

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

DATE: THURSDAY, MAY 13, 2010
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 9:08 a.m. The following were in attendance:

MEMBERS

Laura Thielen
David Goode
Jerry Edlao
John Morgan

Ron Agor
Rob Pacheco
Dr. Sam Gon

STAFF

Dan Quinn/PARKS
Bob Nishimoto/DAR
Paul Conry/DOFAW
Ed Underwood/DOBOR
Ron Cannarella/DOFAW

Morris Atta/LAND
Sam Lemmo/OCCL
Dan Quinn/PARKS
Kevin Kong/DOCARE

OTHERS

Randy Ishikawa, Deputy AG
Mark Travis, D-2
Eric Leong - M-3, M-4, M-6
Marti Townsend, F-3
David Kimo Frankel, K-1
David Sproat, K-1
Bruce Laymon, K-1
Rayne Regush, K-1
County Councilwoman Kurahara, K-1
Michael Lee - K-1, K-3
Rick Barboza, C-1

Diana Bertsch, E-1
Aaron Nakagawa, D-2
Andy Collins, F-3
Amelia Gora - F-3, K-1, E-3, K-3
Linda Sproat, K-1
Don Wilson, K-1
Colin Yost, K-1
Dr. Carl Bird, K-1
Senator Hooser, K-1
Kapua Sproat, K-1
Bill Wynhoff, Deputy AG, D-9

Chris Bennet, D-9
Aaron George, E-3
Ululani Bierne, E-3
Jerome Yasuhara, D-17
Kale Gumapac, K-3
Kenneth Souza Carvalho, K-3
Jerry Iwata, D-20
John Henderson, F-2
Mich Hirano, K-2

Dr. Jim Anthony, D-3
Aunty Mae Au, E-3
Jason Okuhama, D-5
Keoni Agard, K-3
Gene Tamashiro, K-3
Bill Tam, K-3
Darren Lai, D-20
Alison Rieser, F-1

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

Item A-1 March 25, 2010 Minutes

Approved as submitted (Agor, Gon)

Item A-2 April 8, 2010 Minutes (TO BE DISTRIBUTED.)

Board members Gon and Goode recused themselves.

Approved as submitted (Agor, Morgan)

Item A-3 April 19, 2010 Minutes (TO BE DISTRIBUTED.)

Deferred. Not ready.

Item E-1 Request for a Special Use Permit from the World Triathlon Corporation to Use the Hapuna Beach State Recreation Area in South Kohala, Hawaii, for the 2010 Rohto Ironman 70.3 Hawaii

Dan Quinn representing State Parks Division related some background history and set-up information regarding this event noting that the applicant was present and staff recommends approval.

It was questioned by Board member Edlao whether the entire park will be used where Mr. Quinn clarified the parking lot and the south end of the park and that other users can still use the park. There will be some staff time used in this event.

Diana Bertsch who is the applicant was present for any questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-2 Extinguish Two Reservations to the State of Hawaii Covering a Perpetual Non-Exclusive Access Easement and a Perpetual Non-Exclusive Trail Easement Within Land Patent Grant S-15952 issued to The Avataric Ruchirasala of Adidam, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-2-007: affecting Parcel: 007

Morri Atta representing Land Division noted that these are easements not being used that due to risk where he related a recent case where a woman fell over a cliff there was a request to eliminate these right-of-ways and staff agrees with this request. He also noted an amendment to the TMK number of this parcel from 007 to 027 which was assigned by the County.

Mark Travis and Aaron Nakagawa were here in support.

The Board:

APPROVED AS AMENDED. The Land Board amended the submittal by changing the parcel number of the affected area from "Tax Map Key: (4) 4-2-007: affecting Parcel: 007" to " Tax Map Key: (4) 4-2-007: 027." Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Agor, Morgan)

Item M-3 Issuance of a One-Year Right-of-Entry to Hawaiian Electric Company, Inc. to Conduct Engineering Studies, at Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu

Item M-4 Issuance of Lease by Direct Negotiation Together with a Right-of-Entry to Pacific Ocean Producers, LLC, Multi-User Building Lot and Improvements Consisting of Units FV7A-H, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu

Item M-6 Issuance of a Revocable Permit to Big Island Energy Co. LLC dba Akana Petroleum, at Kawaihae Harbor, Kawaihae 1st, South Kohala, Island of Hawaii, Tax Map Key No. 3rd/6-1-03: 32

Eric Leong representing Division of Transportation (DOT), Harbors Division related some background on each item.

Member Pacheco asked about Item M-6 whether there is a revocable permit (RP) because staff is waiting for the Master Plan. Mr. Leong confirmed that staff cannot renew the lease at this time which is the reason for the month-to-month RP and the applicant is agreeable.

Unanimously approved as submitted (Pacheco, Agor)

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Education Permit to Vincent Collins, National Oceanic and Atmospheric Administration, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct an Interdisciplinary Educators Program

Bob Nishimoto representing the Division of Aquatic Resources (DAR) related some background of the intended activities which is in direct support of the Monument Management Plan's action plan 3.5.4 – Ocean Ecosystems Literacy. The exemption class is listed.

Andy Collins representing NOAA testified that they do this activity every other year noting the limited time on NOAA ships and look forward to this opportunity again.

A'opohakuku Rodenhurst, head of the Spiritual Nation of Ku, The Huiea Council of Sovereigns questioned whether NOAA is a Hawaiian organization, asking how many Hawaiian experts are in NOAA and what NOAA is. She expressed not wanting non-Hawaiians on Hawaiian lands.

Chair Thielen said due to the Sunshine Law the Board can only address items on the agenda and suggested Ms. Rodenhurst speak with the NOAA representative afterwards.

Marti Townsend representing KAHEA distributed her written testimony and testified that a permit was issued to the Hi'ialakai which was exempted from Chapter 343 that these exemptions don't provide for ship operations. Although they support bringing education to the people they are concerned that the protections that are in place are not being met. She suggested doing a cumulative impact assessment by doing an EA.

Amelia Gora, Active Liaison of Foreign Affairs for the Hawaiian Kingdom, who are part of the direct descendents of House of Nobles that they are descendants that show claims to all the lands. She testified that the Hawaiian Kingdom claimed for the entire archipelago and oppositions were filed with Presidents Clinton, Bush and Obama which are on-going. Their claim goes beyond the three miles.

Unanimously approved as submitted (Morgan, Agor)

Item K-1 Request to Appeal Conservation District Use Permit KA-3525 for Landscaping (Fence Replacement, Brush & Pasture Management and Habitat Improvement) Located at Lepeuli, Hanalei, Kauai, TMK: (4) 5-1-003: 003

The Board may go into Executive Session pursuant to §92-4 & § 92-5(a)(4), Hawaii Revised Statutes (HRS), in order to consult with its attorney on questions and issues relating to departmental permits, and questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities.

Sam Lemmo representing the Office of Conservation and Coastal Lands (OCCL) related that he has some information that he has that can be made available which is the staff report that discusses the request to appeal the Chairperson's discussion on a CDUP with 3 exhibits attached – the original staff report for the action, the other two are the petitions appealing that decision. He also has a copy of the CDU application, a copy of correspondence and actions subsequent to the issue of the CDUP, petitions from the land owner. A permit was issued February 2010, CDUA KA-3525, and the purpose was for landscaping and fence replacement, bush and pasture management and habitat improvements at Lepeuli, Hanalei, Kauai or also known as Larsen's Beach. Since issuance of this permit the Department received two appeals which are brought to them via their administrative rules – HAR § 13-3-33 Departmental permits a person may file an appeal and the process is in the submittal. Mr. Lemmo went back looking over the application, permit, comments and appeals where he didn't feel any differently, but he left it up to the Board. Staff recommends to either:

1. Affirm the decision of the Chairperson
2. Amend decision of the Chairperson
3. Reverse the decision of the Chairperson
4. Order a contested case
5. Order other procedures to be conducted prior to the Board's decision on the appeal.

A Board member questioned what the criteria were for a Departmental action versus a Board action on CDUAs. Mr. Lemmo explained the criteria are not different. The difference is in the process where the action is administrative in nature – delegating to the Chairperson and usually there is no requirement for a public hearing. Under the rules some uses are identified as Departmental and some are Board because of the nature of the use and the type of use resulting in the overall affect to be considered less significant than for example someone seeking a Board permit therefore that responsibility was delegated to an administrative level.

David Kimo Frankel from Hawaiian Legal Corporation representing Linda Sproat suggested that Chair Thielen should recuse herself from this item because they are appealing her decision and it's not appropriate for her to judge whether she made the right decision or not.

Chair Thielen deferred to Deputy Attorney General Randy Ishikawa who said that the Chairperson has the opportunity to recuse on matters which there is a conflict or other legal infirmity to act. There is also a rule of necessity that has been invoked to allow the Chairperson even when the Department's permit or approval is at issue to participate in the decision that generally applies in cases of lack of quorum and other items of that sort, but it's discretionary whether the Chairperson believes there is a conflict as to her participation in this matter. Chair Thielen said they don't have a necessity here because they don't have any quorum issues, but they do have other Board members here and she thinks it's an appropriate request. She recused herself and had their senior Board member Ron Agor took over as Chairperson.

Mr. Frankel said the Board has their appeal and requested a contested case hearing. They attempted to pay for a filing fee, but was returned by DLNR staff. The second request is he thinks the Board should make a site visit before making a decision because photographs don't do justice in making a decision. He wanted to relate the misconceptions regarding the proposal on the site, there is abundant evidence that this trail is an ancient trail and he will talk about the law. Mr. Frankel distributed a schematic of what is proposed (to replace a portion of the fence line) pointing that out in the yellow highlighted area, but most of the proposal is to install an entirely new fence line. Staff was misled by the applicant's wording. There has never been a fence in the southeastern side of the property makai across from the trail that David Sproat can testify that the fence was mauka on the bluff. Mr. Frankel described the fence line based on the diagram reiterating that the proposal is not to replace, but to construct a new fence line which is overlooked in the application and staff's submittal. He distributed an e-mail from the applicant's attorney to staff regarding where the burials are on the property saying that the fence will have no impact on the burials, but the fence either goes through where the burials are or makai of the burials so that the cattle is grazing right on top of the burial site. There was misleading information to obtain the approval of this permit. Mr. Frankel distributed an aerial photo from the enforcement proceeding that DLNR took against the applicant. The applicant is contending that the shoreline cuts straight across the vegetation line that the sand there is more mauka and is not part of the beach. Colin Yost submitted photos saying that the debris line goes up against where the existing fence line is. When the applicant says the fence will be set back a 150 feet from the shoreline it's not accurate because of the debris line. There was clarification to the Board that where the yellow highlighted area on the schematic is the existing fence and the other area there is no fence. On the bottom portion of the property there is fence but going in a southeastern direction there is no fence there. He pointed out where the sandy area on the photo is on the schematic after Member Agor's questioning. Where there is a junction of 3 roads and a circle around it is where the sand extends to that the debris line goes all the way up to there. Member Pacheco asked about the jagged line labeled "Shoreline Located.." Mr. Frankel recollected that was certified a long time ago. People repeated in their comments requesting that a current shoreline certification be done and it has not. The applicant said not to worry about it because they will be 110 feet away from the shoreline. The fence is at the shoreline at this one point because the shoreline actually comes in. There was some discussion between the map and the photo.

Mr. Frankel said that there is a misconception for people who haven't been there that the proposal is to have cattle graze in an inappropriate area, where he gave analogous on various islands, because it's too close to the ocean and it's on a hill. Also, the application asks to submit a map with contour lines where there is a steep slope and the applicant failed to do that. The trail that the fence proposed will block is an ancient trail and they provided a number of old maps that show this. They've provided a CD of kama'aina from a decade ago talking about their use of this trail historically. This Department recognizes there is a trail on both sides of this ahupua'a and logically they connect. Mr. Frankel passed out an archaeological assessment from nearby Moloa'a which identifies the same trail as a historic site which he read allows access to and from Moloa'a Bay to Larson's Beach. A cultural assessment is attached which he went over. He referred to

the staff's report on enforcement; the last page shows a map with the trail on the other side of this ahupua'a. The Department recognizes this is a historic site and trail. Mr. Frankel referred to Don Wilson's written testimony (he represents the landowner) dated May 6, 2010, page 3, Item V, 1st paragraph, 3rd sentence regarding the landowner's possession of information of the traditional Ala Loa trail which was installed and graded for a vehicles by the previous lessee Beatrice Foods Group for Meadow Gold's pasturage and dairy operations that was in 1973. We have testimony from Mrs. Sproat and others today that confirmed that this trail was used way before 1973. Meadow Gold had nothing to do with installing this trail and was not installed recently.

Mr. Frankel supplemented what was presented on the law reiterating that the trail is still owned by the public. Your title abstractor reached the legal conclusion because this property was land courted the State gave up its right to the trail there and that is not true. There is a section in the Land Court Statute 50182 which is based on an old section of the law from 1935 which is based on another provision of the law in 1925 that says Land Court is allowed for the recognition of trails and highways. In 1931, the Hawaii Supreme Court in Ward versus City and County said that the certificate issued by the Land Court is silent on the subject of roadways, but under Section 3229 a successful applicant in whose favor a certificate of title is issued holds it subject to the possible encumbrance of any highway laid out under the provisions of law when the certificate of title does not state that the boundary of such has been determined as this certificate does not. If there is a highway running over registered land the existence of a highway maybe proven even though it is not noted in the certificate as an encumbrance when as in this case there's been no expressed adjudication of the subject. In 1892, under the Highways Act all of our trails are protected. Even if this property is land courted this trail still belongs to the people and there is no reason for the Board to advocate the public's interest in the trail. If the Board doesn't agree and believes this belongs to the private landowner you still have an obligation to investigate and make findings regarding traditional customary practices that take place on this land which the Department did not do and instead copied and pasted the words used by the developer.

Mr. Frankel related that the Department failed to consider the impact of this project on burials and historic sites by failing to get the Burial Council's input on the treatment of a previously identified burial site by allowing cattle to graze on top. The Department's action both impeded public access and precluded public participation without having a public hearing held on Kauai then having the decision negotiated privately without public input. The approval of the CDUA failed to investigate and protect Native Hawaiian traditional customary practices, breached public trust obligations, violated requirements of HRS Chapter 60 and 205A, unnecessarily restricted public access and public participation in this decision.

Member Agor asked whether Mr. Frankel found any scaled maps because Member Agor found them and the trail is anywhere from 800 to a 1,000 feet from the shoreline and it is accessible. Mr. Frankel said that there are other trails, but the trail along the coast existed and he testified that people who have kuleana lots will walk parallel with the shoreline. Member Agor pointed out aerial maps in 1975 showed no trail and in 1982 there is the

road. Mr. Frankel replied if this is something not provided in the record to have it placed in the record. Member Agor was wondering whether he saw that.

There was some discussion between Member Pacheco and Mr. Frankel on the maps.

Member Goode asked that SHPD talks about a trail to Larson's Beach and did they not imply it went to the sandy portion of the beach or lateral access along the beach. Mr. Frankel said that you would not ask that question if you were to the site and that is why a site visit is so important. Pali might not be the right term, but it does become very steep and the trail comes inland from the water quite a bit and then gradually slants down. One of the reasons why the trail was more mauka was because fishermen needed to go higher up to look down to see where the fish were and the conditions and is consistent with the two trails come from both sides. It doesn't make sense for people to leap down hundreds of feet to get to the sand. Member Goode asked where the County access point is. Mr. Frankel pointed it out on the map.

Linda Ku'ualoha Akana Sproat conveyed some personal background having been born and raised on Kauai living there most of her life. She is descended from konohiki fishermen on the North Shore of Kauai and given her family's long history she has an intimate knowledge of the resources in this area and is a member of Kauai's Na Ala Hele Trails Program. Ms. Sproat asked the Board to reverse the Chairperson's decision and said family members were in the audience and that she represented many supporters who couldn't be there. She is against the CDUP because it will negatively impact traditional customary Native Hawaiian rights and practices. Many Hawaiian families access and continue to access the traditional Ala Loa that cross the ahupua'a boundaries throughout Kauai's North Shore including Lepeuli. She and her family have used this trail consistently since the 1940s and are concerned along with the community that moving the fence would limit their ability to exercise their constitutionally protected rights to access this area to continue traditional customary practices. Ms. Sproat reported that heavy equipment clearing has already started in the coastal area. When she uses the traditional Ala Loa at Lepeuli there was no fence. The trail was marked by a worned band of dirt and in some places just it was mauka of the sand where the vegetation began. In other places the Ala Loa followed the sand and for the most part the Ala Loa followed the shoreline. If the Board members come to Kauai she can show it to you. She is intimately familiar with the location of the Ala Loa because her 'ohana has used it to gather food and medicine for their family for generations. In the 1990s, the community had the same concerns because portions of the Ala Loa were being fenced off. Ms. Sproat interviewed Native Hawaiians from the area from 1998 to 2000 gathering kama'aina testimony about the location and the uses of this trail which is the CD that was submitted. She related that a Mr. Santos walked from Anahola to Kalihiwai nearly everyday to gather food for his family. He told Ms. Sproat that before Kuhio Highway was built this Ala Loa was part of the main thoroughfare for access around the island and that is consistent with what her father and grandfather told her for their use of the Ala Loa for access and gathering. There was an allegation made that the trail they used is not a traditional Ala Loa and with respect given her knowledge and the testimony she gathered that allegation is false. There was a fence erected several hundred feet mauka of

the Ala Loa after the sugar cane was cleared and did not impede their lateral and horizontal access to regularly gather a variety of ocean food and medicinal herbs. Ms. Sproat is concerned that the clearing already done will negatively impact her family's way of life because many of the plants they use have been cut down and urged the Board to reverse the Chairperson's decision. She suggested reactivating Na Ala Hele the BLNR will have access to accurate information including kama'aina testimony about the resources in this area.

Member Goode asked what is her preferred solution. Having the fence mauka of the trail? Ms. Sproat confirmed that is what she preferred because this area has the largest archaeological site on Kauai otherwise the cattle will be walking all over it.

David Sproat, Linda Sproat's husband came up to testify regarding Meadow Gold leasing in 1973, he worked there and the cattle was never allowed go to the site referenced here and was always kept mauka on the flat. This is a lifestyle that his wife and family have lived of sustenance and existence. This trail has been used consistently and has been recorded in historical documents. Moving the fence adequately mauka then this is not an issue and the Ala Loa needs to be preserved. He asked to reverse the Chairperson's decision.

Member Edlao asked whether there will still be access if the fence moves mauka and Mr. Sproat confirmed that there is a flat area which is hard to see the topography on the map. Member Morgan asked without the trail is there reasonable access to the coast or close to the water. Mr. Sproat answered not in a continual way because there is reef and you would have to be in the water.

Member Morgan noted, and he isn't advocating one way or another, that cattle graze on a lot of hills in the state and over a million acres where there are possibly burials that cattle aren't detrimental to something under ground.

Member Gon asked when Mr. Sproat was working the cattle ranch operation was there a fence along the boundary here to keep the cows from getting in. Mr. Sproat confirmed that he helped to fence and by his recollection there was a fence there and it was a rocky area that cattle would not normally access.

It was questioned by Member Goode whether there is a distinction between Native Hawaiian cultural practices and vagrancy and Mr. Sproat confirmed there is a problem with vagrancy and illegal camping in the sloping area. He suggested DLNR getting behind the restoration of the area by partnering with the community. The majority of the community doesn't participate in or want to see vagrancy and instead participate by cleaning up and getting involved in projects because there are regular users in the community who are the true konohiki of the area.

Don Wilson, Attorney for Waioli Corporation LLC and representing Bruce Laymon testified that he submitted written comments. The standard of review that this Board needs to apply when looking at the Chairperson's approval of the CDUP is whether her

action was arbitrary and capricious. Arbitrary is founded on prejudice or preference rather than on reason or fact. Capricious is characterized or guided by unpredictable or impulsive behavior. There was four months of unrestricted public input prior to this approval. If the Board grants a contested case hearing it will only repeat what has been offered to the Department previously and the Board today. The permit itself imposed 18 conditions on the activities allowed under the permit including no interference with PASH rights, best management practices, NRCS conservation plan was negotiated and agreed to by the applicant prior to applying for the permit, protection of artifacts, burials and archeological sites, no destruction of public beach access and definition and improvement of beach access. Mr. Wilson respectfully disagreed with Mr. Frankel on the beach access that there has been and there will be additional beach access trail going down to Larson's Beach. This permit does not block access to Larson's Beach, but what they want is the easy way to get to Larson's Beach using the lateral trail and that is not the only way to get down there. It was agreed between and County and Waioli Corporation to give a second safer public access trail down to the beach. There has been no fencing put in until this process plays out. There were truck loads of trash dumped on the Waioli Corporation property that was deposited by illegal campers over the years referring to photos. There was clearing of non-native vegetation where the illegal camping was occurring under the trees. Improved beach access is a result of this permit put in as a condition by the Chairperson. Mr. Wilson related the steps taken and challenges of keeping illegal activities out through fencing and signage, but are ignored and vandalized. The applicant and the landowner have completely cooperated with DLNR and its staff since this application was approved last February. There have been numerous complaints which have been passed on to the Department for investigation where DOCARE officers and Kauai Police have been to the property several times. They are willing to cease and desist activities if the Department finds there is any violation to the permit conditions or any illegal activity. To date none of the complaints have not been found to have any substance or hasn't communicated to them that these are real and is a problem. They have submitted petitions that number up to a thousand signatures from the community of people who favor this operation and permit.

Mr. Wilson said the issue of the Ala Loa is the primary concern to those against the permit. It is part of a movement to create an island wide trail regardless of whose property it goes across and located. They looked at maps and aerial photos since the 1950s and there is no consensus the Ala Loa is precisely where they (the Sproats) say it is. There certainly are trails the go all over the place, but the Ala Loa is a specific trail. The 1878 Government Survey Map has a scale on it and if you apply that scale to the dotted line to where the trail is it's a 1,000 feet back from the coastline. This is conflicting information about the Ala Loa. Until that final determination is done its premature to say this is where the Ala Loa is. He didn't think within the context of this permit, it's not the Board's or Chairperson's obligation to make the final determination. A fence is temporary and can easily be taken out if so directed in the future and has minimal impact. The owner is a non-profit with three museums on the island and its purpose is to preserve and protect this property. Waioli Corporation will not develop this property and they desire to maintain it for active agriculture and open space which is to

benefit the community. They are disappointed with the objections and misstatements by those objecting to the permit.

Bruce Laymon representing Paradise Ranch testified that he is from Kauai and his family raises cattle there. He related some family background that his mother is from Kilauea, that they go back five generations and his grandson is Native Hawaiian. Mr. Laymon considers himself a steward of the land that he was thrilled that Waioli Corporation chose him for a long term lease because Waioli Corporation's mission statement is to keep the land in conservation, preservation, open space and pasturage. When they applied for a soil conservation permit – a 30 year lease is committed to keeping this property in open space working closely with the National NRCS for best management practices and they are very cognizant of what is happening down there. They look at reef protection, native wildlife and plant invasive species. Mr. Laymon said there were reports that he was bulldozing the beach and every single claim was false. Before he does any work there, even if it's permitted, he contacts DLNR, the head of DLNR Enforcement and the CCO inspector prior to doing any work and they tell them what they are going to do and when which is open and transparent. They had three officers down there after some lady reported they were bulldozing up and down the beach and endangering a monk seal. Mr. Laymon and his staff was a ¼ mile up on the hill putting in fencing when the officer asked what was done and all they did was mow the grass. There was no bulldozer and no evidence of anyone driving on the beach as claimed. He used to fish for tako down at the beach and he wished he took pictures because there were times when there were 200 cows walking on the beach and on the reef. His brother-in-law said the reason for that was illegal camping was so pervasive that these campers would cut sections of fencing and whenever there were complaints they sent the cowboys down to push the cattle back up the hill, but the notion that there was no cattle down there and had fences at the top is not true that he had seen it himself. The manager from Meadow Gold and the cowboys can testify that there were fences down there and because they aren't there now doesn't mean they didn't exist. The old t-posts and barbed wire were taken away because it was too dangerous. Mr. Laymon related that they cleaned out five dump truck loads of rubbish and there should be more sensitivity. One of the local girls told him how much safer she feels coming down there now. This is private property and has been in ranching since the 1800s. They met with the mayor, the Planning Dept., the Kauai Police Dept. and they told Mr. Laymon that they will not assist him with enforcement until he puts up the fencing and no trespassing signs because if it isn't up its inviting people onto the property. Also, Mr. Laymon agrees with the Planning Dept. to move the fence further back than what Meadow Gold had before. Mayor Carvalho and the Planning Director are Native Hawaiian and they support this application and are in favor with what they are doing. Public access is not blocked and described an interview with a Sherwood Ida, an old time fisherman who is about 70 whose father is Native Hawaiian and he told them that in the last 1970s there was no access they went to the County to ask for access to the property. The County approached the trust and the trust gave 3-1/2 acres and sold it for under \$7,000 where the trust paid for conveying it and everything now there is public access down to the beach. In negotiations with the County and the trust, they came up with a second easement resulting in two access points for the public. The majority of the people want to come down the old roads which were originally used to access the fence

by Meadow Gold. Mr. Laymon is real sensitive to people's clams that he will destroy this land and he takes offense to that because he loves Kauai his family, his grandchildren are raised there, play and fished there and he would never stop that. He referred to the petitions submitted that show Native Hawaiians who agree with him. And, no disrespect to David Sproat, but Mr. Laymon disagrees about the cattle on the beach.

There was some discussion regarding photos between Member Pacheco and Mr. Laymon where Mr. Laymon said that when they met with the soil conservation service they removed all the cat claw vines and the lower branches where illegal campers were hiding under. He related a problem with rampant nudity that his mother was fishing and three men walked by where she told them children are in the area and to put their clothes on and those men just laughed at her. The DLNR inspector and CCO inspector said that the native species are growing better than before after the clearing noting that he is a landscaper. They discussed a second photo pointing out the mowed area where Mr. Laymon explained the type of mower and that the area was all grass. Someone broke some naupaka branches and laid it on the grass, took a picture and sent that as a complaint that he was mowing the naupaka. Naupaka seedlings don't sprout here and there. They grow off of the tree. If he ran the mower over the naupaka it would be cut to a million pieces.

Mr. Wilson had all the petitions that were signed and Member Agor said they have it.

Moses Madayag, Museum Curator for the Grove Farms Historic Site Museum and Waioli Mission House and Robert Schleck, Director of Waioli Mission House and Grove Farm Museums testified that they are providing photographs and historic maps that speak to the site over the years. Mr. Madayag said he is submitting government aerial maps – 1975, 1987, 1988 and 2008. Also, they have an aerial map of Meadow Gold circa 1980. He confirmed that there is an Ala Loa trail that goes all around the island, but in this region there is a ravine to create an Ala Loa trail and the trail stops here. The Ala Loa trail has to be set back in order for you to cross to walk the whole Ala Loa trail. Access to the beach would be perpendicular that when the Ali'i allowed commoners to access the beach they would go down perpendicular. As for the Ala Loa on the shoreline, it would be difficult because of the ravine. Mr. Madayag presented an overlay of the 1975 map over a 1985 map which shows there are no clear markings prior to 1975, but after 1975 there is machine grade cuts into the side where supposedly the Ala Loa trail is, but he had a difference of opinion that if that was the true Ala Loa trail it would be very difficult to cross to the other ahupua'a because of the ravine.

Robert Schleck testified that this is for the Board to review and includes the 1878 map with the scale on it. Also an 1824 map of the island by Hiram Bingham is attached. He described Waioli Corporation that was set up by Mabel Wilcox to receive her properties in 1975 confirming that it is a preservation conservation organization and named the various properties. The Lepeuli property was purchased by Abner Wilcox from Kamehameha III in 1854 and at one point it was going to be sold and that is when the two Wilcox sisters bought the property to preserve it. He reiterated previous testimony on giving easier access to local fisherman.

Colin Yost, Attorney representing Surfrider Foundation testified that there is no dispute in the community about trash and public vagrancy noting there are public laws regarding these and has nothing to do with the submittal. Mr. Yost reiterated that the Ala Loa is a public trust resource and is a historic trail. You don't close Ala Moana Park because of homeless and it's the same with the Ala Loa because there maybe an easier way for people to get down there illegal which is not the issue and that shouldn't be a distraction to the Board. He agreed with Member Morgan about cattle grazing on hills, but not here because it is conservation land, one of the most pristine in Hawaii naming monk seals, turtles, albatrosses. There would be major erosion if cattle went in here reiterating previous testimony that cattle don't belong there. A shoreline certification has not taken place. Mr. Yost referred to Mr. Wilson's testimony about arbitrary and capricious that the decision was based on incorrect facts and incorrect law. The NRCS permit says no cattle are to be allowed in the conservation area or no grazing allowed whatsoever. That permit talks about hand tools not a 5 foot wide mechanized motor. That permit did not contemplate any cattle in the area of where the albatross has been seen nesting. The applicant admits they intend to allow cattle to graze in the conservation area. That they are going to put the fence in the middle of the conservation area instead of above it. Since the permit was approved there was overwhelming photographic evidence that they were down there with large mechanized motors clearing out vegetation and that is not grass. Mr. Laymon is not an ecologist and doesn't have knowledge of the plant ecology of the area. His Foundation sent a letter with a long list of native plants that were affected along with a cease and desist letter to this Department. The only purpose of this is to replace the existing fence line and brush management of five non-native species alleging to help the naupaka plants in the area is the only justification given. The application says the only reason for the brush management and fencing is to expand their cattle operation. Mr. Yost went on to cite the law regarding commercial use in a conservation district that it should be a Board permit instead of a Departmental permit. If there is any kind of commercial use there has to be a public hearing. He claimed the Chairperson decided to fast track this Departmental permit with minimal review and little scrutiny and moved it through without a public hearing on the basis of incorrect facts – that is arbitrary and capricious. The facts are being ignored in the application and accept some alternate reality which is not true and make a decision on that and that is illegal.

Mr. Yost distributed a Google Satellite picture/GPS map of the area from his client where he described the black lines of the Ala Loa that are recognized by the State. The red line that connects those two black lines is the Ala Loa that is the subject of this proceeding. The red line doesn't go to a ravine, but to the beach that the Ala Loa is there. He didn't think a site visit is necessary because overturning this permit is the clearest thing to do where he explained if you went there it is obvious it exists and has been there a long time although it's harder to see now that the mower has gone over it several times making it wider. Even if there was a factual dispute there wasn't adequate investigation by the Chairperson before granting this permit and there is so much information that contradicts her decision on this you cannot possibly allow it to stand without rigorous investigation on where the Ala Loa is reiterating a public trust resource shouldn't be taken lightly that should have been a Board permit at the outset. The permit should be revoked and if the

applicant wants to reapply they are free to do so as a Board permit where there is a public hearing on Kauai. It needs to be by the full consideration of the Board and not by one person. Mr. Yost disagrees with Mr. Laymon calling himself a steward of the land that it's absurd that someone would break branches and leave it on the ground which is another reason why this permit should not stand. Mr. Yost went on to reiterate the issue of using machines instead of hand cutting of naupaka and cutting of native vegetation. He summarized the above.

Member Agor pointed out to Mr. Yost about the older scaled maps that the Ala Loa is a 1000 feet away from the shore where Mr. Yost said he is not a topographer or architect or have any expert qualifications to testify to Member Agor's statement.

Member Morgan asked Mr. Yost said commercial use of cattle is a de-use and whether it is the cattle grazing or is it the commercial use. Mr. Yost said he believes any livestock raised to sell meats or dairy cows...Commercial use in the HAR is very broad and talks about anything in trade or commerce. Not a specific use. Member Morgan knows that live stock raising is a permitted use in certain conservation districts and he wanted to get clarity from Mr. Yost. Which is it? The livestock use or the commercial use? Mr. Yost said he believes the commercial use, but he would have to go back and look at the regulation. Member Morgan said he objects to the notion that cattle raising causes erosion and it goes back to him being a rancher – mismanagement of cattle causes erosion, but a lot of ranchers will say this is part of Hawaii's heritage who considers themselves stewards of the land. Proper management of cattle doesn't necessarily cause erosion.

Member Gon asked whether Mr. Yost can contest to the accuracy of the map his client provided. Mr. Yost said he cannot contest completely to the accuracy of the map that they are GPS overlays of the satellite image and he admitted that he hadn't had time to look at it in any detailed way or bring in an expert. Member Gon said that the Ala Loa comes close to the ocean at Waipake and the older scaled map is not as accurate as the GPS map in regards to the distance to the coast. Member Pacheco agreed with Member Gon being familiar with maps and trails on his island.

Member Goode asked whether the trail as a public trust is for the traditional Hawaiian community or for the entire public where Mr. Yost replied saying the entire public. He referred to 13-5-22, P-7, D-1 is another reason why this should be a Board permit because the area has a habit improvement management plan associated with it.

Rayne Regush representing Aunty Loke with the Go Coalition who are a broad based group of residents who value Kauai's natural environment and trails distributed an article on Aunty Loke and Uncle Charles Pereira as living treasures and Ms. Regush testified on how Aunty Loke worked to protect public access rights for all as well as the Ala Loa through the Moloa'a property. She described how Aunty Loke and Uncle Charles hiked through this area to fish and gather limu that Aunty Loke went to school at Lepeuli. Ms. Regush said that HAR Chapter 13-5 to protect and preserve the conservation was disregarded by the Department because the application submitted contained numerous

omissions and mis-information where all of these were itemized in Sierra Club's written testimony of October 23rd and January 8th which she had authored are in the Board packets. Ms. Regush related the failures of DLNR by approving the permit, inadequate evaluation of the CDUA and disregarded facts of law. She reiterated issues of historical and cultural omissions, habitat impacts and brushing aside legal requirements for certified shoreline. Not securing maps and relying on the surveyor's 2009 map lacks validity under the law. Unauthorized mowing destroyed the evidence of the high wash of the waves. No contour maps were provided. The stream was completely omitted from the poor maps provided. Cattle are disallowed in the applicant's NRCS Conservation Plan. The applicant didn't provide to DLNR any written justification to deviate from the NRCS Plan which is required. The Department failed to correct the non-conforming fence error and fence maps are not provided in the application. Brush management for flora and fauna habitat protection is unsubstantiated by the applicant failing to identify what species are to be enhanced by the plan. She reiterated previous testimony that the habitat of the monk seal, turtle and albatross were not considered in the application. The native flora and resources were not listed on a map as required by the CDUA. Any vegetative plant life disturbed would be restored or replaced with endemic or indigenous planting. Any brushing would happen in May and August, but instead was done recently during the rainy season. A beach heliotrope is one of the species that was not approved for removal, but was removed. All these were red flagged to the Chairperson and staff, but failed reiterating the above points. The permit approval was capricious and arbitrary and she asked the Board to revoke the CDUP.

Dr. Carl Bird testified that he is an ecologist working on watershed management in the Hanalei Bay area for 10 years who is here representing the Surfrider Foundation, Kauai Chapter which he briefed the Board on. The Surfrider Foundation recognizes the biodiversity and ecological integrity of the planet's coast as necessary and irreplaceable. They promote the right of low impact free and open access to the world's waves and beaches for all people. He distributed copies of his oral testimony. Lepeuli's shoreline is one of the most pristine, ecologically sound places in the State. The coral reef has an abundance of diversity which has supported the cultural use for over a thousand years. Mr. Bird described the monk seals currently there that cattle shouldn't be there because they could step on the baby and cattle could spread leptospirosis to the monk seals. He described the green sea turtles nesting there and the Laysan albatrosses. Mr. Bird took exception to Mr. Laymon's comment that someone planted that and maybe he doesn't know the native ground cover and plants that his landscaping business has a history of doing things in the conservation district. Cattle do not necessarily cause erosion, but if it's a steep slope you can't avoid that and he suggested keeping cattle on flat areas and away from the conservation district. Mr. Bird reiterated the issue of the Ala Loa and the maps that access is dangerous. Also, the cliff contains iwi kupuna and any new construction would disturb burial sites and pollute the water harming the fisheries on the reef. He advocated that the permit be revoked and new considerations be followed by the law and the applicant be allowed to come in with a new application to do the fencing mauka.

There was some discussion about the second trail by the County which is unsafe and barely usable per Mr. Bird.

County Council member from Kauai, Lani Kawahara testified with concern because she received much communication regarding this permit and she has met with Board member Agor, the applicant, his attorneys and many of the constituents. In the report it says "there is public access to the beach through the County of Kauai road and pedestrian access way and that lateral access to the beach is open to the public" is incorrect. The County has allowed their easement to lapse because this access is dangerous which she and the Mayor found out on their site visit. She indicated 12 people flew to Oahu from Kauai and she strongly suggested the Board come to Kauai to make a site visit due to the complexity of the access issues. These are long time families on Kauai who are involved. The Councilwoman feels there will be some conclusion that will work for everyone, but it does require you to do your homework. Also, she suggested coming to Kauai for a public hearing to make a decision on the permit there. And, she is concerned that there will be no public access because there is none as stated in the report. No legal access which she pointed out on the map which leads you down to the rocks which is not traversable and is not safe. It may be premature to allow the fence to be built across the vertical access assuming there is lateral access.

Senator Gary Hooser representing District 7 – Kauai and Ni'ihau testified that he doesn't come to the BLNR often, but this issue is important. His issue is access through the process and like many others and himself they need a public hearing on Kauai that they have asked repeatedly for one. There is something wrong with this picture if 9 residents from Kauai are willing to pay their airfare here, but we can't get the Department to pay for staff to go to Kauai. Senator Hooser offered the Chairperson to pay for a public hearing out of his legislative budget and at the end of the day there is no public hearing. Given the gravity of the situation, given the permanence of lost of public access to the coastline; that to him is arbitrary and capricious and is an insult to neighbor islanders, particularly to Kauai and his main concern is public access. He related fishermen would call him that they can't go fishing because access is blocked. Everybody agrees there is a trail system that this was used for traditional Hawaiian gathering, but the question is where this trail was located. If that fence goes up that public access will be diminished significantly and agreeing to work with the County doesn't give him any specifics, any confidence or any kind of access down the road. There will be no public access if that fence goes up and right now there is none suggesting and reiterating putting the fence up mauka. Senator Hooser supports Mrs. Sproat and encourages the Board to do the right thing.

Michael Lee testified that his great, great grandfather was the king of Kauai where he described a chant where the various limu were picked at various places in the State and his ancestors exercised their cultural prerogative from island to island and the Oahu Burial accepted his genealogy where he is related to various kings from Oahu, Kauai and Maui which gives him standing. Mrs. Wilcox is his aunt. He had an issue with cattle defecating on burial sites.

Amelia Gora related her relation to Mr. Lee and named who those were. The Kauai konohiki have the rights. The Act of November 7, 1846, the rights of the occupants which are the residents, the konohiki and the government where the government shall have the right to lease land at discretion though without the knowledge of the konohiki and he shall receive half the rent and the konohiki needs to take part of all these cases hereafter.

It was questioned by Board member Agor whether the landowner is committed to having the second access available to the public and Mr. Wilson confirmed that where he described the process of going through the County and they have met with everyone at the County administration, they've agreed on a specific site, they've drafted a grant easement which has been reviewed by the County's attorney office, the County has agreed to accept liability for that trail and it still has to go to the County Council for approval. Mr. Wilson apologized to the Council member and Senator and said he didn't think you could accomplish increasing public access and still protect native species which doesn't make sense to him. The tree that was cut was not done by Mr. Laymon's people and he had police come down to look at it because it was hacked with machetes. Na Ala Hele is on record of having no claim to a trail across this property. When people say there is no legal access to the beach that is false because there is and the County chose not to do anything about it.

Member Morgan asked what is the difference between easy access and not as easy as the applicant is proposing. Mr. Wilson described the lateral trail goes across the entire coastline of the Waioli Corp. property which is a gentle slope and there are numerous places where you can cut over to the Beach from that trail and that is why there has been so much trouble because its so easy. The County owns the parking lot at the top of the property and the County trail goes to the right of that parking lot then the trail goes to the left where it is not gently sloping. It is an established trail that fishermen used and he is not aware of any fishermen who use the lateral access trail. Member Agor described when he and some Council members and Senator Hooser walked the trail and they decided if the County could get an easement over the trail they would be satisfied. Mr. Wilson related that the County has no interest in the lateral trail because of liability.

Member Gon asked whether it is completely out of the question to adjust the fence line away from the slope and conservation district. Mr. Wilson answered in the negative and said that was not what was requested and that was not what was approved. There are other issues, but that is their preference.

Kapua Sproat testified that she is Linda Sproat's daughter, kama'aina to Kauai born and raised in Kalihiwai, has accessed this area regularly to fish and gather limu, she is a Professor at UH Richardson School of Law in the environmental law program and a counsel for Earth Justice. She wasn't going to testify, but because she was so disturbed by some of the representations that were being made by the applicant that she was compelled to make some clarifications. Ms. Kapua Sproat related that Mr. Laymon claims this area has been ranched since the 1800s, but this entire area up to Moloa'a was in sugar until Kilauea Sugar closed in 1971 and ranching is a relatively recent occurrence.

This mis-statement is a testament to Mr. Laymon's lack of familiarity with this area as well as the uses depended upon them. Mr. Laymon claims cattle have always been in the coastal area. Ms. Kapua Sproat has been using that area for the past 30 years and her parents since before the 1940s plus generations of konohiki fishermen and they have never seen Mr. Laymon gathering or fishing in that area or ever seen cattle in the coastal area. She reiterated her father's testimony that the fence was always on the bluff that cattle do get out to areas where they shouldn't be, but they are not allowed to graze on the coastal area. Regarding the petition, this is not a popularity contest. The Board has specific rules to guide their decision making which Mr. Frankel and Mr. Yost clearly articulated what the legal basis is to make a decision on. The kama'aina of this area should have more weight because many of the signatures on the petition are of people from Kapa'a, Ele'ele – people from the west side who don't rely on this area. As for vagrancy, if you aren't an absentee landowner vagrancy wouldn't be a problem and her family understands the challenges because they malama (care) a 1600 acre ahupua'a in Waipa and they are familiar with the complexities of land management, but they are there taking care of it. They do it effectively for conservation and other purposes. The past 3 or 4 years there hasn't been a large number of vagrants living in that area and is no longer a problem. Mr. Laymon raised issues of the difficulty or impossibility of even accommodating traditional access and conservation. For her family as kanaka maoli that has never been a problem. Her family is always there fishing and they don't disturb the monk seals. She is glad Mr. Laymon is taking the trash out because for years her family is always hiking trash out which is part of their kuleana. Also, if Mr. Wilson isn't aware of any fisher people who want to use the Aha Loa - she is one, her family and many others who couldn't afford to fly here today. The law is clear, the facts aren't clear, but what is clear is this is something that should not have been decided without a public hearing without understanding what was happening on the ground. This CDUP as written will aggravate the constitutionally protected rights of Native Hawaiians to exercise their traditional and customary practices and that is what the law is. This is a difficult and complex community issue and isn't something her family takes lightly to have to come here to testify. Her sister is married to a Wilcox and is also a family issue for them. If Waioli Corporation wants to do the right thing, the easiest thing for the Board to do is to reverse the Chair's decision to deny the application without prejudice for them to reapply. They have told Waioli Corp. they as a community are happy to sit down with them and work out what is an appropriate location for the fence. They didn't want to come to this hearing and they offered to mediate instead of going into a contested case, but that request was denied. Regardless of whatever the statements are about the mediation is they (the community) are willing to sit down together and work together as a community. Senator Hooser has offered to help them with that process and she asked the Board to help them as well. They don't want be forced into going into an appeal for a contested case hearing which will result into wasting the Board's and community's resources. Give them the opportunity to sit and work things out by reversing the Chair's decision.

A gentleman chanted the Sproat family's genealogy in closing.

Member Pacheco moved to go into Executive Session in order to consult with their attorney on questions and issues relating to departmental permits, and questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities. Member Goode seconded it.

12:20 PM EXECUTIVE SESSION

1:10 PM RECONVENED

There was Board discussed whether the Chairperson's decision was arbitrary and capricious or not. Member Goode said per our Deputy Attorney General the Board has to look at whether the Chair was arbitrary and capricious in issuing this permit where the applicant applies, staff receives it, see if it's complete, process it, it goes to other agencies for comments, etc. and asked whether this was done through the normal process. Mr. Lemmo said they have a consistent process for Departmental permits and he felt they followed that process as required by law and they normally practice on a day-to-day basis. Member Goode noted there was additional information brought forth that he had not seen in the original application. Today was like an ad hoc contested case hearing, kind of free for all with the public and it's his understanding that this is the first time the Board has ever handled one of these appeals before. On this side of the table the information was all over the place and trying to sift through all of that there seems to be new information that maybe staff didn't have when they first processed the permit. Member Pacheco agreed, but unfortunately the appeal rules described in 13-5-33 and the Sunshine Law the Board has to decide whether the decision was arbitrary and capricious. He doesn't see how they can define the decision arbitrary and capricious based on the whole process that happened from the Department through the Chairperson. There are other issues, but for the Board following the rules and laws, that is what they have to concentrate on and that is all they have to deliberate on by law. He asked Mr. Lemmo whether this is the first time he ever had an appeal come forward and Mr. Lemmo confirmed that. Member Pacheco asked if he had anything to compare this to and Mr. Lemmo said absolutely not. Also, their Deputy Attorney General informed the Board there is limited language as to what arbitrary and capricious means other than the definition of those words. Member Pacheco said he can't see how they can call that decision arbitrary and capricious and his predilection is to deny the appeal based on that and like Board Member Goode he has some problems with the information that has come forward and he would like to follow up with that.

Member Morgan asked what follow-up can be done departmentally. Member Pacheco asked Mr. Lemmo whether this Board has the ability to direct him to review that permit again to see if there was information that was insufficient or inaccurate and would that change the direction that permit went through? Is that correct? Mr. Lemmo agreed that he didn't have any problem with the Board asking or directing staff to go and take a look at the original application. A lot of time has passed from when the application was submitted and today. A lot of information has been provided up until today and based on what he has seen here he is still ok with the decision. As the meeting progressed he had a couple thoughts – whether or not there was pasturing as a non-conforming use in the

conservation area and the representation on the application confirmed there was he believed, but now he is not so sure. Perhaps he would like to go back and look at that issue and at the end of the day, and this is one possibility, if it is found that information submitted in the application is found to be false, untrue, misleading they could take the permit away. This only happens in severe situations and he has only been involved in situations of this type once, but given the interest in this matter maybe they need to go back and look at the information that was given to staff in the original application because there was no arbitrary and capriciousness behind the decision. The decision is based on the information provided to staff and comments of agencies where all the representations seemed fine, etc. and that was the recommendation staff made and there wasn't anything arbitrary or capricious. Staff can look into that and he doesn't have a problem with it.

Member Edlao said he could agree to something like that, but at the same time because the permit is already issued he would ask the applicant to hold off on any kind of work for about 60 days until the review is done and they report back to us. Member Agor agreed to that.

Mr. Lemmo noted it looks like you're going to deny the appeal then everything goes back to normal and staff would then go back to the Chairperson on whether or not there was an issue to allow the permit to continue or not.

*Member Pacheco said that there were several issues brought up today regarding the trail, public access, the traditional access, grazing in specific area and culture – those are issues the Board cannot deal with today or discuss anything of merit because of what is before them on the agenda. He moved to deny the appeal with the Board's strong encouragement or direction to revisit this permit from the ground up and Member Morgan seconded it. Member Agor called for the vote and all voted in favor.

Member Goode summarized it was passed that the appeal was denied and found it not arbitrary and capricious, but the Board is giving strong direction to the Department to conduct an investigation of the permit in a manner of what it was applied for. Some of the information that was discovered today, apply that as necessary, and see if there is continued doubt of not enough information or mis-information provided that maybe grounds to revoke the permit. And, he would like to suggest if all that should transpire if the permit is revoked or stayed or something than it becomes a Board decision on any re-application rather than a Department decision and that would require a public hearing. And, if the Board agrees with him if it's in the rules, that's allowed and it's fair for everybody.

Dr. Jim Anthony asked whether as part of the 60 day period to hold a public hearing on Kauai where Mr. Agor answered in the negative.

The Board:

Denied the appeal with the Board's strong encouragement or direction to staff to re-visit this permit and for the applicant to hold off on any kind of work for about 60 days until the review is done and staff reports back to the Board.

Denied (Pacheco, Morgan)

Chairperson Thielen returned to the meeting.

Item C-1 Request Approval of Contract with the Hui Ku Maoli Ola, LLC to Participate in the State Forest Stewardship Program

Paul Conry representing Division of Forestry and Wildlife described that Hui Ku Maoli Ola has been diligent during this long process and staff has gotten all the approvals. It is a 10 year contract which will restore about 30 acres of forest with native species and overall the funding will be about \$408,000 in State Stewardship plans which are roughly \$40,000 to \$50,000 per year.

Rick Barboza representing Hui Ku Maoli Ola, LLC thanked the Board for the opportunity and look forward to re-establishing some native plants where they once were.

Unanimously approved as submitted (Edlao, Morgan)

Item D-9 Request that the Board Grant in Part Petition for Contested Case Hearing by Steve Baczkiewicz, Wesley McGee, and Raymond McGee for a Contested Case Hearing as to Enforcement Action as to Steve's Ag Services, Ltd., Steve Baczkiewicz, Contract Milling, Wesley McGee, and Raymond McGee (Loggers) Involving the Removal of Koa and Other Timber Resources and Road Construction on State Unencumbered Lands, Alika and Papa 1, South Kona, Hawaii, Tax Map Key: (3) 8-8-1:8 and for Authorization to Select and Appoint a Hearing Officer

Randy Ishikawa, Deputy Attorney General disclosed that he represented a prior land owner on this next matter. Not the defendant, but he is just making a disclosure that this prior land owner no longer owns the property and he doesn't believe he has any conflict over this matter, but just for transparency and for the record. Chair Thielen asked whether Mr. Ishikawa checked with his supervisor at the Attorney General's Office and he did and his supervisor did not believe there was a conflict. He also placed multiple calls to the Advised Disciplinary Counsel, but he hasn't received any response yet.

Mr. Atta reminded the Board that this item has been before the Board previously regarding the taking of koa. The owners of the milling operation were in violation and

it was determined that they should be fined at which point the attorney for the alleged violators requested a contested case and as a result of that the Attorney General's Office reviewed the request and the case and suggested that staff grant in part the request for a contested case with clarification that certain issues not be part of this contested case. Staff did receive communication from the attorney for those individuals and the company in the case saying that they didn't agree with the partial granting and wanted all the issues on the table, but because of the legal nature of those arguments Mr. Atta deferred to our Deputy AG on the matter.

Deputy Attorney General, Bill Wynhoff testified that the loggers wished to re-hash the issue whether the State owns the property or not where he wanted to make two points with respect to that: first about six or seven years ago this Board told him and the loggers that it did not have jurisdiction or authority to decide who owns the property. They have operated like that for a number of years and he thinks for the court to change its mind in response to the loggers' request is based on because they lost. Second and even more important for defense possible is they have gone to Federal Court. The Federal Court had issued a final decision, it's not an appeal, but nevertheless it's final and is binding and as a matter of Federal Law the scope and binding nature of Federal Law is a question of Federal Law and this Board with all due respect does not have the authority to change, bury or revisit that issue. The issue when the loggers were here the last time alluded to the idea that Federal Court decided we owned the property now, but did not decide back at the time of the incident and that is wrong. The only argument the State made was they owned this property since the Mahele. That is the only theory they had and that was the theory that the court decided on. The State has always owned it.

Chair Thielen noted that because they have went through this fairly extensively she wanted to ask the Land Board members whether they had any questions for our counsel on the recommendation to limit the scope of a contested case hearing as stated in the recommendation. Mr. Wynhoff wanted to make clear that because this was a contested case and is going to be a contested case he isn't representing the Board, but is representing staff. Chair Thielen thanked him for that correction that he is representing the Department and asked the Board whether they had any questions.

Chris Bennet on behalf of the loggers' that their counsel, Doug Ing was not able to make today's Board meeting. Before the Board takes action on their clients' contested case request they respectfully reiterated their objections to the recommendation and requested that the Board grant contested case as to all the relevant issues and the parties also because they limited the parties to only the individuals in this matter. Whereas he believes Steve Baczkiewicz is the only employee and the sole shareholder of Steve's Ag and the McGees are the two general partners of Contract Milling. He knows this matter has a long history, but clearly they have been contesting this the whole time and he thought it would be an unfair narrow reading to limit the contested case just to the individual parties when they also are the main executives, main parties behind the two companies as well. They believe it would be to the best interest to all the parties as well as the State of Hawaii to have this matter heard in its entirety by the hearings officer and they respectfully requested that the contested case hearing be granted in full.

Member Pacheco asked if he could explain the reasoning for limiting and the difference between individuals and companies. Mr. Wynhoff said that in order for someone to get a contested case hearing in which each of the loggers clearly have standing and the right to ask for it they have to do two things – by the close of the Board meeting they have to ask for it which they did and Mr. Wynhoff was hear and he doesn't remember anyone saying it was for two, four or five, but presumably it covered all five. In the second they have to submit a written request within 10 days asking for a contested case and provide some information. When the attorney sent it in he sent it with respect to the individuals and not the corporation and they didn't meet that requirement. He don't know why they chose not to do it by sending it in on behalf of John Doe is clearly not a request for a contested case with respect to John Doe, Inc. no matter how closely they are related. They are separate entities, Mr. Baczkiewicz chose to do his business as a separate legal entity and consequences good and bad are consequences that he bears. Mr. Wynhoff has no idea why his attorney chose to send in the petition with respect to the individuals, but that is what he did and that is the reason they ask for it. At that point, frankly, when staff and he talked about it they didn't know if they wanted one with respect to corporations. They didn't ask for one, but now they made clear to be relieved of the consequences of their mistake. Chair Thielen asked that the petition is all filled out and signed by the attorney, correct? Mr. Wynhoff's response was that was his recollection.

Member Pacheco asked he recalled they fined them not as a corporation, but individually and what would the benefit be for having it as a corporation as part of this. Mr. Wynhoff explained that the Board submittal at the last Board meeting was specific to the three individuals, one corporation Steve's Ag Inc. and one partnership which is Contract Milling. The Board action the last time, which you'll remember, the Board said they are going to go to a contested case anyway and just accept the submittal which the Board unanimously did and in fact the Board's action went back to three individuals, one corporation and one partnership.

Member Pacheco said to let him play this out to see if he understands this correctly. Let's say the Board approves this today as the limited nature of the contested case hearing and they go through the contested case hearing and if the contested case hearing finds in favor of the defendants that they should be fined and asked whether the fine that the Board had set would be applicable to the two companies? Mr. Wynhoff confirmed that. The Board has the authority to weigh the consequences of their mistake for not asking for all and he doesn't have a position. Staff submitted it and the reason they asked for only those three was they were the only three to ask for it. Now all five are asking for it – he doesn't personally have a position on it and you could ask staff if they care. Member Pacheco wondered if they are the sole owners of those companies it would be pointless for them to go through a contested case hearing if they win they still have a fine basically. Mr. Wynhoff said the companies would face the fine, but he didn't have any idea if Steve Ag Inc. has any assets that would be used to satisfy the fine. If they were to win it would be a fine against Steve Ag's Inc. which they would collect or would try to collect. If it turns out Steve Ag's Inc. didn't have any money they wouldn't collect it. If they later they got a fine for any of the individuals then they would try to collect from

them. They would not try to collect from the individuals with respect to the corporation that a general partnership introduces some complexities.

Chair Thielen said the only question before the Board now is the request made by the petitioner is they would like a contested case hearing on behalf of all five and they would like it to be not narrow – to be able to raise every issue. The two questions before the Board is whether to accept staff's recommendation to limit it to the three and then to limit the scope of the hearing.

Member Morgan said that it seems like it would be more expeditious and efficient to include all five.

Member Goode said that he felt comfortable with that because he doesn't want to go back and take more State money, but he is more inclined to keep the scope limited. Other Board members agreed.

Member Goode made a motion to allow the other two parties – Contract Milling and Steve Ag's Services Limited and to keep the scope limited as previously decided. Member Morgan seconded it. The Board all voted in favor of the motion.

The Board:

APPROVED AS AMENDED. The Land Board amended the submittal by amending staff's recommendation to grant the petitions for standing by allowing the inclusion of Steve's Ag Services, Ltd. and Contract Milling as Petitioners in the contested case. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Goode, Morgan)

Item E-3 Issuance of Revocable Permit to Ms. Grace Anthony for Agricultural Purposes, Ahupua'a O Kahana State Park, Oahu

Mr. Quinn reminded the Board that this was approved in 2007 that the permit was for Mrs. Grace George and has since remarried. Staff took too long to get the permit executed because there were two different dates on the RP and it was recommend staff go back to the Board to get a new approval for it. He referred to the map which is a reconfiguration and reduction of a former RP that was held by Grace George's husband. Mr. Quinn pointed out on the map where the proposed new boundaries are and staff recommends approval.

Dr. Jim Anthony had already submitted written testimony and introduced Grace Anthony. He testified that he supports the issuance of the revocable permit. Last year Mr. Quinn asked him how they want to hold title and after some discussion they wanted to hold title as husband and wife. The RP before was for 20 years and now the property is reduced to 1.5 acres which is being covered by the RP before the Board today and they acquiesced

to that. Dr. Anthony referred to the submittal page 1, 3rd paragraph “to a point ten feet (10’) makai of the property line of Lot B-6” which is a problem for them because the people who occupy Lot B-6 already have 2.5 acres and are not doing agriculture, but turned into a parking lot of derelict vehicles. Mr. Quinn said with the property line he would freeze everything in place would make incursions into plants they planted outside of the property line on the makai side and Mr. Anthony feels this is wrong. Also, the submittal should reflect an agreement he has with Mr. Quinn that plants they’ve planted extensively on the 2.5 acres that was taken away from them are plants that they have the right to collect if they wish to do that and suggested 90 days. Mr. Anthony also suggested changing recommendation 1.c. from Chairperson to the Board because he thinks that is fair and gets away from arguments of arbitrary and capricious nature decision made by one person.

Chair Thielen asked whether Mr. Anthony had any other requests or changes to the permit aside from the three he outlined. Mr. Anthony said assuming the permit has standard conditions they are ok with staff’s submittal. The Chair asked instead of going to 10 feet from the adjacent property line you want it to go to the property line and he said to leave it. The Chair said and you would like 90 days to collect any plants you planted on the 2.5 acres. Mr. Anthony said if they decide to do that. The Chair said and, change item c with the terms and conditions prescribed by the Board. He confirmed that. Chair Thielen noted that she will have to leave soon and there are people here for another item and asked whether Aaron George is testifying in opposition of the permit and Mr. George answered he is for the permit. Other family members were in opposition.

1:50 PM At this point Chair Thielen turned the gavel over to Member Agor.

Mr. Anthony described what improvements they have done to the property listing what they have planted, purchased equipment and soil improvements. He listed other possible projects in the future and had built a fale. This is not Hawaiian land, but owned by the tax payers of the State. He described other projects that they have done or will do that they will open this to the public in July to show what a small self-sustaining farm is like. He disclosed that they are making use of the State land which is the only farm of its kind in Kahana State Park and sought the Board’s endorsement to make this place work.

Aaron Leialoha George testified that he was a resident of Kahana and he spoke on the memory of his father, Sam George. Mr. George described the property’s RP and the plants there that they find pleasure in visiting the home because the upkeep is outstanding and the land is in production. He related the struggles his dad faced with the property and now his dreams are coming true where the farm will be named after his father and is a fitting to his father’s memory to establish something that would contribute to the mission of the cultural living park at Kahana it was intended to be. Mr. George strongly supports the RP recommended by staff.

Grace Anthony’s neighbor (Aunty Mae Au?) testified relating her family in Kahana and how she worked in the taro lo’i and that she will be applying for an RP later because of

all the plants she has and she fully supports this application because of Jim and Grace's organic farm.

Ululani Bierne, a Lessee at Kahana Valley testified that she said she is here in opposition because they have new legislation on the books right now at 15 which gives the Land Board the opportunity to authorize more leases to be issued at Kahana for the six families who came forward to voice their opinion that they are from Kahana, but are without leases. They have formed a tenant group who are waiting for leases and along with that legislation Act 5 comes with a Kahana Planning Council which took a long time to start and they will come up with a Master Plan for Kahana. She doesn't know whether she would want an ag permit because as a Native Hawaiian she would want to just go on the land and just plant. Ms. Bierne related that Mr. George originally had 20 acres, but the boys weren't able to work the land. She thinks this RP for 1.5 acres is jumping ahead of their Master Plan that the Council will need to present to the Board and the Anthony's are not the only ones standing in line for an agriculture permit. The community needs to pay rent to the State and do their part is setting up the interpretive center. What they should be doing is if this fits into their Master Plan and process than she has no opposition to it. She has no opposition with the Anthonys' opening their interpretive center and groups coming in, but how is it going to benefit their Master Planning process if they jump start it here. When they have the legislation they will have to plan for the entire 280 acres which includes the Anthonys' property, her property, Aunty Mae's property, everyone's property. Ms. Bierne described there is leeway in between properties. The Master Plan is for naught if we start tearing up Kahana again.

Member Pacheco said the revocable permit is good for one year and will have to be renewed where people will have an opportunity in the planning process.

Amelia Gora, Active Liaison of Foreign Affairs for the Hawaiian Kingdom testified that she did give authorization to some of the Kahana families by giving them an injunction notices because the State was going to plow down their houses where she related she is one of the heirs to the konohiki in the area.

Member Morgan asked whether Mr. Quinn had any comments on the three requests where he commented that changing the Chairperson to the Board is a cumbersome thing to do. Mr. Quinn said there is no issue with moving plants from the older original RP area. On the 10 foot setback from the B-6 lot, he did meet with the Lessees on that lot and they requested an even bigger buffer zone and he would stand on the recommendation of a 10 foot setback. Also, Aunty Mae Au is on Lot B-3 which is on the opposite end of the proposed RP boundary. It goes up to her property line, but is set-back mauka lease lot. Regarding the issue of the Board approving more conditions it will have to come back to the Board again before this can get underway and this is long overdue to get this final executed.

It was questioned by Member Morgan whether there was anyone on Lot B-4 and there isn't per Mr. Quinn pointing out to Ms. Bierne's testimony that the Planning Council may

come up with different ideas, but it is proposed to be part of this RP and there is no residence there.

Member Pacheco asked if they decide to do the 10 foot boundary is it required the plants be removed. Mr. Quinn said that is undefined and he hasn't seen it in the last year that there are some perimeter plantings. Mr. Anthony said the load bearing wall is 14 feet from the boundary line because he measured it and that the 10 foot boundary is unnecessary. Mr. Quinn said the 14 feet is the setback of the house within its own lot. There were some discussions about the 10 foot boundary and the request by the Lessee on Lot B-6.

Member Morgan made a motion to accept staff's submittal with the additional allowance for the Anthonys' to remove the plants in 90 days, to put the 10 foot setback in and the permit be prescribed by the Chairperson. Member Pacheco seconded it.

There was Board discussion regarding the boundary line.

Member Pacheco clarified to accept staff's recommendation with the addendum to give 90 days for plant removal from the other property, take away the 10 foot setback and the decision by the Chairperson which he had seconded. All voted in favor.

Unanimously approved as submitted (Morgan, Pacheco)

Item D-6 Consent to Extension of Lease Term, General Lease No. S-4306, Sears, Roebuck and Co., Lessee, Lot 2, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-58:04

Mr. Atta reported the applicant is asking for a 5 year extension for improvements worth \$26,000 and staff agrees with the request. There is a representative of the applicant here.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-5 Consent to Extension of Lease Term, General Lease No. S-4308, Hilo Sheet Metal, Inc., Lessee, Lot 4, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-58:02

Mr. Atta explained that this is similar to the previous that the applicant has put in improvements assessed approximately at \$36,000. Staff has a problem with the tax liens on the property and outstanding property taxes. As part of the conditions to approving this staff recommends those liens be removed within 60 days of approval that the improvements be completed by June 30, 2011 and the removal of an unauthorized sub-lessee which may have occurred.

Jason Okuhama representing Hilo Sheet Metal testified that they appreciate the efforts of the Hilo land agent. The sublessor will be gone by 2011. The tax lien is mandatory and

if they had the funds they would have paid it off, but due to the economy they do not have the funds. He went on to explain that they put in about \$140,000 into the business last year and knocked off about \$52 or \$53,000 of the Federal Tax Lien however the balance for penalties and interest remain. They had appealed with the IRS, but they do have an agreement with them and with the State's Tax Department. They cannot do this if they are given a time limit because if they put in around \$40,000 in improvements and don't get an extension it doesn't make sense. He doesn't have the money to do both the tax lien and the improvements. The IRS can only do so much on a local level. Member Morgan said he understood, but it cannot be open ended and asked what he would be responsible with. Mr. Okuhama said that the IRS suggested maybe getting them to support DLNR's lease by taxing it, but that is another thing he has to pay for and submit. He suggested a 120 days.

Mr. Atta said that changing the time is a concerned with the Hilo Office because of the tax liens, but the tenant has shown good faith in solving this issue and suggested considering a firm deadline with a re-visit date to these issues if that is the position we are taking. He understands that timelines are unpredictable with the IRS and he doesn't know any date they have will have some flexibility in coming back to look at it.

There was some discussion with the lease ending in June where Mr. Atta said it's always subject to possible termination as long as you're in default with the tax lien because the existence of a tax lien constitutes a default under the lease and they always have that option. If what the tenant is doing is good faith effort he doesn't know what kind of timeline the Board would want to place on this.

There was some discussion about the payment plan Mr. Okuhama has with the IRS where he explained that he is helping his dad's company to clean up the mess explained in the submittal, but they always maintained their obligations with DLNR.

It was questioned by Member Goode that the family is committed to the business by putting in all these thousands of dollars in improvements which are to the building and if the family were to leave the State would get those improvements, but Member Pacheco said the State would be stuck with the tax lien which would push into their bond and it's a 33 year sheet metal business which is a liability for the clean-up of the property. Mr. Okuhama countered that if they don't do the improvements the Department will cancel his lease anyway and even if the State inherits a mess you also inherit the improvements and the Board is giving him a timeline to do those improvements.

Mr. Okuhama related that the IRS wouldn't take action against a leasehold property. Member Pacheco asked whether the \$36,000 was applied toward taxes where Mr. Okuhama acknowledged if he had a choice, but cannot by statute.

Member Pacheco asked whether staff could float the lease that extra year somehow to give them the time to clear the tax lien and then start over the year where Mr. Atta said the authority to grant a lease extension is under 171-136B which says when a tenant either borrows or invests in property improvements the Board has the authority to grant

some years based on the need to advertise the additional investment of funds capital into the property. There is no specific time to add on or not. The criteria is to advertise those improvements and that is the reason for the 15 year based on their appraisers estimation that they'll extend. If you made a one year extension on a yearly basis they could do that, but they would be using the same dollars that were used just by a one year extension every year again for another year would be a whole separate Board action and they could do that.

Per Member Edlao's question on how long it would take to catch up on tax payments. Mr. Okuhama related he is trying to reduce expenses to become more profitable and he started April 1st that there is hope. Payments to the IRS would continue and the State they would have to wrap it up. Mr. Atta referred to Member Pacheco's comments that as long as the tax liens are there and if there is a default where everyone is looking for the same pot of money the tax liens will trump any claims they would have or any chances of and any recovery would be jeopardized by that. Its all risk based. Member Pacheco said he was torn over using the tax payers' good graces to extend and it doesn't make business sense for staff to bet on Hilo Sheet Metal to approve this and have to come up with \$130,000 per year for improvements and he questions whether Mr. Okuhama can pull that off and what would they be left with. Mr. Okuhama described how the Union is helping them with a subsidy fund and one increment is in which he set aside for improvements and that was for a job completed - \$42,000.

Member Pacheco asked if the Board approves this then tomorrow there is a rental re-opening and Mr. Atta confirmed that. Mr. Okuhama said he expects \$2400 per month and hopes to legal sub-lease to generate more revenue. Member Edlao summarized if it doesn't work out the State will have to clean up the place by taking a chance on Mr. Okuhama, but if he keeps up with the tax payments and he is willing to go with that or if not they could end it. Mr. Atta agreed if the Board goes forward they will have a tenant who provides income to the State. Member Morgan suggested putting in "maintain a satisfactory payment schedule." Member Pacheco suggested having staff revisit this in 180 days to see if Hilo Sheet Metal continues to make payments otherwise bring it back to the Board. Mr. Atta agreed, but staff is creating a milestone to check-in and what are the consequences if not. He explained with older leases with old structures that need repair where the Lessee agrees to make the improvements and it makes sense to staff. There was more discussion between the Board and staff regarding the tax lien and the reason why the time period was an issue. Mr. Atta said the tax lien can be in place as long as it doesn't affect staff's ability to collect the rent and they could monitor the lien.

The Board had a concern that this sets a precedent and questioned what the performance bond was. Mr. Atta explained the performance bond is on the lease terms itself that they have to pay rent and has nothing to do with the improvements. It was questioned and discussed by the Board that if they don't perform they can collect on the bond which can cover the tax lien or look at other assets. Mr. Okuhama said they have a \$50,000 bond and there is talk of increasing it. Getting a bond doesn't look that easy because his company is not lendable.

The Board asked how long does staff tolerate a tax lien on the property before there is action. Mr. Atta said this is the first because a tax lien usually is a default under the terms of the lease. The company has been a good tenant providing the State with revenues and this is an issue of risk management on staff's or the Board's part and the question is how much risk can they tolerate as land manager's taking in to consideration the company's performance history and the possibility that they can pull out of this. It comes down to analyzing their business plan and how they come out of this situation. It's encouraging to staff that Mr. Okuhama came on board with his finance experience, but because of the tax lien they need to place a time without re-visiting the possibility of termination. There was more Board discussion with Mr. Atta regarding revising recommendation 1. A. and asked how much risk the Board wants.

Member Pacheco made a motion to accept staff's recommendation to change recommendation 1.A. by removing it and replacing with the Division will re-evaluate the applicant's financial status for one (1) year which includes the tax lien and report back to the Board. Member Edlao seconded that. The Board voted to approve.

The Board:

APPROVED AS AMENDED. The Land Board amended the submittal by deleting the requirement that the tax liens be release within 60 days of Board approval and replacing it with a requirement that the approval was subject to staff review one year after the date of the Board approval, of: (1) lessee's financial status; and (2) the progress of lessee's efforts to obtain release of the tax liens. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Pacheco, Edlao)

Item D-17 Sale of Reclaimed Land to Fordyce Smith Marsh, Jr and Noelani Fowler; Amendment of Grant of Non-Exclusive Easement S-5973; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-037:seaward of 012

Mr. Atta briefed the Board on the submittal background that there were questions on what could or could not be sold and as a solution the applicants sought a long term easement of the area. Subsequent to that since the case had settled staff was advised that reclaimed lands can be sold where the applicants asked staff they want to purchase the reclaim land area. Because this is Kaneohe Bay there are seawalls and piers that encroach for those who don't sell the land and continue the easements. The proposal is to leave the easement in place and remove the reclaim land area to go forward and prorate a refund for that portion out of that easement fee. OHA had objections to staff's characterization of this as reclaimed lands other than that staff recommendation are to go ahead and sell the reclaim land.

Jerome Yasuhara representing Office of Hawaiian Affairs (OHA) reiterated OHA's objection to this and explained that they don't want a diminishing of ceded lands and public trust corpus which is a running argument from the lawsuit.

After a Board member's questioning Mr. Atta said that the case did settle, but the issue of ceded lands hasn't resolved.

Another Board member asked if there was a sale whether OHA was opposed to the proceeds to the sale and Mr. Yasuhara said there was no stipulation in the recommendation as to that. Mr. Atta noted that staff is required by law if it was determined these were ceded lands. He explained the ceded land issue is what the character of the land is since this is reclaimed land filled in 1952-1956 which makes it eligible for reclaimed land under their chapter for sale under 171. Mr. Yasuhara said that is arguable and there is nothing in the submittal that mentions do or owing to the Native Hawaiian.

Member Morgan moved to approve and was seconded by Member Goode.

Unanimously approved as submitted (Morgan, Goode)

Item K-3 Decision on Standing for a Contested Case Request by 1) Kale Gumapac and Kanaka Council Moku o Keawe, and 2) Michael Kumukauoha Lee Regarding Conservation District Use Permit (CDUP) HA-3495 for Hawai'i Oceanic Technology, Inc. to establish an Open Ocean Fish Farm offshore of Malae Point, North Kohala, Hawaii.

Member Pacheco recused himself.

Mr. Lemmo reminded the Board that this was a contested case on a CDUA that was previously issued. The staff's report speaks for itself that the recommendation is do not grant standing which is based on input from the Attorney General's Office which is lack of a specific claim.

Michael Kumukauoha Lee distributed packets containing his written testimony and supporting documents and testified that he is a Native Hawaiian practitioner recognized by the State citing the Papipi Road Drainage and Kalo Gulch issues where they have standing in court. He related his family chant and background which was accepted by the Oahu Burial Council. His genealogy and all the documents he presented give him standing. There is a list of all the limu (seaweed) and black coral that he uses as a practitioner and learned from a Kohala practitioner. Our Hawaiian ancestors feed a million people without destroying the land or the fish. What is being proposed is Hawai'i Oceanic Technology (HOT) is going to take out the apex predator in the sphere which will cause disease and the sick animals will not be culled which is a Western philosophy to make as much money as you can at the expense of the natural world. Where the spheres will be tethered is a natural spring that shoots 6 feet out the water where the

salinity will drop and those fishes will die. There is no salinity monitor to tell you when this will happen to move the spheres. Mr. Lee related William Ellis's account regarding hot water springs in October and November.

2:00 PM Member Gon returned.

Mr. Lee said with Papipi Road there was a sentence directed to him asking what are the long term cumulative impacts from this water on his native limu. What are the long term cumulative impacts from the artificial food this company is feeding in the bio-spheres and the waste products? Mr. Lee described the impacts to the corals, the sponges and limu and what they are used for. This has been all pushed aside with no public hearing and no public access. He is doing HOT a favor because the population of salmon in Peru and the Pacific Northwest collapsed by taking out the apex predator to maximize profits resulting in disease. This is a giant science fair project that is not reliable and it needs a \$30 million dollar bond because if that sphere is not tethered it will crash into the reef explaining what happened to the reef off the Airport Reef Runway when it was damaged. He asked what are the emergency procedures to warn boaters. Who does regular inspections of the seams? Or on the integrity and strength? If these questions are not answered here he asked for a contested case to go to court as they've done before.

Keoni Agard testified that he is the legal counsel for the petitioners Kale Gumapac and Kanaka Council Moku o Keawe. They filed their petition for contested case hearing November 2, 2009, over six months ago which concerned him. He called staff 2-1/2 days ago to get the status on this matter and he was informed there was a hearing today and he did not receive any notice. Under your rules 13-1-13.1 any person who is represented by an attorney service shall be made to the attorney and he never got that service. When he spoke to staff he asked staff to send him a copy of the notice which he received 2-1/2 days ago. If it wasn't for his call he wouldn't have known about this hearing. Mr. Agard asked to allow him one week to properly respond in writing to the report that was attached to the notice. He waited six months and the Board could at least give them one week to respond.

Kale Gumapac, Alaka'i for Kanaka Council Moku o Keawe testified he speaks under the authority on this proceeding in action Article 43, 1907 the Hague Convention, IV, whereby an occupant State must administer the laws of the occupied state. He is a subject of the Hawaiian Kingdom and so are the members of the Kanaka Council Moku o Keawe. They are also protected as defined under Article 4, 1949, Geneva Convention, IV. They also have an undivided vested right in all the shorelines of the Hawaiian Kingdom, which include access, gathering and fishing and are directly affected by this permitting process of the Board of Land and Natural Resources. In 1846, the Organic Act protects their piscary rights. In 1904 and 1906, these rights were upheld by the United States Supreme Court. Oliver Wendell Holmes, a Supreme Court Justice, made this ruling to protect the piscary rights and vested rights of the Hawaiian people. He also said even though these people on the Pacific may not have the same traditions as we do here in the United States it is our obligation to make sure that these rights are protected. Today, Mr. Gumapac is not seeing these rights being protected from Kauai and with

OHA. They are talking about a subject matter that the Board is suppose to be ruling on that it's a conflict of interest because they are saying the Board is out of its jurisdiction under this law. Mr. Gumapac said he turns to the Deputy Attorney General for you to make a ruling to disqualify this Board from making this ruling because they need to recuse themselves from making this ruling because what you are doing is making a ruling on their allegations that you don't have jurisdiction. And, you have your staff member write after he gets an opinion from the Attorney General that takes over 6 months to write as to whether or not he has standing. Mr. Gumapac asked whether this staff member is an attorney. What is his credentials to able to write an opinion to affect your decision of which your decision is a conflict of interest because they are making this argument against you (the Board)? It is a conflict of interest on what you are deciding as to what Mr. Gumapac does or what Kumu Lee does. Mr. Gumapac asked what is the Deputy Attorney General's ruling on this. Because when Chairperson Thielen saw she had a conflict of interest she recused herself and he asked what about the Deputy Attorney General. He doesn't have the jurisdiction to make this decision and the Attorney General has to make the decision whether or not the Executive Agreement between President Cleveland and Queen Liliuokalani is invalid. He never made that decision and now, you are saying Mr. Gumapac doesn't have standing? David Malo is his great, great, great grandfather and Hawaiian Antiquities being used now as the standard of Hawaiian history and practices where he could go on with all his genealogy, but he is a Hawaiian and yet you are telling him he doesn't have standing? Aole pono. They need to proceed with this.

3:14 PM Chair Thielen returned. Member Pacheco stepped out.

Amelia Gora, Active Liaison of Foreign Affairs for the Royal Family House of Nobles or Hulu Manu. She testified in support of his cousin that she has been documented in the Waikiki Burials and konohiki descendants of Kapalama as well as the Kamehameha and Kalaniopu'u family lines. In the foreign testimony, volume 3, part 2, pages 456 and 460 they continue to have the rights of fishery (piscary) and their tutus had claimed for the archipelago. On December 11, 2003, Ms. Gora did serve letters to President Clinton documenting opposition to the Executive Order claims to the coral reef in the Hawaiian Islands which is 133 islands. She has documented active genocide issues are on-going and being documented with other information for presentation to the Hague Tribunal, etc. The ownership and jurisdiction recognized belong to the Kingdom of Hawaii in reference to the coral reefs, fishes, etc surrounding the Hawaiian archipelago which is part of the hereditary rights of Kamehameaha's descendants and kanaka maoli. The konohiki care takers are regarded rights in history. The fishing grounds were free respecting the tapu fishing grounds and no restrictions by any means be laid on the sea even to the deepest ocean. The Hawaiian Kingdom did receive income from whaling ships for fishing in the ocean which are on the records. The law of the sea was signed by 170 nations except the United States of America. The reference is Hawaii Constitution granting laws, land divisions and awards by Louis Agard. This letter and change of name was sent to President George Bush and President Obama. She also cited active konohiki of 1846 which still applies. Ms. Gora has evidence because she has done history research for 30 years, 20 years in genealogy and 10 years in legal history because she has a paralegal

certificate. She support all the evidence they have and even if it goes to court because the information will come out.

Gene Tamashiro reiterated previous testimony that a million people can live in peace on the land and he just learned that Title Guaranty only goes as far back as 1896 which is scary because he owns stolen land. He expressed his frustration with the Government lies and the Board should decide based on their gut feeling.

Ms. Gora came back and read an article from 1893 that the Hawaiian Kingdom is underground which it doesn't exist. It continues.

Kenneth Souza Carvalho distributed copies of the Organic Act of 1900 and testified that each race of people had their own country that the Hawaiians came to these islands first and possession is whoever comes first owns it. He described the language in the Organic Act and asked why is it that Hawaiians don't have their country? And, he reiterated previous testimony on what should be done right.

Mr. Lemmo conveyed that the notice went to Kale Gumapac on April 20, 2010, but not to his attorney. It was questioned by Board member Goode whether normally the notice goes to the attorney and Mr. Lemmo said that is the proper thing to do and to the question whether Mr. Lee had an attorney Mr. Lemmo answered in the negative that Mr. Lee received the notice.

Member Morgan said there were some emotional comments about a different historical and legal entity besides the State of Hawaii and he doesn't think the Board is in a position to do anything about that. They are volunteers to the Board of Land and Natural Resources. He understands the emotion and commitments, but it is not the Board's kuleana that they have a different kuleana. A separate issue is the process here and whether or not there is standing – he wanted to acknowledge the Board's kuleana is different from that. He is troubled by the procedure on the notice to the attorney.

Bill Tam, an attorney representing the applicant testified that there was a public hearing on this matter where the Board had previously approved the CDUP where two individuals and their association requested a contested case hearing under your rules. What you do is file a written summary of your arguments and the decision is made on the face of this paper and there is no further argument based on the advice from the Attorney General's Office on whether the case is made on the papers. This hearing is unnecessary and no further arguments made because you have the advice of the Attorney General and you act on that. No further oral arguments and none of us have any further to advice you because you the papers and you already have the Attorney General's advice and that is all you need to decide on. There are no further due process rights which was submitting the application and making written arguments to Supreme Court on whether they grant you an oral argument or not is discretionary. Member Gon asked what he is saying is any further exploration of these fundamentals need to be made outside of the contested case hearing procedure. Mr. Tam said the question before the Board is whether the two individuals and their association have a legal interest in the permit area 2-1/2 miles off shore and shown a property interest or a legal interest that could be impacted and their

arguments have to be presented in the papers they submit to that is sent to the Attorney General's Office. The Attorney General's Office under prevailing case law makes a judgment and advises you with a written paper about whether there is legal standing under prevailing law at a contested case hearing. The Board got that advice through your staff member which was "no." He isn't sure whether there is a debate after that, but that is the only question before you. Case law is there a legal interest that is affected. To his knowledge there is no further argument about that. Historically you get that advice and you issue an opinion there is no further hearing on the issue. It is not for public debate. It is a legal question you have to decide done during discussion.

Mr. Agard testified and reiterated his request to at least counter in writing what the staff has recommended is only fair. He has yet to get the actual document to find out what it is about.

Member Morgan explained that he is not an attorney and that the Board relies on their attorneys on matters of process and he finds it hard to second guess their attorneys.

Member Edlao said he feels for the Hawaiian people and the Hawaiian Kingdom, but at this point his decision is based on the laws that represent the Attorney General, staff and the people. As far as standing with regards to Native Hawaiian or Hawaiian Kingdom that is not for him to argue. His decision is based on the laws he is guided by now. He assumes as for the notice it would probably come back with the same kind of thing in regards to Hawaiian Kingdom law, no different from what Mr. Lee has already represented. He must make his decision based on what he is familiar with.

It was emotionally expressed by Mr. Tamashiro that the Board should prove their jurisdiction.

Member Morgan feels the same way, but he doesn't know what new information would come out reiterating he doesn't want to second guess the advice of the attorneys.

Mr. Gumapac said they are not asking you to make a decision based on Kingdom of Hawaii. All they are saying is this is an administrative process in order to do a contested case and the hearings officer who would be able to make that determination when they bring the evidence here. Because the Attorney General decided for whatever reason that he as a Hawaiian person doesn't have standing. He is saying he has standing. Kumu Lee has standing and let the administrative hearings officer made that determination. Chair Thielen spoke saying there is a legal question whether there is standing and whether this advice is right and she thinks the appropriate authority to take on that question about whether our legal advice is right or wrong is Circuit Court. Her recommendation is they follow the advice they received from their counsel. If the parties disagree with that the appropriate authority to take a look at it is not an administrative hearings officer which will just come back to the Board again – it would be Circuit Court. If the Board has made a decision to say "no" then the parties can file an appeal to a court and the court would be the one to decide whether the decision is right or not and they would abide by that for future decisions. We need a higher judicial authority to decide whether this

advice is right or not and to trigger that process is to make a decision today. Member Gon concurred and said in Hawaiian and then in English that he was the Board member that took the minority opinion that an unproven farm was not a good idea at the time and the way to pursue this is as the Chair suggests.

Member Morgan moved to approve. Member Edlao seconded it.

Chair Thielen summarized that the approval is to deny the contested case hearing and that triggers an ability to file an appeal to the court.

Mr. Agard requested that staff send him the notices and Member Agor said they have that request. Mr. Gumapac asked whether there is procedural law. The Chair said that is something they can raise also. Mr. Lemmo apologized that it was his office's fault and that Mr. Agard will get a notice from them.

Unanimously approved as submitted (Morgan, Edlao)
All voted in favor except Member Gon who opposed.

Item D-20 Issuance of a Temporary Right-of-Entry Permit to City and County of Honolulu, Department of Transportation Services, Over State Lands Encumbered by Revocable Permit No. S-7359, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-017:097 por.

Mr. Atta communicated that this item is to allow the County to conduct a survey and study in preparation for establishing the rail in that area. This parcel is under the Department's revenue production efforts next to UH West Oahu and there is a proposed rail alignment running through the property and in order to finalize the County's plans they want to assess the stability of the soil. Any other disposition will come to the Board at the appropriate time. This is for preliminary investigation purposes.

Jerry Iwata introduced himself and Darren Lai both representing the City and County Transportation Services testified that this is a request reiterating the purposes as presented by Mr. Atta. Mr. Iwata concurs with the recommendation.

Unanimously approved as submitted (Gon, Morgan)

3:45 PM Member Pacheco returns.

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Charles Littnan, NOAA Fisheries, Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Hawaiian Monk Seal Foraging Habitat Assessment Activities.

Bob Nishimoto representing DAR described the reasons for this permit, how this will be done and this supports the Monument Management Plan. This is an exempt class. The

potential affects as provided by Chapter 343 had been determined to be of probable, minimal or no significant affect on the environment and exempt from preparation of an environmental assessment.

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Education Permit to Alison Rieser, University of Hawaii, for Access to State Waters to Conduct a Marine Conservation Field Studies Course

Chair Thielen asked Mr. Nishimoto whether the exemptions on Item F-1 are the same and they are.

John Henderson representing Charles Littnan said he was here to answer any questions. One thing pending from the application was defining exactly where the camera would be and they are looking at the data on tagged seals on the best places to look and that data will be available in mid to late June.

Alison Rieser from the University of Hawaii was here to answer any questions and said she has read the staff's recommendation and agrees that she will make sure there is full compliance.

Marti Townsend said she stands on her testimony.

Unanimously approved as submitted (Edlao, Agor)

Item J-1 Recommendation for Final Approval for Adoption of Rule Amendment to Chapter 13-231, Section 13-231-26 Hawaii Administrative Rules, As Relating to Allowing One Personal Partner to Reside on the Principle Owners Vessel.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reported that the ACLU contacted staff and felt that if they allow a live aboard they should also allow a personal partner which staff agreed and went through the rule making process. This is a rule amendment to 13-231-26 referring to Recommendation #1 regarding compilation.

Unanimously approved as submitted (Pacheco, Gon)

Item K-2 Conservation District Use Application MO-3537 for the State of Hawaii, Department of Transportation (DOT) Proposed Kawela Bridge Project, Located at Kawela, Molokai, TMK: (2) 5-4-001:027

Mr. Lemmo noted that Mich Hirano is here with concerns regarding the recommendation.

Mich Hirano representing Munekiyo & Hiraga, Inc. testified that he wanted to make a correction and clarify the scope of the work referring to page 7 of the submittal, 1st

paragraph, last sentence that the access ramp is a permanent improvement in the conservation district because it's required to provide machinery access down into the stream bed to clear out debris after storm events. Chair Thielen said staff should delete that access ramp from that sentence where Mr. Hirano agreed and said put the rip-rap rubble apron, access ramp, concrete lining and CRM retaining walls will remain.

Chair Thielen asked Mr. Lemmo whether that changes anything in the staff's recommendation and it doesn't, but it should be noted on the record.

The Board:

Made a motion to amend page 7, 1st paragraph, last sentence by deleting [access ramp] and adding it and concrete lining after apron to read ...the rip-rap apron, access ramp, concrete lining and CRM retaining wall will remain. Otherwise, staff's recommendation is approved as submitted.

Unanimously approved as amended (Gon, Edlao)

Item B-1 Request Board Approval to Enter into a Letter of Agreement between the Department of Land and Natural Resources and the Department of Justice, Drug Enforcement Administration (DEA)

Item B-2 Request Board Approval to Enter Into a Joint Enforcement Agreement between the Department of Land and Natural Resources and the National Marine Fisheries Service, Office of Law Enforcement (NMFS/OLE)

Item B-3 Permission to Extend Contract No. 57948 One Additional Year for DOCARE's Enforcement Management System (EMIS), Statewide Funded by DOCARE Operating Funds

After the Chair's questioning Kevin Kong representing Division of Conservation Enforcement (DOCARE) said there were no changes.

Member Goode asked whether Item B-1 is on State lands because it wasn't clear. Mr. Kong said it's for eradication of plants being cultivated on State land.

Chair Thielen asked that he received some of that funding for training of officers which help to serve their law enforcement and other purposes as well. Mr. Kong said according to the DEA grant as long as it's connected through marijuana eradication they cross train officers with repelling and they've also assisted them in search and rescue and checking trails. It benefits the officers and multiple uses for everything else. He cited through the grant it allows use of funds to send their fire arms instructors to national conferences, extra certification and get updated on current Supreme Court rulings' as for use of force. Member Gon commented that it always pleases him to see support for DOCARE.

Unanimously approved as submitted (Gon, Pacheco)

Item C-2 Authorization for the Chair to Sign a Memorandum of Agreement between the US Army Garrison of Hawaii and the Department of Land and Natural Resources

Mr. Conry reported this agreement is to assist with implementation of conservation and restoration projects on State lands. Staff is seeking funding through DOD to help them with infrastructure and maintenance. They are asking for impact aid where the US Army is utilizing State roads, gates, fighting fires, etc. and staff has been slowly getting an agreement from the US Army to provide funding and this cooperative agreement establishes that and authorizes the Department's cooperation to implement Army interest projects on State lands. He noted one change on the 2nd page, at the bottom, 2nd sentence it should be amended with approximately 5 percent.

**Unanimously approved as amended (Pacheco, Goode)
Add the word "approximately" before 5%.**

Item C-3 Request for Approval of Expenditure of Funds and Authorization to Negotiate and Sign Contracts to Implement the Project, "Reforestation of Leeward East Maui" (RFP SPF10-1) to the Tri-Isle Resource Conservation and Development Council, Inc.

Item C-4 Request for Approval to Enter into a 2-Year Contract with the Zoological Society of San Diego to Provide Services to Operate the Endangered Bird Captive Propagation Facility on Maui, the Maui Bird Conservation Center, and to Provide Expert Avicultural Services to Conduct Related Forest Bird Propagation Projects at the Keauhou Bird Conservation Center on the Island of Hawaii and Throughout the State.

Item C-5 Request for Approval of a Memorandum of Agreement between the Division of Forestry and Wildlife, through its Board of Land and Natural Resources and the University of Hawaii, Institute for Astronomy for Emergency Access to Skyline Trail and Polipoli Access Road, Kahikinui and Kula Forest Reserves, Maui

Item C-6 Request for Approval of Federal Funds Sub-Grant to Maui Coastal Land Trust for Purchase of Nu'u Makai Wetland Reserve

Mr. Conry said there were no changes to Items C-3, C-4, C-5 and C-6 where he related some background on Item C-4 which is based on their biennial budget and compliance of the procurement procedures because this is a sole source arrangement. On Item C-6, Federal funds are going through for the acquisition of the Nu'u Makai Wetland. There was some discussion about Item C-5.

Unanimously approved as submitted (Gon, Morgan)

- Item D-1** Grant of Perpetual Non-Exclusive Easement to Kauai Island Utility Cooperative (KIUC) for Access and Utility Purposes Over Governor's Executive Order No. 97 to the County of Kauai, for Wailua Park Purposes and Authorize the Issuance of a Right-of-Entry for Planning, Construction and Management Purposes, Wailua, Lihue, Kauai, Tax Map Key: (4) 3-9-02: Portion 04
- Item D-3** Grant of Perpetual, Non-Exclusive Easement to Maxwell Klutke for Access and Utility Purposes, Kapaa Homesteads, 1st and 2nd Series, Kawaihau, Kauai, Tax Map Key: (4) 4-6-33:portion 7
- Item D-4** Amend Prior Board Action of January 8, 2010, Item D-6, Grant of Perpetual, Non-Exclusive Easement to Motor Supply, Limited, for Access and Utility Purposes over a Portion of Maile Street at the Wailoa River State Recreation Area, Waiakea, South Hilo, Hawaii Tax Map Key: 3rd/2-2-29:01 (por.)
- Item D-7** Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department and Kamehameha Schools for the Remediation of Hawi No. 3 Reservoir (HI ID #00050), Hawi, Hawaii County, located at TMK Nos. (3) 5-5-003:001, 004 & 005
- Item D-8** Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc., Mauna Kea Beach Hotel, South Kohala, Hawaii Tax Map Key: (3) 6-2-2: portion seaward of 4
- Item D-10** Cancellation of Revocable Permit Number S-6930 to Harry K. and Pearl O. Pahukoa for Agriculture Purposes, and Issuance of a New Revocable Permit to Pearl Pahukoa for Agriculture Purposes at Wailua Homesteads, Wailua, Koolau, Hana, Maui, Tax Map Key:(2) 1-1-004:006
- Item D-11** Issuance of Revocable Permit to Jeanine Thomason (Event Manager) for The Maui Film Festival at Wailea 2010 Event, at Wailea Beach, Maui, Hawaii: Tax Map Key:(2) 2-1-008: seaward of 109
- Item D-12** Cancellation of Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28038 to Christian C. and Julia C. Low and Grant of a Term, Non-Exclusive Easement to Anthony and Christine Riecke-Gonzales for Waterline Purposes, Hamakuapoko, Makawao, Maui, Tax Map Key: (2) 2-4-013: Por. 078

- Item D-13** Cancellation of Governor's Executive Order Nos. 2054 and 2400 and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, Together with the Offshore Mooring Area known as the Lahaina Roadstead Mooring Area, for Lahaina Small Boat Harbor Purposes, Waianae, Puako and Pakala, Lahaina, Maui, TMK: (2) 4-6-01: 2, 14 and 17
- Item D-14** Issuance of Revocable Permit to Oahu Hawaiian Canoe Racing Association for Canoe Race Event at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-37:por. 21
- Item D-15** Rescind Prior Board Action of December 9, 2005, Item D-10, Consent to Assign General Lease No. S-4908, Dannielle Ululani (von Hiram) Beirne and Francis Daniel Beirne, Assignors, to Francis Daniel Beirne, Donald F. Beirne and Clayton Beirne, Assignees, Maunalaha Homesites, Maunalana, Honolulu, Oahu, Tax Map Key (1) 2-5-024:003
- Item D-16** Consent to Assign and Amendment of Area and Term of Grant of Non-Exclusive Easement No. S-5602, SPRINTCOM, INC. Assignor, to STC TWO LLC, Assignee, Kailua, Koolaupoko, Oahu, TMK: (1) 4-2-98:portion of 047
- Item D-18** Amend General Lease No. S-5806 for Private Noncommercial Pier Purposes; Sevath S. Tanaka Trust, Lessee; Kaneohe, Koolaupoko, Oahu; TMK (1) 4-5-1:seaward of 39
- Item D-19** Consent to Assign Grant of Non-Exclusive Easement, Bishop of North American Region of Sukyo Mahikari, Assignor, to Iglesia Ni Cristo (Church of Christ), Assignee, Wahiawa, Oahu, Tax Map Key: (1) 7-4-022:portion of 050.
- Item D-21** Issuance of Revocable Permit to Envisions Entertainment & Productions, Inc., for Aerial Fireworks Display at Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-057:seaward of 29.

Mr. Atta had no amendments. Most are routine.

Unanimously approved as submitted (Pacheco, Edlao)

- Item E-2** Five Year Extension of Lease to Friends of Iolani Palace, 2010 to 2015, for portions of the Iolani Palace State Monument, Oahu

Mr. Quinn conveyed this is a lease for the buildings only and staff did add a provision in the event there are additional conditions or changes they want to the Board to delegate that authority to the Chair.

Unanimously approved as submitted (Morgan, Edlao)

Item L-1 Approval to Execute Supplemental Contract No. 1 to Contract No. 57977 for Job No. B41CM72C, Kahului Small Boat Harbor Improvements, Phase II, Kahului, Maui, Hawaii

Item L-2 Appointment of West Kauai Soil and Water Conservation District Director

Item L-3 Certification of Elections and Appointment of Hamakua Soil and Water Conservation District Directors

Unanimously approved as submitted (Morgan, Edlao)

Item M-1 Issuance of Direct Lease - Goldwings Supply Service, Inc. Honolulu International Airport

Item M-2 Issuance of Direct Lease - Pleasant Aircraft Leasing, LLC. Honolulu International Airport

Item M-5 Request for Proposals Pertaining to the Contract for a Fuel Facilities Lease at Kalaeloa Airfield

Item M-7 Issuance of Non-Exclusive Rent-A-Car Concessions Honolulu International Airport

Unanimously approved as submitted (Gon, Pacheco)

Item C-7 Progress Briefing to the Board of Land and Natural Resources Regarding Hawaii's "Statewide Assessment of Forest Conditions and Resources Strategy"

Mr. Conry introduced Ron Cannarella, Program Manager for DOFAW's Planning and Information Services Program Section and explained that this is an update of where staff is in fulfilling a Federal requirement for participation in the State and Private Forestry Program. Congress has taken these programs where they are requiring comprehensive plans be developed and staff is following through. It gives the State the ability to define and shape the issues that they are prioritizing or identifying how those Federal support programs fit with the State's and what qualifies us for grants and funding through these Federal programs.

Ron Cannarella briefed the Board that the State has been fortunate to do a comprehensive landscape wide assessment of the condition of our natural resources because most states have not done this. The first time was at the turn of the century when there was a water crisis where in 30 years 1/3 of the land was locked up in Forest Reserve, animals were removed, trees were planted and the springs came back. We could easily become Haiti,

but through this comprehensive statewide assessment of our natural resources created our tropical forest. The process happened again at Statehood and what was then the Forest Reserve System became the Conservation District and they've continued that tradition of Natural Resource management. He described how the environmental movement had fractured and that Hawaii has the experience to work together with other communities and agencies. Testing the GIS data and coalition building where it has been a challenging process due to the lack of funds for travel. How The Nature Conservancy and the UH English Department benefited. A student from School of Natural Resources wanted to learn GIS and now has her dream job with the Army Corp. The Urban and Forestry community see themselves as being part of the integrated landscape. Positive responses and this is his life's work. There is a 30 day public review and they will continue with their stakeholders – The Farm Bill research strategies and forest details.

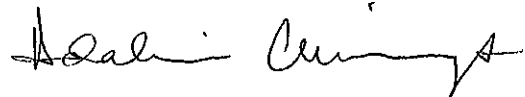
The Board had a question about the Federal mandate which Mr. Cannarella detailed regarding the funding and they will make the deadline of June 18, 2010. Mr. Conry said there were a couple small grants through Fish and Wildlife to do the process.

Mr. Cannarella briefed about invasives which are a challenge, related the water analysis on how much forest is needed to recharge areas, looking to identify and focus on the forest and the coral reef is an inspiration.

Adjourned (Pacheco, Gon)


There being no further business, Chairperson Thielen adjourned the meeting at 4:25 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



Laura Thielen
Chairperson
Department of Land and Natural Resources