athline Clark/ DAR
Sam Lemmo/OCCL
Morris Atta/LAND
Bin Li/ADMIN
Bill Andrews/DOBOR
Jackie Robinson/DOFAW

Dan Quinn/PARKS
Paul Conry/DOFAW
Kevin Kong/DOCARE
Martha Yent/PARKS
Ed Underwood/DOBOR

OTHERS

Pamela Matsukawa, Deputy AG
Kaleo Kualii'i, E-2
Mikahala Roy, E-2, D-1
Darin Akiona, E-2
Tracy Fukuda, K-1
Butch Haase, C-2
Margaret Willie, D-5, D-1
Pastor John Hoover, D-5
Martha Torney, D-13
Kyle Kajihira, D-1
Donna Burns, D-1

Kumealoha Gomes, E-2
Jerome Kanuha, E-2
Keola Lindsey, E-2
Corbet Roy, E-2
Mich Hirano, K-2
Ivan Nishiki, H-2
Sherman Hee, D-5
Kevin Kinvig, C-3
Kat Reddi, D-1
Marti Townsend, D-1

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

Item A-1 August 14, 2009 Amended Minutes

Board member Gon recused from this item.

Approved as submitted (Agor, Edlao)

Item A-2 September 25, 2009 Minutes

Member Goode recused himself.

Approved as submitted (Agor, Gon)

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

Was distributed to the Board.

Approved as submitted (Agor, Edlao)

Item A-4 October 23, 2009 Minutes (TO BE DISTRIBUTED.)

Not ready.

Deferred.

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to the Monument Co-Trustee Representatives of the U.S. Department of the Interior, U.S. Fish and Wildlife Service; U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and State of Hawai'i Department of Land and Natural Resources, for Access to State Waters to Conduct Conservation and Management Activities.

Written testimony was distributed.

Athline Clark introduced herself as the co-manager of Papahānaumokuākea Marine National Monument, representing Division of Aquatic Resources (DAR), Division of Forestry and Wildlife (DOFAW) also US Fish and Wildlife and National Atmospheric Administrations are applicants where she apologized that due to late e-mails they are going to defer until the next Land Board meeting. There were last minute questions raised by Fish and Wildlife that required staff to go back and look at the application again and re-examine what was proposed in the proposal.

Chairperson Thielen pointed out that people may have come to testify on this matter. The Chair announced that while Athline is before us today is her last day and hoped she will still help us while doing projects jointly with the Army Corp but she was sad at losing her

who has been a tremendous resource and historical knowledge with the State and Aquatics Division, somebody who gave her heart and soul into her work and recognized for her time here.

Ms. Clark described that it hasn't been four years since the Governor first designated the whole area as the largest conservation area in the history of the state. One of the first bold actions that was taken was an agreement by the Board itself in the process of issuing Land Board permits that we would consider activities in the Northwest Hawaiian Islands both for their cultural and biological importance equally. In many ways that was the first time they strove to recognize the importance holistically of a conservation area resource environment. Six months after that President Bush declared the first National Monument as the largest conservation area in the world which began the grand experiment describing the MOA for Federal and State agencies to work together. Staff spent a lot of time learning the cultures and language of each of our agencies coming up with agreed upon terms that would work for all. The next approach was developing a Management Plan where the key agencies were all different. They incorporated the comprehensive conservation planning process for Fish & Wildlife, the State EA process and the NOAA process all into one joint Management Plan. During that time they developed an application for the first U.S. nomination to the World Heritage Convention which is well over 15 years and had to consult with other countries on developing it. There is no manual for the co-agencies and every time there is something new they get together to start the conversation again on how to do it. Ms. Clark recognized and thanked all her colleagues for all their hard work pointing out Office of Hawaiian Affairs and the Board for all the support and understanding over the years.

Chair Thielen noted that if this is accepted as a World Heritage site it will be interesting for this Department and this Board while it happened three years ago and we all focus on today's crisis it's a reminder that we're being stewards for something of international importance as well as significant importance to the State. It's a huge resource that's wonderful and we'll miss Ms. Clark's institutional knowledge and history. The Board thanked Ms. Clark and everyone applauded.

Deferred (Gon, Agor)

Item E-2 Resubmittal of Curatorship Agreement for 12-acre Portion of Keolonahihi State Historical Park, North Kona, Island of Hawai'i

Dan Quinn with Division of State Parks reminded the Board that this item came before them in June 2008 which is a partnership agreement that the Board has approved several of them recently. This one is for a significant complex in Kona where many families were involved and one group taking the lead on it. The Chair had been in discussions with the Betty Kanuha Foundation and that group had signed an agreement in anticipation of this coming back to the Board. The Board asked that this come back to them when things were resolved and staff believes they have. This agreement as it's been revised needs to go to the Attorney General's Office for final review. Staff sent the agreement back out to the folks who were involved later and staff hasn't received any comment. This agreement has been modified once attached to the Board submittal it

shows the original that came by the Board last year. The substance of the agreement remains the same as the original. Staff recommends Board approval to pass on to the AG's Office for final review.

Ku'ualoa Gomes a Board member of the Betty Kanuha Foundation described who Betty Kanuha was and the purpose of the Foundation was for the children of the Kona community to take advantage of the funds to get a higher education and provide activities for the youth. The Foundation supports the curatorship. Their kupuna (elders) gave the younger family members permission to care for this area which is very significant. Ms. Gomes spoke of the sacredness of the place where there is a spring where the ali'i (chief's) bones were washed of flesh before they were buried. This is that kind of place that needs special care thanking the Board and staff.

Kaleo Kualii who is one of the family representatives from Kona testified on behalf of his Uncle Jr. Kanuha who attended the last meeting on this and he sends his aloha. The family thanks the Board - from the Governor and the Chairperson visiting. And, appreciates what has been done by staff. It's now the kuleana of the State but as lineal descendents they are there to malama.

Member Gon said he is delighted when the descendents of a place are willing to continue to malama (care) that area and anything the Board can do to empower makes him happy to serve in this capacity.

Mr. Kualii acknowledged that it has always been a kakou (everyone) thing for them, even people from Japan, Sweden and other countries. He extended an invitation to the Board to visit them any time and Jr. Kanuha would be the contact.

Jerome Kanuha represents the Betty Kanuha Foundation describing his mother, Betty Kanuha who was half haole-Hawaiian from Honolulu, moved to Kailua and lived with 30 men and women in a house where she feed and educated every one of them and the community is her family. She had more power than anybody because she spoke on behalf of kids. He started the Foundation 10 years ago in respect for his mother who taught if you learn anything always reading and math because this knowledge is all over the world. Mr. Kanuha related a list of organizations that helped the Foundation and that education is the key. Also, how this Historical Site came about and kupuna involved.

Mikahala Roy testified that she is the daughter of David Kahelemauna Roy, Jr., Chairman of the Kamoia Point Advisory Commission during the 1970s and 80s. The other significant name of this area is Kalua O Ka Lani or the second heaven where the entire Kona shore is and the work of the Kamoia Point Advisory Commission was the connection to our ancestors of this place where she related more background history of this pristine and sacred area. That faith and religion of the land provides structure to a culture and asked to pray that this is the entire nature of this land which is the root of her people. It is important that such lands are cared for by the 'ohana (families) to practice their faith that these places are sacred places of prayer that full understand has yet to come and it comes through the ancestors. Her group formed an organization,

Kauohanaokaua O Ka Lani and welcomes other 'ohana groups and wants to work with them. But, at no point should a non-profit represent the sacredness of our lands. Ms. Roy opposed this agreement that they (her organization) were privy to any meetings with the Betty Kanuha Foundation that none of her 'ohana were and gave some names of 'ohana. Ms. Roy's family wants to work with the members of their 'ohana and they will not work with a non-profit that will have a connection with the State and that is not the way to do this. Her family is not against the Betty Kanuha Foundation or the 'ohana. It is a matter of principle that would you have a corporation represent the most sacred realms of the earth, you cannot.

Chair Thielen asked whether Ms. Roy had no problem working with members of the 'ohana, but the concern is having the foundation itself named in the curatorship where Ms. Roy confirmed that and said they have an organization of a greater circle of people that want to be kept all together.

Member Gon asked what would be Ms. Roy's solution to enter into this curatorial agreement. Ms. Roy said she is here on a call of defense because she was not aware this would be coming before the Board. She wanted the 'ohana to work together and asked that this action be deferred reiterating her reasons regarding the faith of the land cannot be represented by a non-profit and must be by human beings where Ms. Roy described the heiau's significance to her 'ohana

Board member Gon asked whether members of Ms. Roy's organization are part of the Betty Kanuha Foundation and she confirmed some are members of both organizations that those members have some history through the Kamo Pt. Advisory Commission.

Where Member Gon explained that he wanted to be as inclusive as possible to people who've been significant with the protection of a place. Due to State Laws governing the DLNR an individual or organization represents the 'ohana and as long as its made clear that the Betty Kanuha Foundation has relationships with the bigger Kauohanaokaua O Ka Lani organization that there might be a way to do that. The need for a palapala (document) in order for lineal descendents to work at a place is a necessary legal instrument that empowers that to happen. It's not important who is specifically named, but he doesn't view this binding on a particular organization. Member Gon views it as a way that the State can work in cooperation with as large a body of people that need to be there.

Chair Thielen pointed out that this agreement is written in that manner because there were different groups and the agreement specifically says anybody can sign and be a volunteer and steward for this area. There is no exclusivity and no barring of anyone that any of the lineal descendants may sign on and be co-signatories of the agreement, the stewardship and curatorship and exercise the same rights and responsibilities. That offer would remain open.

Ms. Roy repeated that a non-profit cannot represent sacred lands and that is the crux to take that non-profit off and list the names which is more sensible to Kauohanaokaua O Ka Lani. She noted this principle will be defended in court if necessary.

Keola Lindsey representing the Office of Hawaiian Affairs (OHA) distributed his written testimony to the Board summarizing that OHA recognizes the individuals and families for the work at Keolonahihi. Often times there are clashes between the traditional cultural practices and the process required by Administrative Rules and Statutes. OHA understands that in order for this curatorship agreement to move forward State Parks has to work it out with a non-profit entity and the Betty Kanuha Foundation stepped forward noting that any individual can participate and urged the Board to authorize the Chair to sign this agreement.

Darin Akiona described what the site was like in the 1960s. 2007 Jr. Kanuha took him to this place and showed him what it was and Mr. Akiona was shocked by the homeless and trash that no one was taking care of this place, but since then volunteers worked on the site and that is what motivated him to help work on the language for the agreement which doesn't exclude anybody in the State. Mr. Akiona emphasized that the State cannot take over this property because it doesn't have the resources and will only get worst. After people are educated about this place they will be respectful of all places in Hawaii. This item should go forward that the people of Kona continue to work together on this important property for our youth to malama the aina and respect what was in the islands before the rest of us came.

Corbet Roy testified he is a brother of David Roy and are a part of this place that Corbet Roy respects what the Kanuha's have done and he thinks they've done a wonderful job. But, there is an underlying principle to think about for the hui 'ohana and not a name because all the lineal descendents are related trying to carry that load into perpetuity by remembering our ancestors and that is who they should go back to.

Chair Thielen related some background regarding this item noting that because this property is in State Parks staff needs to be able to answer other people whether there is an agreement, something to protect the State from liability to make sure these areas are cared for and to use these curatorship agreements to do that. She had gone to the area to meet with the families and there wasn't an agreement on a lead where staff came up with a curatorship agreement that everybody can sign and all it says is "we are all willing to work together to care for this area." That came before this Board in 2008 and at that time the Board asked the Kanuha Foundation be named in the agreement as the point organization to keep it open so anyone can sign it. This went back for discussion and review and now its back.

The Board questioned Mr. Quinn whether the intention of this agreement is short term since it is a 3 year agreement and a 30 day out clause if things don't work out with the private party does it move back to the State or does it stop. Mr. Quinn said that is something staff puts in all agreements. Sometimes groups find they are unable to continue that he doesn't recall an occasion where the State has to ask folks to not continue, but there has to be some way to cancel an agreement like this so it's not lingering with nothing happening and this is standard.

The Chair noted that this is not an agreement in perpetuity because the Board can't do that legally with State land.

The Board asked whether staff reviewed the Betty Kanuha Foundation's charter and if it is the best fit for a non-profit where Mr. Quinn said that staff has been working on this for some time that he did not see the non-profit document. The Chair noted that it was the request of the Board.

There was some discussion on what happened at the 2008 meeting whether or not there was discussion with the Deputy AG at the time, the necessity of having some official organization named in a curatorial agreement although there are agreements that name certain sets of individuals. The Chair said that normally they have one family or one unit that signs on for the curatorship agreement because there are many lineal descendents that are interested in caring for this area and having an open signing that it was important to have some entity that is there.

Member Agor said that approval of this item sets up a vehicle for everyone and anyone who wants to participate in this venture that he didn't have a problem with ahead.

Member Morgan agreed saying that in an ancient perspective there was no organizations where things were done differently and this is not that time. There are organizations that exist taking care of different properties - sometimes for profit, sometimes not for profit, sometimes for governments, but these are all organizations that represent people and there are people behind the organizations.

Member Gon noted that there are sites with practitioners who as individuals collectively practice and share in the care of those places. Although these practitioners are the main folks at that place many of them are part of a smaller sub-set of a much bigger group who exist because of these representatives at the organizational level and that is how he looks at it. The way individuals are allowed to add on is not so much saying that we set the precedent that the 501c3 be the spiritual body for a particular place. This instrument merely empowers a relationship.

*Board member Morgan moved to approve staff's recommendation. Member Agor seconded.

Chair Thielen summarized that this agreement is for a three year period because we have been talking about this for about two years and have not come up with an alternative she encouraged the families to do during this three year period is to develop an alternative. If you don't want a 501c3 organization and you want the lineal descendents in a different hui, you can come back at any time during this three year period and say we want to amend this agreement that we now have an alternative solution. At the end of the three years if you want a new organization to go forward we would do a curatorship with that new hui. This is not forever, but what it does do is it allows you to continue the work in that place and to care for it while you are finding a solution.

Ms. Roy reiterated that you cannot have a non-profit represent the faith of the land. They are going with the premise of the ancestors not with a new American premise because these have always been ancestral lands and always will be. The American premise doesn't listen which is shameful and disrespectful and the ancestors will find a way where they can all take care of this place. She has no disrespect of the 'ohana at all, but she wished these things weren't pushed before the Board to make a decision to make an accord.

Chair Thielen said they would prefer an accord and encouraged her to find one, but in the meantime since Ms. Roy mentioned the lawsuit that if she wants to contest the decision from this Board she may file a request for a contested hearing. In order to do so she must make a verbal request at this meeting and then file a written request in 10 days and at that point the Board will get advice whether there is standing for a contested case hearing.

*Ms. Roy said she desired a contested case hearing on this matter. The Chair said that she'll have State Parks staff work with her on how to file a written request which has to be filed within 10 days of today's Board meeting encouraging folks to work together.

Unanimously approved as submitted (Morgan, Agor)

Item K-1 Request for Public Hearing and Small Business Impact Determination for a Petition to Amend Title 13-5, Hawaii Administrative Rules (HAR) to Designate a Portion of the State Land Use Conservation District into the Resource Subzone by A Charitable Foundation (ACF) Located at Pupukea Ahupua'a, Oahu, TMKs:(1) 9-023:portion of 001 & (1) 5-9-024: 001

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) noted this is the first step in the process and asked the Board to make a determination on the small business impacts assessment. It is a subzone in Waimea Bay that needs to be designated as a sub-zone.

Tracy Fukuda of Wilson Okamoto Corp said she had nothing to add.

Unanimously approved as submitted (Goode, Gon)

Item K-2 Conservation District Use Application (CDUA) MA-3526 for the Lahaina Watershed Flood Control Project by the County of Maui Department of Public Works and Environmental Management Located at Waiianukole, Lahaina, Maui, TMK: (2) 4-7-001:018 and adjacent submerged lands

Mr. Lemmo explained that the Board had already approved the project, but the County did not initiate construction and went into a void situation and now they are back asking for the Board's approval for the same project. The County of Maui engineers are here and staff recommends approval subject to conditions.

Mich Hirano with the planning consultants for the County of Maui explained why the project didn't go through when it was first issued was because of some land issues with respect to the easement required where the County had to go through a condemnation process to acquire the land which was approved and are ready to proceed awarding the project to Kiewit Construction who is starting early December.

Unanimously approved as submitted (Edlao, Gon)

Item C-2 Authorization to Legacy Land Conservation Program Grantee to Amend Approved Project to Include Donation of Conservation Easement to the County of Maui

Paul Conry, Division of Forestry and Wildlife (DOFAW) Administrator is a request to authorize an amendment to a prior agreement to land purchased on Molokai. The Board has approved a grant to Molokai Land Trust for the acquisition of 196 acres. The Governor approved that process where staff developed a grant agreement and received matching funds from Maui County who asked for a condition - a conservation easement be put on the property. Staff has no objections to that and requested that the Board authorize staff to amend the grant agreement to include granting the easement to Maui County and approve that with the condition of the deed restrictions as required as part of the overall Legacy Land Conservation Program.

Butch Haase from Molokai Land Trust thanked the Board saying that Representative Colette Machado had to leave for a meeting and introduced the Board President of Keopuni Lokahi who was here answer questions.

Chair Thielen asked whether they can meet everything in time for the closing. Mr. Haase said that the report back from Maui County is no objections.

Mr. Conry asked as a plea from staff that their intent was after the Board vote is to hustle this over to the Attorney General's Office for their signature and to get it back on the Chair's Office to expedite it.

Unanimously approved as submitted (Edlao, Gon)

Item H-2 Issuance of a Revocable Permit to Showcase Hawaii, LLC., a Hawaii Limited Liability Company for a Museum Gift Shop, Production, and Related Retail and Office Uses at the No. 1 Capitol District (formerly the Hemmeter Building), Honolulu, Oahu, Tax Map Key: (1) 2-1-17-001.

Ivan Nishiki, Branch Chief for Leasing Services under Department of Accounting and General Services (DAGS) communicated that staff seeks the Board's approval for a revocable permit and gave details about the permit.

Chair Thielen asked Morris Atta of Land Division whether this is because DLNR still manages the lands under the Hemmeter Building because she has not seen this come before the Board before. Mr. Atta explained the title still remains with the State. It's his understanding that the Board still needs to approve these types of dispositions. The Chair said the only reason she is asking is because it is relevant only if the Board is interested if its not it clutters up our agenda. She suggested if this comes up more frequently in the future DAGS could discuss it with our Land Division staff maybe putting in an application to have a delegation to the Chairperson to authorize because DAGS manages the building.

Unanimously approved as submitted (Morgan, Agor)

Item D-5 Grant of Perpetual, Non-Exclusive Easement to Joseph F. Pickering, as Trustee under that certain unrecorded Joseph F. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994 and Joseph F. Pickering, as Trustee under that certain unrecorded Helen D. Pickering 1994 Qualified Personal Residence Trust, dated April 7, 1994, for Utility Purposes, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-9-02: 9.

Item D-6 Amendment to Grant of Easement No. S-4858 to Joseph F. Pickering and Helen D. Pickering for Vehicular and Pedestrian Ingress and Egress Purposes, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-9-02: 9.

Morris Atta, Land Division Administrator noted that this item and item D-6 are related. This easement is to rectify a situation with utility transmission lines that pre-existed with the current tenant and this is to legitimize that its there and staff requests a formal easement be granted to recognize this. Comments were sought saying that the utilities should remain in place. He clarified that item D-6 is for an adjustment to an existing access easement and for other reasons there is a need to have it revised.

Margaret Willie, attorney representing Joe and Helen Pickering testified that she is here to answer questions reiterating Mr. Atta regarding legitimizing the record and the easements. She commended staff with getting everyone to work together, saving the kiawe trees and gave details about the utilities involved. After Member Gon's questioning Ms. Willie acknowledged that her clients read this and they support it – that it's clear to minimize any problems in the future.

Sherman Hee is the nominal prospective lessee of the Church site and is the Executive Director of the Hawaii Conference Foundation introducing Pastor John Hoover of Hokuloa Church testified that they've worked hard with the Pickerings and staff thanking them. The church recognized the need for the easement to accommodate larger vehicles and requested that when the Pickerings install their water pipe to do it during reasonable times and to extend all the courtesies as neighbors should.

Pastor John Hoover said on behalf of the church they commend the Board's professionalism and the church has always continued to pray for peace.

Chair Thielen asked whether working with the church on a timetable is included in the recommendation where Mr. Atta said he didn't think so. Where the Chair questioned if that was acceptable and it was for Ms. Willie. There was discussion on adding a condition. Ms. Willie clarified that they worked through this and there is a provision that if there is work on the waterline to give 30 days notice unless there was an emergency and she suggested following that same framework on a day when it wasn't too disruptive for the Church. The Chair suggested the construction may extend more than 1 day and she would go beyond a 30 day notice to encourage the client's contractor working with the Church on scheduling around church events.

Unanimously approved as submitted (Morgan, Gon)

Item C-3 Authorization to Begin Process to Subordinate Mineral Rights over Conservation Easement to be Acquired by the Maui Coastal Land Trust on Lands Owned by Pietsch Properties, LLC in Pupukeya, Oahu; TMK (1) 5-9-005:067.

Mr. Conry noted this is another Legacy Land Conservation Programs that the matching funds are coming from the Federal Government – Natural Resource Conservation Service (NRCS) and one of the Federal requirements when granting Federal money is that mineral rights be subordinated. The Department has worked with NRCS in the past and developed an MOU on how to handle that decision because it is a decision the Board will have to make on whether it will subordinate its mineral rights. This will be the authorization to start that process and to bring back the results to the Board for your consideration and decision. Also, noted on page 1, last paragraph, and 3rd line change \$550,000 to \$609,425.

Kevin Kinvig representing the NRCS was here to answer any questions.

Member Gon commented that he didn't see any problems.

Chair Thielen said all states reserve mineral rights to subordinate and that they would consider it on a case by case basis rather than waiting if it's a matter of right. These are Legacy Lands and Hawaii doesn't have a lot in the way of minerals.

The Board asked whether it gives the Federal Government the right to mine where Mr. Kinvig said that is what they don't want that they have a conservation easement and that is something NRCS doesn't want. Mr. Conry said that NRCS interest is to prevent mining. The Chair noted that is part of our examination. The State would have the same interest for those types of mines, preventing them.

Unanimously approved as submitted (Edlao, Agor)

Item D-13 Consent to Lease of Lands under Governor's Executive Order No. 172 to the Department of Human Services, Kailua, Koolauloko, Oahu, Tax Map Key: (1) 4-2-006:portion of 002.

Mr. Atta described that this is to issue a 1 year lease to the Administrator of the Hawaii Youth Correctional Facility for residential purposes to allow the Administrator's 24 hour presence at the facility in support of the mission of the facility. It is prudent and staff is facilitating this request as the land owner.

Chair Thielen asked for clarification is this because the terms of the current order do not permit residential where Mr. Atta said it doesn't specifically allow it even though the previous structure allowed administrators as residents, but under the terms of the EO it doesn't say specifically.

Martha Torney introduced herself as the Executive Director of the Office of Youth Services attached to the Department of Human Services citing that one of their mandates is to oversee the Hawaii Youth Correctional Facility stressing that they are currently operating under a Federal mandate settlement agreement as a result of a US Department of Justice Investigation of conditions at the facility and they had to extend that settlement agreement by one year because they are not compliant yet and may have to go into a second year. One of the things that prevents them from being compliant is their youth are suicidal and incarcerated that one of the requirements is to have staff available at all times, but at night staff neglect that duty completely and this is to allow staff to be available. And, she thanked staff.

The Board questioned whether the Board can allow an MOA that gives the administrator to act as the youths' legal guardian where Ms. Torney clarified that is in the law already that she is the legal guardian and delegated to the head of the Youth Facility acknowledging that they are both legal guardians which can be found in Chapter 352.

The Chair summarized that the recommendation before the Board is to consent to the lease between DHS and the administrator of the Hawaii Youth Correctional Facility.

Unanimously approved as submitted (Morgan, Gon)

Item D-1 Issuance of Right-of-Entry Permit to U.S. Army Corps of Engineers on Lands Encumbered by Executive Orders No. 1225, 1588, and 3092 to Department of Public Safety for Kulani Correctional Facility, Waiakea, South Hilo, Island of Hawaii, Tax Map Key:(3) 2-4-008:009.

Written testimony was distributed.

Mr. Atta reported on the permit background that since the closure of Kulani Correctional Facility there's been numerous discussions about what plans for that property is going to be. As the Army's continued exploration of unexploded ordinances on State land the Army Corp is asking for access through the Kulani Prison property and he believes some

of the investigation work is located on a portion of the lands that yield to Public Safety. This is a request for a right-of-entry because the EO (Executive Order) to Public Safety (DPS) does not include this sort of activity as part of its designated purpose. That is why Land Division is the entity issuing the right-of-entry as opposed to Public Safety.

Kat Brady, Coordinator of Community Alliance on Prisons which is a community initiative working to improve the quality of justice in Hawaii testified that they have concerns over this because people were working and living at Kulani since the 1940s and only now the Army Corp is curious of UXOs. She related the closure of the facility and the reason for the closure is to obtain a 2 year MOU for Youth Challenge. Ms. Brady learned from the Hawaii Mayor's office that the Army is seeking a 25 year commitment to Kulani including all 8000 acres of pristine forest and she asked the Board to defer this to find out what is happening.

The Board questioned whether this is only for a right-of-entry where Mr. Atta confirmed that this allows access to the UXO site which is far from the prison site and reiterated going through the prison site to reach it. He is not aware of the issues that Ms. Brady brought up.

The Board questioned whether the State will see a report and Mr. Atta confirmed that staff does receive copies of the report. It was his understanding from the Army Corp that delays in granting access to UXO sites will likely push any funding for that site to the back of the priority list which is out to year 2140. The Board asked what will be funded where Mr. Atta replied the investigation and remediation of the unexploded ordinances.

Margaret Willie testified that she is a resident of Waimea, Big Island that she felt the same way that what she read was termed a feasibility study and it didn't say what it was for which could be something bigger and related the success of having a prison facility locally, now there is this loss.

Kyle Kajihiro described that he is the Program Director of the American Friends Service Committee, a Quaker Peace and Social Justice Organization who are concerned with clean-up and return of lands from the military. They support the clean-up by the military, but his organization had the same concerns that Ms. Brady brought up and reiterated them wanting to know what the future use is which drives the clean-up with full disclosure to the community. Mr. Kajihiro suggested creating a pu'u honua for a Hawaiian holistic healing center or a natural area reserve and his Committee opposes the transfer of this parcel to the State Department of Defense and asked for a deferral.

There was some discussion between the Chair and Mr. Kajihiro that this is not for a transfer, but for access which he understood reiterating his previous testimony that the clean-up is driven by the purpose and larger plan. Member Edlao noted that this has to come back to the Board and they will not give the land away.

Marti Townsend representing KAHEA reported that they received e-mails from their constituents on the future of this place which is a trust issue and KAHEA has worked

closely with Conservation Council of Hawaii to advocate that this place be set aside as a natural area reserve in the past. The public looks to the Board for leadership to ensure this area is protected and KAHEA supports the clean-up suggesting a condition to the recommendation expressing support for this area that it has natural and cultural resources that may allay some fears and build trust with the public.

A resident of Hawaii Island, Mikahala Roy supports Ms. Brady's testimony and testified that the families don't understand the decision on Kulani and want to know why because it was very hasty.

Member Gon assumed that the right-of-entry is good for 1 year and was confirmed by Mr. Atta that they are limited by statute.

Member Gon related the Three Mountain Partnership – Kilauea, Keauhou, Pu'u Maka'ala Natural Area Reserve, Ola'a, National Park Service and Kulani were part of this partnership recognizing that this place is very significant in regards to impact of native forest systems. When he learned of Kulani's closure it was unclear what would happen to their seat with Three Mountain which concerns him because partnerships like these are the best way to bring long term management to a very important natural resource that we (the Department) are charged to protect. While he doesn't believe they (the Board) are opposed to the idea of removing ordinance or issuing a right-of-entry for one year in order to do that, he too is curious what is the long term negotiations for agreement with the Department of Defense for the State lands here because of the important resources and that this Board must remain cognizant of those facts.

Mr. Atta communicated that the issues raised, as for the Land Board's role, is premature because we don't have authority to make decisions at this point in time on the disposition of the land because it has been EOD to Public Safety and Public Safety has the primary decision on these issues while he agrees to bring these issues to the Board's attention because ultimately the Board will have control over the final disposition. Mr. Atta understands that all the discussions to date were made to DPS as the management authority and none of that is in the submittal because the Department has never been involved in those discussions.

Where the Chair said since that decision was made the Department has been in discussion with Public Safety and other agencies within the State what the plan is for the properties in the future because the EO does provide it to Public Safety. Changes in that would have to go through a revised Executive Order which would come through this Board. The Board knows there are pristine areas there and appreciates the partnership with Public Safety over the years in the fencing and they have the concern to enable continuing that access working with the partnership and the alliance. The Department has asked Public Safety to come to the table with DLNR. As for Youth Challenge Programs, the Chair has not heard any interest in this other than to take a look for unexploded ordinance. Because people are doing resource work she wouldn't want to defer a right-of-entry to look to see whether they should be concerned with unexploded ordinance on the property during these discussions which should be brought on the

community level as well. But, she would hate for someone to stumble over something and get injured by turning down the experts to investigate in a well managed program. Any changes to the property or the clean-up and access for that would have to come back to this Board.

Donna Burns testified giving her background that she was new to this and asked what the protocol is to ask questions because she finds it appalling how people are treated that this was a rude process. Where Chair Thielen said that she would be happy to talk with her after the Board meeting about the process on how the Board is run and the laws governing them.

Member Goode moved to accept staff's recommendation. Member Edlao seconded.

Chair Thielen asked the Board members whether to consider an amendment for discussion purposes. She thought Marti Townsend had an interesting idea to add in to either the submittal because they incorporate that above or in the actual recommendations. They want to recognize the value of the native species forest there and the importance of that to the State and the Department of Land and Natural Resources.

Member Goode and Member Edlao agreed to accept that amendment.

The Board:

Approved as Amended. The Land Board amended the staff submittal by including an additional remark emphasizing the Board's recognition of the importance of native species and other natural resources in the affected area. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Gon, Edlao)

Item B-1 Request Board Approval of a Supplemental Agreement No. 2 to License no. DACA84-3-99-21 for Schofield Barracks Military Reservation, Island of Oahu

Kevin Kong with DOCARE asked for approval from the Board to authorize the Chairperson to sign a supplemental extension agreement to license DOCARE staff to train at the Department of Army's Live Fire Ranges at Schofield and Pohakuloa. The current license will expire December 31, 2009. This extends the license to five more years.

The Board questioned whether this is a cooperative agreement so DOCARE officers can maintain their training which Mr. Kong acknowledged that they use the Army's Live Fire Training for Officers. On Oahu there is only Koko Head Firing Range which is controlled by Honolulu Police Department on week days. On the weekends, every

shooting club and recreational shooters use that range on a first come first serve basis. There is more flexibility for DOCARE officers to train at the Army's Firing Range.

Unanimously approved as submitted (Goode, Gon)

Item C-1 Request for Approval of Three Forest Reserve Management Plans: 1) Na Pali-Kona Forest Reserve, Hanalei and Waimea, Kauai, 2) Puu ka Pele Forest Reserve, Waimea, Kauai and 3) Molokai Forest Reserve, Molokai and Kalawao, Molokai

Mr. Conry reported that this was to brief the Board on the activities staff has been involved in over the past year half to two years at the reserves listed. Staff took advantage of some the funding that was provided through the conveyance tax for watershed planning. Management of our forest reserves to bring on some staff that was assigned to update our Forest Preserve Management Plans. He recognized staff – Jackie Robinson.

Unanimously approved as submitted (Agor, Gon)

Item D-16 Re-Submittal 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 communicated that this is to facilitate funding of the program and for DLNR to continue managing Department of Agriculture's aquaculture leases and that DLNR will be compensated for management services.

The manager for the Aquaculture Development Program was available for questions and he agrees with this item.

Unanimously approved as submitted (Morgan, Gon)

Item D-7 Approval of a Sublease of Private Property between Hualalai Land Corporation and the State of Hawaii, by its Board of Land and Natural Resources, on Behalf of the Department of Accounting and General Services, for Radio Station Purposes, Kaupulehu, North Kona, Hawaii, TMK:(3) 7-2-02: Por. of 1.

Mr. Atta explained that on the advice of the Office of Attorney General didn't want to limit this to just a sublease with concerns that it may trigger subdivision requirements that may or may not be a problem. Staff's discussion with the County has not resulted in a requirement that the parcel be subdivided for this to go forward. But, to ensure that if there is a need for some kind of modification staff's recommended change is to expand the approval to a sublease for other land use agreement for private property. This is in

case staff needs to get out of that very narrow category of a sublease which would possibly trigger a subdivision requirement.

The Board:

Approved as Amended. The Land Board amended the staff submittal and recommendations by changing the approval to include the use of a land use agreement in addition to or in place of a sublease, and conforming the submittal to reflect that change. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Morgan, Gon)

- Item D-2** Issuance of Right-of-Entry Permit to the Federal Highway Administration and Okahara & Associates Inc., onto Encumbered State Lands at Kaumana, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-5-002: 001.
- Item D-3** Withdrawal from General Lease No. S-4474, Parker Ranch, Inc., Set Aside to the Division of Forestry and Wildlife for the Koaia Forest Sanctuary and Issuance of a Management Right-of-Entry, at Puu Kawawai, Panoluukia and Kapia, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-2-01:03.
- Item D-4** Amend Prior Board Action of September 25, 2009, Item D-7, Grant of Perpetual, Non-Exclusive Easement to Office des postes et télécommunications de Polynésie française for Submarine Cable Purposes, Immediate Construction Right-of-Entry, Kawaihae 2nd, Waimea, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-2-02:08 por. and submerged land seaward of same.
- Item D-8** Issuance of Revocable Permit to Barron Thomas Souza Jr. for Pasture Purposes, Honopou-Hoolawa, Hamakualoa, Makawao, Maui, Tax Map Key: (2) 2-9-001:008 & 011.
- Item D-9** Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: (3) 6-6-05:19, 20, 22, 24, 25, 27, 29 & 32.
- Item D-10** Issuance of Revocable Permit to Moses Kahiamoe for Pasture Purposes, Puolua-Hanehoi, Hamakualoa, Makawao, Maui, Hawaii, Tax Map Key: (2) 2-9-008: 024 and portion of 018.
- Item D-11** Grant of a Perpetual, Non-Exclusive Easement and Issuance of a Construction and Management Right-of-Entry to the City and County of Honolulu for Sewer Main Purposes; Waikiki, Honolulu,

Oahu; Tax Map Key: (1) 2-3-037: 002, (1) 2-3-036: 036, (1) 2-3-034: 033, (1) 2-7-036: 001 and 005 and portion of Ala Wai Canal.

Mr. Atta had no changes.

Unanimously approved as submitted (Morgan, Agor)

Item D-12 Issuance of Right-of-Entry Permit to the Department of Health on Lands Encumbered by General Lease No. 4007 and Governor's Executive Order No.3867, Waimanalo and Kahuku, Oahu, Tax Map Key: (1) 4-1-027:023 and (1) 5-6-006:050.

Item D-14 Second Amendment of Grant of Term, Non-Exclusive Easement S-5652 to Steven Donald Kittell for Seawall and Fill Area Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-018:seaward of 068.

Item D-15 Amend Prior Board Action of May 13, 1994, Item F-12; Direct Award to City and County of Honolulu, Department of Public Works, Perpetual, Non-Exclusive Easements for Sewer Line Purposes at Halekou-Waikaluakai Homesteads, Kaneohe, Oahu, Tax Map Key: (1) 4-5-077:059.

Mr. Atta had no amendments.

Unanimously approved as submitted (Gon, Morgan)

Item E-1 Request for Special Use Permit from March of Dimes Hawaii Chapter to use the Large Pavilion and Certain Portions of the Wailoa River State Recreation Area in Hilo, Hawaii for their "40th Annual March for Babies" Fundraising Walk

Dan Quinn for State Parks Division noted that a number of these permit requests have come in recent months because of the fund raising aspect and he requested approval of this item with attached recommendations. But, also as a side, close to what the Board delegated to the Chairperson several years ago when staff managed the Old Kona Airport these permits have become routine where the Board delegated to the Chairperson the authority to approve those in order to work on streamlining the Board agenda particularly if we're moving into a modified schedule. The next time he brings these he'll ask the Board to delegate the approval of these to the Chair.

Unanimously approved as submitted (Goode, Agor)

Item H-1 Request for Amendment of Administrative Sanctions Schedule for the Civil Resource Violations System

Written testimony was distributed to the Board.

Bin Li representing the Department introduced Dan Quinn and Martha Yent of State Parks and he briefed the Board that this request is to adopt new penalty guidelines for the Civil Resource Violations System. The purpose is to protect areas that are ecologically and culturally sensitive within the State Park shoreline areas and of great concern to staff are some areas within the Kealahou Bay Historical Park especially the Ka'awaloa area. The target is to use the Civil Resource Violations System to handle violations in those areas and the intention is to incorporate DOCARE in this process. Mr. Li thinks it is a good idea to phase in the DOCARE operation in the system to protect more areas in the beginning. Staff did receive written testimony from three individuals who are in support of the program, but raised issues on whether the fines were too low or whether to permit certain native cultural practitioners who are new to the area. Staff doesn't have a problem with that now that the permitting process is established. As for the fine, staff will test it and they could come back to revisit the issue if the fines are too low and wouldn't deter violations in those area.

Where Member Edlao asked whether signs will go up and Mr. Li acknowledged that they are in the works.

Member Edlao asked if there are problems with kayakers and paddle boarders does it come back and they make adjustments.

Martha Yent of State Parks explained that currently the sign says vessels which might exclude what Member Edlao is asking and the rules talk about vessels.

Member Edlao asked whether these signs will be posted in other areas where Ms. Yent said just at Ka'awaloa and at the Napo'opo'o Landing where most of the kayaks take off to go over to Ka'awaloa. Member Edlao asked whether there were informational meetings out there regarding the posting of signs. The stewardship plan went out for public review and comments earlier this year and the posting of no landing at Ka'awaloa is in a number of different sections in the plan and the public was made aware of it during the review process. There is public outreach where the Division of Boating and Ocean Recreation is taking the lead and is contacting all the kayak rental companies notifying them and giving them 30 days notice of this posting. Member Edlao said the reason for these concerns were because of questions on Maui regarding posting signs.

Member Gon asked whether there was a curatorial group at Ka'awaloa which there is, Hale Mua, which is a sub-group of the Royal Order per Ms. Yent. Member Gon wondered whether these groups were aware of all this and are in support. Ms. Yent acknowledged that and said the reason for this is to protect the archaeological sites because its one of the most important in Hawaii. There are no restroom facilities or a designated landing area it would be detrimental. Hale Mua supports protection of the archaeological cultural sites.

Chair Thielen reminded the Board that the Civil Penalties System provides a third option for enforcement. Prior to that the only two options available to the Department to enforce

the rules, regulation and laws that the Department is responsible for were the criminal courts and frequently they were petty misdemeanors with a maximum fine of \$100 or bringing the matters before the Land Board. The Legislature authorized the Department adopt Civil Penalties where this Board approved rules, it went out for public hearing, adopted those and staff began phasing certain selected rules into the Civil Penalties System since Bin is it working with the Divisions. She will ask Bin to do an updated presentation for the Board down the line. The monthly catch reports for commercial fishers were the first penalty they started to implement. Staff did an intensive outreach to fishers and found that the outreach increased compliance by 50 to 80 percent. Then when they started to implement the Civil Penalties there was about a 200% increase in compliance and filing in the courts. In working with the staff stewardship group, they identified the landings and people wandering around. This particular state park is primary degradation of resources while staff is trying to find a management plan. They will pilot project to see if Civil Penalties can help in this case and that's particularly helpful because a lot of people that may be landing are not Hawaii residents and maybe tourists and to go against them with petty misdemeanor would be a much higher penalty for them because they would have to either fly back to Hawaii for a court hearing or otherwise have a bail bond against them which is unfair. Staff is hoping with intensive outreach to the kayak vendors would warn the clients and say you'll lose your deposit if there is a problem. With that education and discussion they'll have that voluntary compliance increase. Staff will be reporting back to the Board as they phase this system in to see how well it works and then review whether it would be appropriate at other places if it is successful.

Unanimously approved as submitted (Agor, Gon)

Item J-1 Consent to Assign General Lease No. H-89-13, Valley Automated Fuels, Inc., Assignor, to Pacific-West Fuels, Inc., Assignee, Lahaina, Maui, Tax Map Key: (2) 4-6-001-portion of 014 and portion of 017.

Bill Andrews representing Division of Boating and Ocean Recreation (DOBOR) reported that Valley Automated Fuels sold most of their assets on the mainland and would like to sign Pacific-West Fuels here in Hawaii. The assignor and assignee are in good standing. The attorney called saying he couldn't be here. Also, in the legal reference 171-36(b)5 should be included in this. Staff recommends the Board consent to the assignment subject to the terms on the submittal.

The Board:

Approved staff's submittal with the amendment under Legal Reference to add HAR § 171-36(b)5 which was omitted.

Unanimously approved as amended (Morgan, Edlao)

Item L-1 Approval for Award of Construction Contract for: Job No. F15C675A, Royal Mausoleum, Mauna'ala Repair Stone Wall, Honolulu, Hawaii

- Item L-2** **Certification of Election of Waikaea Soil and Water Conservation District Director**
- Item L-3** **Approval for Additional Funds to Construction Contract - Job No. F54B659A, Wailua River State Park Opaekaa Falls Overlook Site Improvements, Wailua, Kauai, Hawaii**
- Item L-4** **Approval to Execute Supplemental Contract No. 2 to Contract No. 55344 for Job No. B45XM82B, Maalaea Small Boat Harbor Ferry System Improvements Maalaea, Maui, Hawaii**
- Item L-5** **Approval of Supplemental Agreement for Contract No. 58043 for Professional Services, Diamond Head State Monument, Loop and Return Trail Development, Honolulu, Oahu, Hawaii**

No staff present. No public testimony.

Unanimously approved as submitted (Agor, Gon)

Adjourned (Morgan, Gon)

There being no further business, Chairperson Thielen adjourned the meeting at 11:33 a.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



Laura Thielen
Chairperson
Department of Land and Natural Resources