

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

DATE: FRIDAY, FEBRUARY 11, 2011  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

**MEMBERS**

William Aila, Jr.  
David Goode  
Jerry Edlao

Ron Agor  
John Morgan  
Dr. Sam Gon

**STAFF**

Sam Lemmo/OCCL  
Barry Cheung/LAND  
Molly Schmidt/DOFAW

Russell Tsuji/LAND  
Paul Conry/DOFAW  
Dan Quinn/PARKS

**OTHERS**

Julie China, Deputy Attorney General  
Michael Lee, K-3  
Glenn Oamilda, K-3  
Margaret Willie, K-3, D-5, D-6, D-7  
Keoki Wood, D-6, D-7  
Alan Gotteib, D-6, D-7  
Guy Inouye, K-2  
Mike Maberry, K-1  
Julie Myre, D-8

David Frankel, A-1, K-3, K-1  
Kai Markell, K-3  
Yvonne Izu, K-3  
Brandi Beaudet, D-6, D-7  
Greg Mouers, D-6, D-7  
Julius AhSam, D-14  
John Nishimura, K-2  
counsel for IFA, K-1  
Laura Kahakua, C-2

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

A number of written testimonies was received and distributed.

**Item A-1      December 1, 2010 Minutes**

Member Gon amended [Keoki] Raymond to be Kiope Raymond from Maui throughout the minutes.

David Frankel representing Native Hawaiian Legal Corporation testified that they haven't had a chance to review the minutes as the Board has, but he wanted to make sure that the December 1<sup>st</sup> minutes reflect the fact that Kilakila 'O Haleakala was not allowed to present its case that Kiope Raymond's testimony was cut short and the minutes should reflect that. In addition, prior to the Board's vote he specifically said to Laura Thielen "you folks are not going allow us to present our case" and she said "no" and the Board went ahead and took the vote.

**Approved as amended (Agor, Gon)**

**Item A-2      December 9, 2010 Minutes**

Member Gon recused himself and the Board reviewed it.

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

**Item K-3      Request that the Board Grant a Petition for a Contested Case Hearing by Mr. Michael Kumukauoha Lee, and to Deny a Petition for a Contested Case Hearing from Mr. Glenn J. Oamilda, and to Limit the Contested Case to Issues Raised by the Change in the Size of the Marina, with Respect to an Amendment to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel Located at Honouliuli, Ewa, Oahu, Plat (1) 9-1-012; and for Authorization to Select and Appoint a Hearing Officer.**

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) briefed the Board noting that this case has a long history. The permit was originally approved in 2001 which was subject to a contested case hearing and was approved by the Land Board. In 2007, Haseko came back to the Board asking amend the CDUP to reduce the size of the marina and subsequently Haseko came back again asking for another amendment to the CDUP to reduce the size of the marina. This went through an approval process, a withdrawal process, a request for contested case hearing, but at the end Haseko asked for an action to reduce the size of the marina and staff received two petitions on that request. As you can see on the staff report there is a thorough discussion on the issue of standing and at the end of the analysis staff recommends Mr. Oamilda's petition not be accepted according to staff and in discussions with the AG's office he does not qualify to have standing to have a contested case hearing. However, staff requests granting standing to Mr. Lee as a party to a contested case. In summary staff recommends denying Mr. Oamilda's request for a contested case and to grant Mr. Lee's petition for a contested case. Limit the contested case to issues raised by the change in the size of the marina and authorize appointment of a hearing officer to conduct the hearings and report back to the

Board for a final decision and delegate authority for selection of a hearing officer to the Chairperson.

Michael Kumukaoha Lee, a Native Hawaiian practitioner on lapa'au 'o limu, the Kumulipo and a papakilohoku testified that it is his family's duty to protect our iwi kupuna (ancestor bones) distributing some handouts to the Board members. He is also the kahu or keeper of the ali'iaimoku of Ewa in Honouliuli citing his relationship to an aunt who was the former keeper and he wanted to release all genealogical records at SHPD (State Historic Preservation Division) that he had signed be opened to this committee and the general public – birth certificates, land records, death certificates, marriage certificates, personal genealogies and the hearing records of the April 14, 2010 the Hawaii OIBC (Oahu Island Burial Council) closed Executive Session minutes to be approved by him to be printed in whatever form this body chooses to hear all records open to this body for clear and transparency in this case as well as to Haseko. Except for the GPS exact location of the seven burial sites that were mandated to be protected he requested that those documents remain sealed. Staff has requested to limit the scope to the shrinkage of the marina. According to Hawaii State Law referring to his documents on page 22 to 28 gives the legal standing of why and where he gets his power under the State Constitution to make this claim. His standing is based on Kalo'i Gulch which is an arm of the general plan of the Ewa Marina as well as the Ewa entrance channel where both are linked together and cannot be separated. Mr. Lee described an underground cave or carst system which is a protective shield to his ali'iaimoku and many high ranking ali'i are buried there whom he named and related some history regarding them including the mother of Kamehameha whom he descends from. He released documents to support his claims where he had submitted an exhibit of 440 certified documents by the Archives. In the August OIBC, Coochie Cayan said in recordings that SHPD is ready to acknowledge Mr. Lee as the lineal descendent of Kamehameha's mother. Mr. Lee pointed out on the map the carst system of where the ali'i are buried that OHA is aware of this and are working with archaeologist to locate the bones and he has been given protection under OIBC who submitted to SHPD almost a year ago to protect those seven burial sites. Mr. Lee described after Haseko broke into the carst system, covered it up and made it a preservation area and as a limu practitioner he has noticed a disappearance of limu in that area because of they did this. Chairperson Aila asked the carst he referred to is the one in the preservation site and Mr. Lee confirmed that.

Kai Markell representing Office of Hawaiian Affairs (OHA) testified that we are on our 21<sup>st</sup> year of this case giving some history of when this case first came up a contested case was held which was found in favor of the Board and OHA with others appealed to the Circuit Court. Judge Wendell Hutty found in favor of DLNR where that was appealed to the Supreme Court who came out with a Memorandum of Opinion that said of all the claims the Land Board failed to properly identify the traditional, cultural, Native Hawaiian practices of the area prior to granted the CDUP. The language in that Memorandum of Opinion became the language of the landmark case Kapa'akai in 2000. It is the same three tired test that before you grant a permit on approval that you need to assess what Native Hawaiian traditional practices and resources are in the area. How would your approval impact these resources adversely and how do you mitigate it. After

the Supreme Court's decision the Land Board brought some kupuna from the area who said they didn't know of any burials and spiritual sites or of any fishing villages in the area and the permit was granted. A few months later a man finds some iwi of a high ranking ali'i and she was found where the marina would come through the beach. She was held in a box until OHA took her over relating some hoailona (revelations). This isn't about anti-development or stopping a marina it's the constitutional duty this Board has every time it moves a project or give approvals to look at the profound remnants of the Hawaiian culture and let the truth come out. This doesn't have to be harmful to Haseko. There is a negative attitude every time someone finds iwi, but we should celebrate the history we have here and show aloha to our kupuna ali'i and don't hide it pretending it doesn't exist because they have already been erased in the genealogies. Instead lets malama (care) for Oneula a very sacred place that he doesn't want machines ripping up more ali'i from that beach. Chair Aila asked whether OHA was putting financial resources into determining the presence of the iwi. Mr. Markell said he is working on a request and he spoke to Pua Aiu to come up with survey plan.

Chair Aila asked whether Mr. Lee is providing all this information to for the general public and Mr. Lee confirmed that he is opening it up to the Board and Haseko to examine the files for transparency and backed up by documents to make a fair and clear decision based on knowledge. The staff recommendation in limiting the scope of this would take him to appeal with the First Circuit Court and he knows this body wants to do it due diligence and it would be unfair to go over your heads and he is trying to provide the most transparency that he can. OHA has the exact sites.

Member Morgan asked whether the Supreme Court did they overrule the Circuit Court. Mr. Markell said it was limited to re-manning it back to the BLNR to hold hearings again on that sole issue which they did in 2000.

Member Gon appreciated Mr. Markell's and Mr. Lee's attitudes with regard to these kinds of things and stated well how most people feel about the hoailona that appeared. If we are going to move forward we need to assess that and figure out how to work those kinds of situations. He appreciates the history of this place and looking at the recommendation it occurred to him that even if this recommendation were to be granted by this Board a reduction in the size of the marina presumes the existence of the marina and he would have to have the AG's office on the legal. Mr. Markell thanked him for his comments and OHA did talk to the Army Corp of Engineers and a permit was granted on this project, but there was a condition on the permit that if any new information comes out that the concern was historical or cultural information that they can revisit the permit and they could go that route because what was found in 2001 was profound information to that permit and they will look at that option as well. Mr. Lee related some information on Kamehameha III and his wives that Kamehameha School recognizes.

Glenn Oamilda of Ewa Beach testified that his request for a contested case hearing was denied and related some background information associated with Ewa Beach. His main objection was the shrinking of the marina and related what was originally planned and what is planned now that the flood waters will come into the Ewa Beach community

ending up in the ocean. Mr. Oamilda wants to improve limu growth and preserve the near shore eco-system. Haseko didn't consider these impacts when they downsized this marina. He appealed the recommendation.

Yvonne Izu representing Haseko testified in answer of Member Morgan's question regarding the Supreme Court and confirmed that Mr. Markell was correct that the Circuit Court did affirm the Land Board's decision. Between the time of the Land Board's decision and the Supreme Court ruled on it, the Supreme Court ruled on the PASH case which was a significant case where the court dealt with Native Hawaiian rights. What the Supreme Court said Land Board you didn't have a chance to consider the evidence with respect to PASH which they did and again issued the permit in 2000 and no one appealed that decision.

Ms. Izu said that Board member Gon has a concern with the scope of the case. The Land Board's jurisdiction you have to be with any one proceeding, not saying you cannot revisit if there is significant new information with respect to cultural findings, but what is before you is Haseko's request to reduce the size of the marina from 70 to 54 acres which is completely within the urban district. What is excavated today in the inlet waters is already 54 acres and what they want to do is stop excavating the inland basin. We are not asking to make any changes to the entrance channel which is in the conservation district and because of that they believe the staff's recommendation is correct that the issue has to be limited to what Haseko has requested. What Mr. Markell pointed out there are other avenues in which you can revisit other issues and if those other avenues are pursued then those issues can be discussed, but what is before you is this one particular request and they don't think the contested case can be expanded to include things outside of that request. Responding to Mr. Oamilda's statement the change in the drainage is a City issue and how the drainage comes down to the region is a City issue and size of the marina irrelevant. When Haseko first obtained the permit they had a 120 acre marina plan straddling the Honouliuli sewer outfall and the City decided they didn't want them to lower the outfall which is why they cut off the side of the marina east of the outfall and that did affect the drainage as Mr. Oamilda mentioned which changed the configuration of the golf course. As far as whether the drainage goes through the Kalo'i Gulch into the ocean or through the beach park into the ocean or into the marina and whether they keep the marina as 70 acres or 54 acres that has no impact on it. The Land Board does not determine where the drainage is going to go. The City determines that.

Member Agor asked overall in the construction process what is left. Ms. Izu said the last is the entrance channel. Member Morgan asked how wide is that right now from mauka to makai. Ms. Izu said when she talks about the entrance channel it's everything leeward of the shoreline which is not constructed today and she believes its 400 feet wide. Member Gon asked whether all construction is in submerged lands where Ms. Izu said most of it pointing out a map from their request. The 70 acres is the green part and the 54 acres is in blue minus the shoreline above the high water mark.

Member Goode asked that Ms. Izu mentioned another avenue that they had testimony earlier regarding the Army Corp permit is that what she was referring to. Ms. Izu

acknowledged that was what Mr. Markell had mentioned and there is a standard condition in all CDUPs that if the information was misrepresented, fraudulent or there is significant new information then the Board has the opportunity to revisit the permit. Member Gon asked what the Army Corp of Engineer's reaction was to the 2001 burial finding and Ms. Izu said she didn't know noting that was found on State land not on conservation land.

Mr. Oamilda testified that in his recommendation was to concur that there are two entrances – one is the marina entrance the other is the drainage entrance. There is a State and County property that they want to bust through to the ocean and they don't have a permit right now, but are requesting to bust through so that the free flow of water from Kalo'i Gulch will go to the ocean and flood the park during the 100 year flood. If this is the plan of the Army Corp of Engineers he and the community want to know. The Chair said that is a question for the court.

Member Agor asked with regard to burials would it affect the opening from the marina to the ocean. Mr. Lemmo said obviously there are in fact burials in the area where they are going to break the shoreline and there is an affect to those entities. I have thought that those issues were partly taken up on the re-man where the Board was asked to consider the PASH framework - is there any significant cultural resources, what is the impact, what measures are you taking to protect them. Subsequent conditions of the CDUP approval that this Board issued regarding inadvertent burials. From a regulatory planning perspective it seems to him the permit has the adequate conditions and safeguards in it to protect those entities from damage. Chair Aila said but, should they exist there you are talking about removing all of them, coral, to open the channel and that would certainly have an impact on the burials should they exist there. Mr. Lemmo said yes, sir. Chair Aila asked given the fact that we have new information and have not had the opportunity to review that what would be staff's time frame be to review that new information. Mr. Lemmo said they are always open to reviewing new information as it comes in. Certainly, if a project hasn't been effectuated and we get new information we shouldn't just proceed blindly and should take a look at what's being presented to us. We would have to look at this information with the help of SHPD and use their network of people to look at this new information and advise us on how to proceed. I don't think this prevents us from moving forward in this proceeding to grant Mr. Lee's request to question the reduction in size of the marina which is not in the conservation district as described by Ms. Izu.

Member Edlao said with all these discussions he understands Mr. Lee's concerns with burials and all of this that the hearings officer will be looking at all these documents that is provided and if there is no evidence of burials we will discuss that and come up with conditions and recommendations to the Board. At this point in moving forward we should proceed. Mr. Lemmo said he is not an attorney, but we should treat them as two separate issues that this is not the driving factor in the contested case hearing. For clarification Member Gon asked if he meant one issue is the reduction of the size of the marina and the other is the possibility disturbance of burials at the opening of the marina and Mr. Lemmo replied that is what he said.

It was asked by the Chair what is the mechanism in order to ask that question. Mr. Lemmo said he is not an attorney, but we would need a request by Mr. Lee to look into this issue and I believe he has made that request now in his submission of documents. We can take that and begin the process of dissecting the information he has given us and working with SHPD and others. I think that should happen distinctly separate from the contested case on the reduction of size of the marina because as Ms. Izu described the breaking of the entrance channel and the entrance channel was resolved. It went through the process it went through the courts. The Board addressed the PASH issues and this should not be about reopening that matter, but can be treated as new information that could affect the process forward in terms of how this project is implemented. Deal with the contested case separately.

Member Gon asked whether the presiding AG offer any words on this because he would prefer having a discussion outside of executive session for the public. If Mr. Lemmo's characterization was agreeable then there is no need to go into executive session. Deputy Attorney General Julie China said I think it is agreeable and if there is significant different information then Mr. Lemmo could bring it back to the Board for consideration and that is the proper way to do it.

David Frankel representing Native Hawaiian Legal Corporation testified that he represented Mr. Lee in Kaloι Gulch and Papipi Drainage cases. If we separate these two as Mr. Lemmo suggested Mr. Frankel would ask the Board to go into executive session because you need to ask you Attorney General if it's separated whether the issue of the burials can ever come back to this Board with respect to the permit. I think you need to look very carefully with legal authority if you do not include this all as a package as Mr. Lee has asked you to whether there is any legal avenue in which you can.

Margaret Wille testified she was here as a concerned citizen and looking at the standing issue and encouraged you to consider rejecting Mr. Lemmo's proposal on this community member who is interested in this in terms of recreational and environmental issues. She suggested looking at this in a more holistic way referring to the Superferry case which recognized standing for recreational, aesthetic and environmental interests. The Hawaii Supreme Court's view of standing takes more into account those interests, the public trust doctrine and this issue affects more of us than this one case rather than compartmentalizing those who have an interest.

Member Gon made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it.

10:07 AM EXECUTIVE SESSION

10:20 AM RECONVENED

Chair Aila asked whether anyone else wished to testify.

Mr. Oamilda said to make it clear that if he is being rejected he asked to appeal. Chair Aila said that is your right to do so. The Board will take a motion, but before doing so he wanted you to know that the information presented today will be available to the hearings officer. The scope of the motion is limited to the reduction and the hearings officer has the ability to consider all new information which will be presented to the hearings officer.

A motion was made by Member Morgan to accept staff's recommendation and was seconded by Member Edlao.

Chair Aila summarized that the motion is to vote on staff's recommendation and he wanted to make it clear that under the contested case hearings scenario the hearings officer is able to take into consideration all information. Staff will make this information available to the hearings officer for consideration who will report back to staff and will be included in the discussion. Member Gon said the situation of the staff's recommendation notwithstanding.

Chair Aila took the vote and all voted in favor.

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

**Item D-5      Consent to Extension of Lease Term, General Lease No. S-4474, Parker Ranch, Inc., Lessee, for Parcels 14-A and 14-B, Government Land of Puu Kawaiwai, Panoluukia and Kapia, South Kohala, Hawaii, Tax Map Keys: 3<sup>rd</sup>/6-2-01:03, 05.**

Russell Tsuji representing Land Division noted that Item D-5 agenda title TMK was not complete and for Sunshine purposes staff requests withdrawing that item. Staff has already submitted a submittal for the February 25<sup>th</sup> Board meeting.

**Deferred (Agor, Gon)**

**Item D-6      Consent to Extension of Lease Term, General Lease No. S-4464, Parker Ranch, Inc., Lessee, Parcel 15-B, Haleaha, Waimea, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/6-5-01:06.**

**Item D-7      Consent to Extension of Lease Term, General Lease No. S-4465, Parker Ranch, Inc., Lessee, Parcel 15-C, Government Land of Keanuimano and Puuiki, Waimea, South Kohala, Hawaii, Tax Map Keys: 3<sup>rd</sup>/6-5-01:20.**

Mr. Tsuji suggested taking Items D-6 and D-7 together since both are for Parker Ranch and staff recommends granting Parker Ranch's request for an extension. In Item D-6 that parcel there was a request from Hawaii Preparatory Academy (HPA) to lease the lands. Under the lease the Lessee is entitled to request from the Board for an extension of the lease if it meets certain conditions and the Lessee has and is entitled to extend up to the 55 year limit which staff recommends despite there was a request for the school to lease

the property staff felt the Lessee had priority over that request. There was written testimony submitted by Margaret Wille referring to some access issues one citing statute basically before the disposition when the Board is considering disposing of lands that we should look at access issues. Staff looked at that and they don't believe that is applicable on a lease extension. This is not a brand new issuance of a lease. This is an extension of an existing lease. The Lessee is here represented by Tim Johns and others and Margaret Wille is here, too.

The Board members and Mr. Tsuji discussed the reasons for withdrawing Item D-5 because of a missing parcel at the end of the TMK. After consulting with the AGs and receiving testimony in opposition of the request and to avoid a Sunshine issue staff will withdraw it and put it back for the February 25<sup>th</sup> Board meeting. There will be another one at that meeting so there will be two (leases). Deputy AG Julie China said that our recent experience with OIP is they are real sticklers.

Brandi Beaudet, Land Manager for Parker Ranch introduced Keoki Wood, Tim Johns and Jimmy Greenwell. Mr. Beaudet thanked the Board for consideration. They reviewed staff's submittal and are agreeable to the terms and conditions as stated. Also, they are working with HPA and staff to find a solution to assist the school.

Keoki Wood echoed Mr. Beaudet's comments noting that these grazing lands are important to their operation and they have been good stewards in the cultural and environmental aspects of the land that they want an opportunity to continue that.

Margaret Wille, a resident of Waimea and South Kohala who is an attorney working in environmental, cultural and land issues with various degrees and interests. She testified on Items D-5, D-6 and D-7 since she doesn't plan to be here for the next meeting and she is not opposing Parker Ranch's use of this land. You have a choice for a single use or multi-use of this land that would address additional community issues and cultural issues. This started in 2004 when she was part of a sub-committee of a community group looking at protection of the pu'us (hills), public access and a sub-division. She asked the Board to deny this request and instead recommending a short term with a few years extension while we are able to work out a consensus agreement or a proposal for multi-use with the various groups that have shown an interest and allow us an opportunity to look at some of the practical issues that they have been working on in the past. When we came to DLNR a few years ago and asked about working on this staff said no, Parker Ranch has the lease right now and you would have to wait for this to end. It would have to be at the beginning of that lease. That put everything on hold. Ms. Wille related going to the leased areas with a former Parker Ranch trustee and is now in no trespassing signs to everyone. These are key pieces of State land. All have cultural resources where she related one where a great battle occurred, but all are closed and you would have to get a hunting permit to go there. She isn't trying to say no to Parker Ranch and noted that one of the lots has a proposal to carve out the Koaia Reserve relating how the Department of Interior giving money for this as well as other Departments for access. There are a lot of issues with parking, practical issues. You can say where we are going with this or say guys get together come back to us in a certain amount of time and come up with a

proposal together or come up with a separate one. No one is seeking to stop in the meanwhile Parker Ranch doing this. The South Kohala community development action plan, this was the number one item in their CDUP that was worked on and in the CDUP it includes public access. In getting into the legalize of Section 171-26 and say is this a disposition of land or is it not – they would win if she had the time and money to do it. Look at the bigger picture. Even when Mr. Woods came to the committee he said we will work with you and lets get a temporary extension and see if we can work this out. She encourages that vision of partnerships of coming together. You can set a time she doesn't think it should be indefinite. Ms. Wille thinks this is consistent with your Hawaii State assessment plan in terms of the importance of cultural tourism in terms of the environmental issues. I think one has to get a gripe on looking at mauka tourism. The reason you are dealing with all these cultural issues along the coast is because the sea levels are rising. She thinks you can \$4,000 for two of the parcels and about a \$1,000 for the other. Ms. Wille believes you can make much more money having a permit of limited access with people to go to the most astounding place on the Big Island describing it as a baby Diamond Head. For the inhabitants of recreation, one of the teachers from a Waimea school came and spoke about when she went to the site as a child and touched the dirt. Now she has to tell her kids it now says no trespassing. Maybe they can get a special permit and be allowed. The biggest discussions in the group when they discussed this years ago there should be real public access. Ms. Wille argued to go with something limited to earn the right to go there. Like the hunter safety course add a cultural segment or an environmental segment and it's all very doable in her mind. If you look at several of these parcels they tie together. It was suggested by a trustee that if they did that kind of project they could combine in. She wants the Board's help to bring them together and to tell them to talk together and to have more local input in this decision making just because they have had the lease for 30 years and could go another 20 and they are not in compliance if you look at the inspection report. You usually have to do the compliance items before you get approved. The appraisal, none of that is here. Ms. Wille knows she is a torn in the side of Parker Ranch, but asked to bring them together and give them a chance. They can go on using that, but set a time because things go on and on. She did submit written testimony, but it was abbreviated – educational issues, the public trust doctrine and the County Charter and why these things implement that. Ms. Wille related an experience she had with visitors and there was an idea to have a perimeter trail reiterating wanting to work with Parker Ranch and a way they could bring in more income. She did submit that if the Board denies it she would file an appeal. In terms of standing her property is adjacent to one of these parcels. It is in the best interest of the community to not have any trespassing signs for the next 20 years.

Greg Mouers, Vice-Chair of the Board of Trustees of the Hawaii Preparatory Academy testified that he did submit written testimony, but he will not insult the Board by reading from it. HPA did file a request to lease this property and prepared a draft environmental assessment and he is here to support Parker Ranch's lease extension. They have a trust, beneficiary relationship with Parker Ranch and want to be seen at odds. The question is how to best work together to accomplish both of their goals on this property. The Ranch has been good stewards to the property and based on their agreement to continue to work

with us on finding a manner to pursue educational purposes for this property they want to support that lease. Mr. Mowers did review Ms. Wille's filing with the Board and it's important to note that since they are mentioned in that filing that Ms. Wille doesn't represent us. We represent ourselves and in that regard should you grant a contested case proceedings in this matter we request to be a party so they can protect their interest because they do have all the land west of Haleha'a which is the ili spoken to under D-6, lease number 4464 which is the only item they are speaking on.

Alan Gottlieb testified he is a rancher representing the Hawaii State Cattleman's Council and had submitted written testimony. The Council supports items D-5, D-6 and D-7. The cattle industry statewide has a policy to preserve public grazing lands with a no net loss to state grazing lands. The Legislature continues to say ranching and farming is important to the State's food security that every one of these leases are important and they support them.

Member Gon disclosed that as a staff member of the Nature Conservancy he needs to clarify with Parker Ranch whether there is anyone on their Board that is on the Board of the Nature Conservancy currently. Mr. Beaudet said not currently.

Chair Aila read off who submitted written testimony in support and opposition.

Member Agor made a motion to approve Items D-6 and D-7 as submitted by staff. Member Morgan seconded it. All voted in favor.

Item D-5 was moved to defer by Member Agor and seconded by Member Gon. All voted in favor.

Mr. Tsuji asked the Board's counsel whether they need action on Ms. Wille's request for a contested case. Ms. China said she needs to follow the rules for a contested case hearing. The Board said to submit a written petition within 10 days.

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

**Item D-14 Forfeiture of General Lease No. S-4007, Deny Request Regarding Waiving or Reducing the Performance Bond and Deny Request Regarding Encumbering a Real Estate Security for the Performance Bond for God's Love Mission, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:023 and 024.**

Mr. Tsuji briefed the Board of the defaults under the lease, substantial amounts on the rent due and the performance bond. He learned this morning that the Lessee paid rent through what was previously due, but what became due also is still outstanding as of January 28<sup>th</sup>. There is a \$6,900 payment for rent currently due right now which is for the current quarter plus a performance bond of \$55,000 plus. There are also some USDA issues and the Lessee is here who could explain that. There are outstanding delinquencies and continue to bring this before the Board.

Julius AhSam representing God's Love Mission testified that it is taking a long time for the conservation plan from the USDA which he distributed to the Board. With regards to the bond he wanted the Department to accept security of real estate that under the lease agreement you can substitute real estate which he described is on the North Shore and is unencumbered and they offered that, but was refused. He related hard times and offered up this property in different ways requesting that it be accepted or waive the bond. The rent is very high compared to a neighbor's and they hired an appraiser and found that the rent was under \$5,000 and went up to \$25,000 plus which Mr. AhSam didn't think should happen. He distributed a copy of the appraisal (1990) and said that the appraiser recommended the rent should be \$5,574.00 at that time because only 15 or 16 acres of the property is usable although there is over 34 acres total. They were never given an opportunity to fulfill the appraisal the lease required where they were dealt with an increase and no negotiations after that. Mr. AhSam was away during the 2009 negotiations and asked for an extension and was denied. In 1990, the negotiations weren't done for a whole year. The increase of a \$1,000 related to the high appreciation throughout Hawaii and was unfair wanting justice. He pointed out the photos on how steep the property is reiterating it is unfair to be charged for all the acreage when only 15 or 16 acres is usable and the reason why they ask for a reduction in the bond. They had some problems because Mr. AhSam had been away for several years on the mainland reassuring that won't happen again. He described getting inspections and bonds for two houses on the property and the expense that all he wants to do is be allowed to build a house for his family. He distributed a copy of the inspections they had complaining that they never got notice for any of them and cited a Section 34 to give tenants 48 hours notice. Mr. AhSam described of people taking pictures of their property and the experience they had with Department of Health (DOH) which he objected and questioned all this happening. They are just farmers that it's hard to farm if they have to do expensive unnecessary things and related digging underground to find metals per the DOH which took 10 months to clean up which was expensive and unfair. For the lease in the past he did not know he had to appear before the Board, but spoke to staff that he should bring his complaints to the Board. He only learned yesterday that the meeting is today and spent all day and night putting together these papers complaining that they should be properly informed that it's very unfair. Don't want to cancel the lease just because of a bond and still wanted to offer his property. Mr. AhSam complained about the issues he had with DOH and having not been notified.

Chair Aila asked whether he disputes the balance currently due. Mr. AhSam described what was being paid in the past, to DOH and asked to give them more time to pay complaining how stressful and expensive asking for a reduction in the lease because it is really high. The Chair asked whether the DOH was the agency responsible for him spending \$50,000. Mr. AhSam said DLNR probed them. They never came out to any property and theirs was picked for whatever reason which is very unfair. There are ulterior motives behind to set them up so that they will walk away and lose their lease, but they want to keep it and asked for justice, fairness and to be left alone to enjoy the property.

It was asked by Member Morgan whether this is a residential or agricultural lease. Mr. Tsuji and Mr. AhSam said agricultural lease. Member Morgan asked that when Mr. AhSam referenced the 48 hour law is that according to an agricultural lease law or residential lease law. Mr. AhSam said because it is used as a residence as well and comes under residence. Member Morgan said but he imagines under your lease under the State of Hawaii they say you can be inspected. Mr. AhSam asked even if you agree to that don't you think it's reasonable to be given notice.

Member Morgan said all he is saying is Mr. AhSam is alleging that DLNR was breaking the law and there is probably a difference between a land lease and a residential so I think the allegations of impropriety are not that correct. Mr. AhSam agreed saying okay that he was making a point that maybe he is right reiterating having a residence there. Member Morgan said he is saying a lot of things that sound reasonable looking at one perspective, but looking at the submittal there are several problems throughout the term of your lease. Something goes wrong, it's cured. You don't pay the rent, it's cured. At the stand point of a landlord looking at a tenant you have continual problems with a tenant it's reasonable to look harder at the tenant. If you had been paying your rent the whole time and there are no problems then you can see what you call harassment, but I can see how a problem tenant keeps on giving problems a little more oversight maybe warranted. Mr. AhSam said as he mentioned he was away and he had managers there who weren't honest that he had to chase down and the Department was aware of that. Once he learned of it he cured it, but now he is back and trying to catch up without unnecessary demands.

Member Morgan said don't know about calling them unnecessary demands because the lease calls for you to maintain the property in good condition because if it is not it is the obligation of the State of Hawaii to make sure that is done right. I don't know if he can characterize bad stewardship as a tenant right. And, you said you were away and whoever you had managing the place didn't manage it properly, that again is your responsibility. Mr. AhSam agreed that it is their responsibility and he is back now. Member Morgan said it is not unreasonable for them to want good stewardship. Mr. AhSam complained about charging three times the rent and the cost of the houses that is in the past and they are working with the Department.

Member Goode asked about the performance bond in the form of a CD and whether that is gone. Mr. AhSam confirmed that describing having meet DOH demands and had to hire and needed cash for the lease either be fined or go to prison are the threats he received. Member Goode asked whether he notified the Land Division that he had withdrawn the CD. Did he ask their approval in advance to take it out? Yes or no? Mr. AhSam said no, he did not ask in advance. Member Goode said now you have asked for now is to use this other Department as security and asked in Mr. AhSam's original testimony the deed in blue is that property both free and clear? Mr. AhSam acknowledged it is.

Member Goode asked in the conservation plan in the submittal here staff says the conservation plan was not submitted to NRCS, Department of Ag. Was the conservation

plan submitted to NRCS? Mr. AhSam said they have received a copy. Member Goode asked when it was submitted. Mr. AhSam said this morning because he just got his recently. The approval is around November and sent him a copy end of last year, but he forgot. He made them aware and told them last year that he is working with the Department of USDA and there was a delay to have to start over again with a private company.

Member Morgan commented that it's the State's responsibility to lease there land to proper tenants and the proper tenant pays the rent as a good steward and he would think a landlord would get rid of a tenants who don't pay their rent or are not good stewards. Regardless of what the outcome of this Board meeting is it is incumbent upon you to convince the DLNR that you are a proper steward and you are going to pay your rent otherwise he wouldn't support Mr. AhSam continuing with this lease. Mr. AhSam reiterated that he just got back and that he won't be behind again asking to be fair that the property is better now since he got back. Member Morgan said that would be the perspective of the responsibility of DLNR is over its land, but in Mr. AhSam's testimony you are trying to make DLNR staff out to be the culprit and that doesn't sit well with me. I would it is incumbent upon Mr. AhSam to prove he is the right person for the land and not just being persecuted because the staff has a responsibility and we have a responsibility to make sure the tenants are the right tenants that doing right for the land. Mr. AhSam reiterated again that he wasn't here, past problems and asked for some notice that the continued actions should stop. Member Morgan said if I was the landlord that the first inspection showed something I didn't like and the second was worse I would come back and tell the tenant because I wouldn't let it happen personally because you don't want a bad situation. Closing my eyes to the situation is irresponsible and I disagree with Mr. AhSam. Mr. AhSam complained regarding the house situation, the economy and said there will be a huge improvement from now on reiterating the bond to DOH.

Member Agor asked whether he went to an insurance company for the bond. Did he offer the property? Mr. AhSam acknowledged he did, but it's very tough and they tried many times. He wants to foreclose or don't pay and they take the property.

It was questioned by Member Edlao why he didn't contest the rent back in April? Mr. AhSam explained that he wasn't here and his brother said it was the same rent and questioned why it went up so high since the last negotiations reiterating his previous testimony on the appraisal.

Mr. Tsuji said he has staff here if the Board wanted to hear the reasons why for the inspections. He confirmed that this is not a residential lease. Landlord/Tenant Law does not apply here that this is an agricultural lease in Waimanalo prime ag land, one of the few remaining on Oahu. As for the rent, it's roughly 34.5 acres and that staff has been getting appraisals for Waimanalo for roughly 10 acres at about \$10,000 to \$11,000 a year so it's not out of line. It was evident during the Lessee's testimony that he had an opportunity under the lease to contest and go through the arbitration process, but he never did. The rent doesn't appear out of line and the Lessee had an opportunity to contest that.

Member Edlao asked the rent is based on size and not the use. Mr. Tsuji replied that it would be if the Lessee felt he had not had adequate usable land he could have contested. We went through arbitration for one Waimanalo property where the son was a lawyer representing his father for about 10 acres with a similar situation. During the arbitration it was decided in DLNR's favor where the rent came about there. For Waimanalo, staff gauges a \$1,000 per acre per year which is reasonable since their leases allow dwelling for a residence and an employee dwelling. This particular tenant acquired this property through a foreclosure and there may be stuff on there, but you have to take care of the problem and the Lessee acknowledged there are two structures already and if he wants to build another one it will not be allowed. At one time the Lessee never complained about the dwelling, but now he is saying its time to take it down. We have a waste provision if it's becoming an eyesore or hazard or health problem that you can't waste the property or make it bad condition. On the environmental, he doesn't think environmental laws or DOH enforces or cares whether you put it there or not. If you are the owner or occupier and you are there and you find these environmental conditions you have to fix it. It may not be fair, but that are the environmental laws to take care of the environmental conditions on the property. If you knew when you bought it at foreclosure with junk cars you got to remove it because this is ag land. About 3 or 4 years ago the farmers in the area were complaining about one of our tenants claiming they were doing some other activity on the property. It took six months before the Board before something was done. Our land agents are sensitive that they want to ensure that our ag leases are actually doing ag.

There were some discussions about the performance bond where Mr. Tsuji said that staff's preference is cash and if people give them land there is some due diligence done for any hazards and there is the question of management and a cost factor. Staff did try to notify the tenant, but might not have been able to get a hold of him noting there is a history of defaults.

There were more discussions about the outstanding rent and Mr. Tsuji said that the property being offered that may be an issue if his insurance company doesn't want to take it on. He doesn't know why the Bank released the CD because it needs more than one signature. This is an auction lease and those provisions remain. Barry Cheung did say the tenant did pick up some farming. Mr. Tsuji suggested that the tenant talk to a bank to get a CD.

Board member Edlao suggested giving the tenant 90 days and if he doesn't cure the rent and everything it doesn't come back to the Board and it disappears. Staff suggested staying with the full amount.

Member Morgan made a motion by amending the recommendation to terminate the lease in 90 days to cure all defaults and if not staff may proceed to terminate the lease. Member Edlao seconded it.

**The Board:**

**Approved as amended to defer effective termination of the lease for ninety (90) days to allow to cure all of the defaults; if it not cured, staff may proceed with termination of the lease without having to come back to the Board.**

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

**Item K-2 Conservation District Use Application (CDUA) OA-3566 Dual Force Main System of the Ala Moana Wastewater Pump Station (Force Mains #3 and #4) by the City & County of Honolulu Located Under Fort Armstrong Channel on Submerged Lands of Honolulu Harbor, Oahu**

Mr. Lemmo briefed the Board that the City & County of Honolulu is under an Environmental Protection Agency decree and is proposing to put in a new sewage transmission line from the Ala Moana Wastewater Treatment Center out to Sand Island where they will have to go under Honolulu Harbor which is considered a conservation district area. No work will happen in the conservation district. All work will happen sub terrain. Staff is in favor of the project and would be subject to all standard conditions that they impose on all CDUAs.

It was questioned by Member Edlao whether this was similar to the Ala Wai project. Mr. Lemmo acknowledged that but this is bigger and a similar project is being worked on in Kaneohe. A couple of the Board members spoke in agreement to the project.

Guy Inouye, representing the Department of Design and Construction testified asking for the Board's favorable consideration. Member Gon asked whether he reviewed staff's recommendations and were okay with that and Mr. Inouye acknowledge that.

Member Agor inquired whether they have to increase the capacity of the existing treatment plant. Mr. Inouye said that is under consideration. Jon Nishimura, consultant with the City testified saying that the increased capacity is designed for 50 years hoping in the future they will not need to add to it.

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

**Item K-1 Request that the Board Appointment and Selection of a Hearing Officer to Conduct All Hearings for One (1) Contested Case Hearing with Respect to Conservation District Use Permit (CDUP) MA-3542 for the Advanced Technology Solar Telescope (ATST) at the Haleakala High Altitude Observatories Site on Puu Kolekole, Makawao, Maui, TMK (2) 2-2-007:008.**

Written testimony from Native Hawaiian Legal Corporation for Kilakila 'O Haleakala was distributed.

Mr. Lemmo briefed the Board that the permit was issued December 1, 2010 by this Board. OCCL received three identical petitions for a contested case hearing prior to that. The petitions are from Kilakila 'o Haleakala represented by Native Hawaiian Legal Corporation and also made oral requests to be parties in the contested case hearing. There were testimonies by Kilakila 'O Haleakala and David Kimo Frankel from Native Hawaiian Legal Corp. at that Board meeting when this matter was taken up. Essentially, on the original petition staff received as shown on the staff report they didn't feel that the petitioned contained enough information to make recommendations on standing. Staff is asking the Board to authorize appointment of a hearing officer and let the hearing officer conduct all the hearings on standing and should a contested case be held that the hearing officer run the contested case hearing and staff is also asking to delegate authority to the Chairperson to designate the hearing officer. He noted that Mr. Frankel did submit a letter to this Department yesterday and the Board should have copies of it which provides additional information on the issue of standing. One of the request by Mr. Frankel is for the Board to add language to this action should the Board approve this and to read as follows: "The staff recommendation should be amended to add language that the Board grant the request for a contested case hearing subject to Kilakila 'O Haleakala establishing its standing." For some reason Mr. Frankel wants this language added to the staff report or to the Board action if you move forward with this. He is here to explain why and to talk about other issues. Staff requests the Board approve the recommendation of the two conditions and entertaining Mr. Frankel's request to add additional language to the Board's action regarding establishing standing for Kilakila 'O Haleakala.

David Frankel testified from his written testimony referring to Kiope Raymond's declaration that fully documents the directors of Kilakila 'O Haleakala engaging in traditional customary practices. As a footnote, your rules do not require that we must file a petition that such level of detail be provided in the petition. It is more appropriately dealt with in the course of a contested case hearing that standing has to be more firmly established. In any case, we submitted it to you folks yesterday. As for the traditional customary practices I do want to note the University in its own environmental impact statement notes that construction and operation of the proposed ATST project would result in major, adverse, short and long term direct impacts on the traditional cultural resources in the summit area. The University admits these cultural impacts. Secondedly, in terms of environmental concerns the National Park Service concluded that the impacts to the National Park will be far greater than the EIS itself disclosed. According to the National Park Service the impacts of the proposed ATST would be adverse, major and long term on the visual resources to key points along the summit. Now if you decide not to grant a contested case hearing it does not insulate your decision from review. You already have two proceedings going on at Circuit Court regarding your December 1<sup>st</sup> decision. You would be getting bad advice if you were told that we do not have the right to pursue directly over your decision. It has been a consistent practice of the Hawaii Supreme Court to look at the decisions of government agencies even where a contested case hearing is being denied. We are asking that as Sam eluded to specifically amend the motion or recommendation so that you are voting to grant the petition for the contested case hearing subject to the decision on standing. You will note there is a dramatic contrast between how the staff put together the language for Item K-3 which you have

already approved versus this one. Quite frankly the way this is drafted this one is sloppy. You are making a decision on whether to grant a contested case hearing or not and one of the subject matters of the contested case is standing. But, were as you have done but not as your attorney general hopes remove the whole existing case from the Circuit Court because you will not have rendered a decision as to whether to grant a petition for a contested case hearing or not. So you need to do that. Third major thing that will not be sufficient simply granting a request for a contested case hearing and the reason is you've already granted a permit. This is not a land disposition. This is a permit – a conservation district use permit. If you refuse to void the decision you've already made what is the subject of the contested case hearing? There is nothing to be decided. You've already made up your minds so why would we be having a contested case hearing? There is nothing to contest. You do not have the legal authority to review a decision you've already made yourself. You've got to void it. If you go back and read the PASH decisions – both the Supreme Court and the Intermediate Court of Appeals the courts held granting a permit without giving someone who has a right to a contested case hearing that contested case hearing means that whole permit is void. That is good law. You cannot allow the existing permit to exist in the course of the contested case hearing because you have not given Kilakila 'O Haleakala that opportunity. The permit itself is void. You need to do that. Your Deputy Attorney General suggested we go ahead and file a motion on this with the hearings officer later on. Well, what good is that going to do? The hearings officer has no authority to invalidate the conservation district use permit. So we will have to come back to you. The contested case hearing is going to be delayed. I would think the University of Hawaii would want a decision sooner rather than later. We would like a decision sooner rather than later and we don't want a delay so void the permit now and we can have our contested case hearing. We can get rid of significant number of issues that are before the Circuit Court now and would make resolutions of everything far simpler. And, we've indicated in our testimony a plethora of case law that reveals that when it comes to issuing a permit you got to have your contested case hearing first. All of you except for the Chair have unfortunately displayed bias by voting on the application already without us having the opportunity to make our case. There is good case law on this in Sussel versus Honolulu Service Commission about the fact that appearance of impropriety is sufficient to have someone be recused or disqualified and indications of bias are not appropriate. Of course, you can't all disqualify yourselves because who would render the decision of the contested case. This is why in October 22<sup>nd</sup> and December 1<sup>st</sup> he asked you not to vote on the permit prior to allowing a contested case hearing to occur. You received bad advice. You need to have the contested case hearing first so we can present our entire case before you make a decision. We asked Member Goode recuse himself specifically because even beyond voting he made comments that are simply inappropriate. You can't talk about job producing elements of a project when that is not within the parameters of the Board of Land and Natural Resources in your decision making. That is not one of the criteria. It's totally inappropriate. And, because you indicated that interest which isn't so surprising, contracts association, it goes beyond where evidence is far too much bias and demonstrates partiality. Finally, our request is in the appointment of a hearings officer you ensure the hearings officer is not bias. That is not someone who makes money by facilitating development of the conservation district. That kind of person would not

provide Kilakila 'O Haleakala a fair hearing. As it is we already feel it is going to be difficult to get a fair hearing given the vote already took place, but that hearings officer got to be somebody impartial.

Member Gon asked whether Mr. Frankel had a chance to review that vote. Mr. Frankel said there was one dissent and five for and the minutes just came out today, but he had not seen the minutes. Member Gon asked whether the vote was unanimous and it was not per Mr. Frankel.

Member Morgan commented that Mr. Frankel said that the Board is not supposed to issue a permit if there is a contested case looming and we've gotten opinions two times that says its okay. In my mind you can hammer on that all you want and some court will make that decision because we are not attorneys. We have our Deputy AG to go on and our Deputy AG recommended that. Mr. Frankel said your Deputy AG has not sufficiently reviewed the case law and he provided this to her and if you want to fight this we can go to the Supreme Court. I'm saying it will be much easier for you, much easier for the University and much easier for us to just void the permit. If you are going to give us a contested case hearing then give it to us, but void the permit so they can have a contested case hearing on something. What are we having a contested case hearing on if the permit is already granted there is nothing to have a contested case hearing on? It's illogical. Void the permit and go through the process properly. Read the PASH decisions, read Pele Defense Fund versus Puna Geothermal there shouldn't be any reason why we should be fighting about this issue because there is a real easy way to solve it. Member Morgan said that I'm not an attorney and have to rely on our counsel.

Mike Maberry, Assistant Director of the University of Hawaii -- Institute for Astronomy (IFA) testified that they have no objections to granting a contested case and strongly object to voiding the CDUP and in their opinion what is being contested is the granting of the CDUP, but wanted to allow his counsel to provide additional information.

His counsel wanted to address the only item on their agenda which is the contested case request and will limit her remarks to that and she didn't think it appropriate to discuss the other items that haven't been subject to the Sunshine requirements and they are not properly before the Board. With respect to the contested case request we certainly do not oppose the contested case and specifically with regard to Mr. Frankel's letter and the only part of his letter that she is in agreement, but I don't not have any objection to his language that the Board grant a request for a contested case hearing subject to Kilakila 'O Haleakala establishing it's standing. I thought the staff report was clear on that regard, but if he feels the language of the staff report was not sufficiently clear I am fine with that clarification.

Member Goode said he wanted to address the recusal issue brought up by Mr. Frankel that he had checked with the Deputy AG an hour before today's meeting that he can't imagine why he needs to recuse himself. Certainly there is no bias and he didn't know where Mr. Frankel came up with that. Member Goode was the Board President of the Maui Contractors Association and has since resigned. It is a non-profit organization that

addresses a lot of issues on behalf of the contracting community and the Board made no formal position that he is aware of, on the project. He doesn't have any intention of recusing and the Deputy AG confirms that. Member Agor said he was responding to other testifiers and he wasn't bringing it up himself. Member Goode said he was only talking about the recusal issue, but the other issue of bringing up other matters not part of the criteria. He thinks he is free to speak on whatever he wants. He didn't say that was part of his secret criteria, he is just free to speak on what he wants. He has no intention of recusing himself.

Member Edlao said in spite of Mr. Frankel's misunderstanding of the recommendation why are we going to hire a hearings officer if we are not going to a contested case. We will look at standing and the hearings officer will make a recommendation and you can go to him and give all the information you want and he will come back with the recommendation for the decision.

Member Edlao made a motion to accept staff's recommendation. Member Gon suggested having this matter come back before the Board as a result of the hearings officer's finding of standing. Would it have to come back before the Board in order for the contested case to proceed? Mr. Lemmo said only if there is a denial. Member Gon said then if they find standing the contested case will proceed and in which case we don't need to put that clause into the suggested amendment to the client. He wanted to clarify that before he seconded the motion.

Chair Aila took the vote and all voted in favor.

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

**Item D-8      Approval in Concept of Issuance of Direct Lease to the Water Board of the County of Hawaii for Windfarm and Related Communication/Energy Facilities Purposes; Issuance of Right-of-Entry for Survey and Maintenance Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Keys: 3rd/ 6-6-01:02 por., 71 & 76.**

Mr. Tsuji conveyed the background of this item and there are some issues if this were to approve where one is to update the EIS and Forestry Division asked they conduct an auditory monitoring to the site to determine if any animal species listed as endangered or protected would be affected to the proposed project and to provide copies to DLNR and Fish and Wildlife. This is preliminary to whether a habitat conservation plan would be required for this project.

Julie Myre, a civil engineer with the Hawaii County Department of Water Supply testified saying how easy it was to work with Kevin Moore (staff at Big Island Land Division). She corrected that the update is for an environmental assessment and not an environmental impact statement. The previous lease expired in December and the property has not been maintained. Her Department is interested in re-powering the existing eight wells in that area. This moves the Hawaii Clean Energy Initiative forward

in terms of renewable energy and allows control for the water supply that serves customers.

Member Gon asked whether she had read staff's recommendation and agreed with it. Ms. Myre acknowledged that.

There a question from Board member Edlao regarding monitoring and Ms. Myre said it would take about a year unless there are evidence of bats or endangered birds and they will work with Fish and Wildlife to address any concerns. Member Gon asked whether the Fish and Wildlife has any history of takes of bats or birds and Ms. Myre said they did not. There has been some along the beaches of Waikoloa and Kawaihae, but too far away from the site.

Member Goode asked whether the County of Hawaii intends to run the wind farm. Ms. Myre said no, the intention is to hire a third party operator which was originally done in 1984 and if all goes well they would venture into a sub-lease. It would be a request for qualifications and then an RFP.

Mr. Tsuji appreciated the comments about Kevin Moore who is a rising star in Land Division. And in this scenario staff will come back as this goes forward.

Member Morgan moved to approve as submitted. Member Gon seconded it. All voted in favor.

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

**Item C-2      Review and Approval of Project Recommendations for Funding from the Fiscal Year 2011 Legacy Land Conservation Program (Land Conservation Fund)**

Paul Conry, Administrator for the Department of Forestry and Wildlife (DOFAW) reported that this is to come forward to ask the Board's approval to use purchases for conservation purposes from the Land Conservation Fund. There are four proposed acquisitions that total over \$12 million dollars in real estate value and the State's commitment is a little over \$4 million dollars to be partnered with county, non-profits, Federal agencies to go forward and add these lands to conservation status for perpetuity. He introduced and recognized Molly Schmidt and Ian Hirokawa in Land Division for doing outstanding work together appreciating the Board's support in maintaining this program. There have been bills to eliminate this fund and putting the funds to other purposes which staff is not supporting. Any opportunity you get to pass on your experience with the program would be greatly appreciated. Staff recommends going ahead with the approvals and the recommendations to the governor to approve these acquisitions. Staff has spoken with both the Senate president and House speaker and they concur with the acquisition. Next to final step is the Board approval and then to the governor for final approval.

It was queried by Member Agor whether the North Shore property was being used by agriculture now and Molly Schmidt said she believed so.

Member Morgan disclosed that he is on the Volunteer Advisory Board for Trust for Public Lands and that he doesn't need to recuse from all of this.

Laura Kahakua, a native field representative for the Trust for Public Lands testified to support the Department's recommendation and they have a part in three of the four projects which she named.

Member Morgan made a motion to approve as submitted. Member Gon seconded it.

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

**Item C-1 Issuance of Special Use Permit No. FW-2011-H-01 to Palani Ranch Company, Inc., Kailua-Kona, North Kona, Hawaii, TMK (3)-7-4-002:por.007.**

Mr. Conry briefed the Board on the continuation of this permit and is important to transition to control any fire fuel out there. The permittee was here and is fully supportive of the proposal and urged its passage.

Member Gon asked whether this is the continuation of the one year extension and it is per Mr. Conry. Member Gon asked what is the outlook on this in five years whether it goes to DOFAW. Mr. Conry confirmed that at the end of 10 years, but has been in this for five years now. Staff is developing some access into the forest preserve which alleviate some of the community comments because now they are land locked up there.

It was moved to approve by Member Goode and seconded by Member Morgan. All voted in favor.

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

**Item E-1 Request for Approval of New and Increased Pavilion Rental Fees at Wailoa River State Recreation Area (SRA), Hawaii**

**Item E-2 Consent to Assign General Lease No. SP-0130, Richard and Crystal Jones, Assignor, to Corwin and Joanne Acoba, Assignee**

**Item E-3 Request for a Special Use Permit from the NOAA Fisheries Pacific Islands Regional Office to Use the Area Overlooking Kealakekua Bay to Study the Potential Impacts of Human Disturbance on the Hawaiian Spinner Dolphins in Kealakekua Bay.**

Dan Quinn representing State Parks said he had no changes, but noted for Item E-3 that this is coming to the Board because the area was closed following the 2006 earthquake

where he described the location of the site near Napo'opo'o near Ka'awaloa Flats referring to a map.

It was asked by Member Edlao for Item E-1 whether staff cleans up after and Mr. Quinn acknowledged that. There is a deposit people pay if they don't clean up and if they do they get their deposit back.

Member Gon moved to approve as submitted. Member Morgan seconded it. All voted in favor.

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

**Item D-4 Amend Prior Board Action of February 22, 2008, Agenda Item D-5, Grant of Term, Non-Exclusive Easement to Chantee Shiroma, Glenn Shiroma & Samuel Alameda, Charles C. Selhorst and Vivian B. Eusebio for Access and Utility Purposes, Kulaimano Homesteads, South Hilo, Hawaii, Tax Map Key:3<sup>rd</sup>/2-8-06:06.**

**Item D-9 Forfeiture of Revocable Permit No. S-7421, Felix Ibarra, Permittee, Waiohinu, Ka'u, Hawaii, Tax Map Key:3rd/9-5-05: portion of 03.**

Mr. Tsuji said they need to withdraw Items D-4 and D-9 since both issues have been resolved.

**Withdrawn (Morgan, Gon)**

**Item D-16 Assignment and Assumption of Lease for General Lease No. S-5219, Tyco International (US) Inc., Assignor, to Tyco Telecommunications (US) Inc. now known as Tyco Electronics Subsea Communications LLC, Assignee, Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:333.**

Mr. Tsuji explained that they need a motion to amend the title by adding the words "Consent to" at the very beginning.

**The Board:**

**Amended Title of the Agenda to include "Consent to" that did not appear on the Agenda Title.**

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

**Item D-1 Issuance of Revocable Permit to Chrysalis Events Hawaii for a Teambuilding Event at Shipwreck Beach, fronting the Grand Hyatt Kauai Resort & Spa, Poipu, Kauai, Tax Map Key: (4) 2-9-1: portion seaward of 2.**

- Item D-2** Rescind Prior Board Action of December 11, 2009, Item D-3: Consent to Sublease of General Lease No. S-5848, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Trust, dated October 23, 1991, Lessee/ Sublessor, to ARC of Hilo, Sublessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 2-2-37: 63.
- Item D-3** Issuance of Right-of-Entry to the Department of Public Works, County of Hawaii, for Access and Maintenance Purposes, Piihonua, South Hilo, Hawaii; Tax Map Keys: 3<sup>rd</sup>/ 2-3-26:04 por. & 13 por.
- Item D-10** Grant of Term, Non-Exclusive Easements to Douglas Lee Callahan & Madeline Cochrane Callahan for Access & Utility Purposes, Por. of Hanawana, Hamakualoa, Makawao, Maui Tax Map Key: (2) 2-9-011: Por. of 008.
- Item D-11** Issuance of a Revocable Permit to Pyro Spectaculars, Inc. for Aerial Fireworks Display Purposes, Honolulu, Lahaina, Maui, Tax Map Key:(2) 4-2-004: seaward of 015.
- Item D-12** Grant of Perpetual, Non-Exclusive Easements to Department of Defense for Civil Defense Warning Siren Purposes; Moanalua, Kalihi, Honolulu, Oahu; TMK (1) 1-1-063: 014 (por.), (1) 1-3-027:001 (por.), (1) 3-1-042:005 (por.)
- Item D-13** Issuance of Revocable Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:021 portion.
- Item D-15** Amend Prior Board Action of April 8, 2010, Item D-12, Grant of Term, Non-Exclusive Easement to Burt T. Kaminaka Trust and Miriam K. Kaminaka Trust for Boat Ramp, Seawall, Gazebo and Lanai Purposes, Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-030:seaward of 019.
- Item D-16** Assignment and Assumption of Lease for General Lease No. S-5219, Tyco International (US) Inc., Assignor, to Tyco Telecommunications (US) Inc. now known as Tyco Electronics Subsea Communications LLC, Assignee, Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:333.

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

- Item M-1** Amendment No. 2 to Concession Agreement No. DOT-A-09-0002 DFS Group L.P., Retail Concession Honolulu International Airport

**Item M-2 Authorization to Negotiate for the Acquisition of Privately-owned Lands for Airport Use, Situate at Spreckelsville, Wailuku, Maui**

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

**Adjourned (Goode, Gon)**

There being no further business, Interim Chairperson Aila adjourned the meeting at 12:35 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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William J. Aila, Jr.  
Interim Chairperson  
Department of Land and Natural Resources