

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

DATE: FRIDAY, MAY 13, 2011  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

**MEMBERS**

William Aila, Jr.  
Jerry Edlao  
Rob Pacheco

David Goode  
Ron Agor  
Dr. Sam Gon

**STAFF**

Sam Lemmo/OCCL  
Francis Oishi/DAR  
Patti Edwards/DOCARE  
Dickie Lee/ENG

Russell Tsuji/LAND  
Pua Aiu/SHPD  
Dan Quinn/PARKS

**OTHERS**

Bill Wynhoff, Deputy Attorney General  
Gary Marrow, K-1  
Tony Dulles, K-1  
Timothy Bradley, K-2  
Wallace Lean, D-10  
Angela Ka'aihue, D-10

Thomas Yeh, K-1  
Gwen Herrington, K-1  
Lucas Hubbard, K-1  
Gregory Allen, K-3  
Stephanie Tom, D-10

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

**Item A-1      March 10, 2011 Minutes**

Member Pacheco recused himself.

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

**Item A-2      March 24, 2011 Minutes**

**Item A-3      April 8, 2011 Minutes**

**Item A-4      April 21, 2011 Minutes**

Were not ready for this Board meeting.

**Item K-1      Alleged Conservation District Use Violation (HA-11-09) for the  
Unauthorized Construction of a Hiking Trail, Stairs/Walkway  
Platform to Support Commercial Tour Operations by Kapohokine  
Adventures, Located at Honoli'i Gulch, North Hilo, Hawaii, TMK: (3)  
2-7-002:021**

Member Pacheco recused himself from this item.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) related some background on this item that the area is in a limited subzone. He brought to the Board's attention two transmittals from the counsel of Kapohokine, Thomas Yeh and Michael Moore which is statement of allegation and responses regarding the allegation made by staff (Mr. Lemmo), a declaration from Ms. Teresa Prekaski and information from Kapohokine Adventures. Another filing from the law firm is declarations from several people who have done restoration work in support of Kapohokine. Mr. Lemmo received a couple letters from a Sean McConville, written testimony from a Gwen Herrington via e-mail, the declaration of Norman Medeiros and others the Board might have received.

Mr. Lemmo said that staff engaged in some correspondence with the land owner who inquired about doing some invasive species removal and possibly building a trail down to Honoli'i Stream. There was some correspondence in 2010. In December 2010, staff received complaints of unauthorized trail work where staff investigated and had enough evidence to issue a cease and desist order. Staff's last letter to Ms. Prekaski was that they would need a CDUP to conduct the work they have been inquiring about that they have not done that and yet trail work had commenced and staff issued a cease and desist order. Mr. Lemmo related contacting a Gary Merrill of Kapohokine Adventures allowing DOCARE to make a site inspection. Mr. Lemmo wrote the staff report and as you can see staff feels this is an unauthorized trail construction and an unauthorized commercial use of conservation district land. They have responded to those allegations that this is not construction of a new trail, but alleging there was an existing trail and they were improving and restoring what was there. They also allege they are not using the trail for

commercial purposes. They did acknowledge that they need a Departmental permit for what they did and they want to file an after-the-fact permit for the work that they did, but not taking responsibility for the commercial allegation that staff is making and trying to convince staff by letters of declarations that they were improving a trail that was already there. There are no changes to the staff report. Mr. Lemmo feels the staff report is substantially correct and he is comfortable with moving forward with this recommendation. The recommendation is staff finds them (Kapohokine Adventures) in violation for unauthorized trail construction and commercial activities. They be fined \$15,000 for the work on the trail that they pay some administrative costs that they pay the fine in 60 days that they either remediate the trail or apply for an after-the-fact CDUP for trail recreational use. If they don't comply with these conditions they could be fined as much as \$15,000 every day.

Member Gon asked what the maximum penalty might be and at what basis it might be imposed. Mr. Lemmo said our statute says that you can be charged up to \$15,000 per violation and upon verbal or written notice if you fail to cease work that you can be fined an additional \$15,000 per day. Staff sent a written notice to them in the original cease and desist order that indicated this. I was getting reports that there was still continuing use of the trail after that by visitors. They could put some resources into investigating and tracking that activity they could say for every day you use the trail for commercial purposes we can charge you an additional \$15,000 per day.

Member Edlao asked how many violations he is looking at, just one. Mr. Lemmo acknowledged that.

Member Goode asked is the conservation district limited atop a gulch on both sides and down. Mr. Lemmo said it coincides with the top of the gulch and everything in the gulch. Member Goode asked everything outside is Ag district and controlled by the County. Mr. Lemmo acknowledged saying that is correct.

Member Goode asked whether a permit is needed from the County where Mr. Lemmo said the County is the primary regulating body. Member Goode asked if the County has authorized any permits to any type of commercial activity on the adjoining lands. Mr. Lemmo said he didn't know and said he knew there was an issue going on between the County and Kapohokine Adventure, but didn't know what those issues were.

Member Goode asked whether he had DOCARE officers investigating and Mr. Lemmo confirmed they did. One of the things he did in this case was they did turn over copies of the DOCARE reports to the counsel of Kapohokine and redacted all the personal information. There were two DOCARE reports generated as a result of this investigation and he has copies of those reports here. The staff submittal is based on information from these reports.

Member Edlao asked Kapohokine felt they could do what they could under the permit. What permit do they have that they felt they were in compliance with? Mr. Lemmo said they don't have a permit. There is an admission by them that they should have...we told

them in a letter they need to get a Departmental permit. It's in bold letters. Their explanation as to why they did the trail work without filing the CDUP is there was a misunderstanding. I don't know the details of that. However, they acknowledge in hindsight now they should have filed for the Departmental permit, but not for a commercial use simply to remove as a landscaping purpose, to remove plants. Member Edlao asked then they didn't have any kind of permit to do the work or for the commercial activities. Mr. Lemmo said no permits from us. Member Edlao asked and the violation is for what. Mr. Lemmo said the trail construction for the purposes of commercial tour operations.

It was asked to clarify by Member Gon that staff could impose fines just for the trail construction independent of commercial operations because it's an improvement on the conservation district without a permit. Mr. Lemmo acknowledged and confirmed that. Member Gon asked the conservation district subzone does not allow for commercial use without a permit. Mr. Lemmo said correct. Member Gon asked there was a demonstration of continued use of that trail in the time frame between that indication and now that you can find on the website or tourist activities then that would be a clear indication of continued use. Mr. Lemmo said it could be an indication of continued commercial use which would require additional vetting to prove that.

Member Edlao asked when staff issued the cease and desist letter to whom was it issued the land owner or the commercial. Mr. Lemmo said it was issued to the land owner. Member Edlao asked whether nothing was sent to the commercial operator. Was that up to the land owners to do that? Mr. Lemmo said Kapohokine was copied on the cease and desist.

Thomas Yeh, counsel for Gary Marrow who was present also. Mr. Yeh testified that he submitted another submittal dated yesterday. What he wanted to do was to put things in perspective. There are two sides to every story. What we are really talking about here is the way the work was done. When I looked at OCCL's allegations in the complaint as well as the DOCARE report there were several items that were alleged to me leaves the reader to believe that there is this really serious activity going on in light of the OCCL rules. One allegation was a trail was constructed. You are going to hear from some members who are going to testify that there was in fact an existing trail. If you take a look at what I submitted today you'll see an e-mail from Mr. Marrow to Mr. Lemmo dated January 5, 2001, that's Exhibit 1. Those are photos of the existing trail pre-work that shows specifically that there was a trail that existed. If you look at the second page of Exhibit 1 you'll see a waterfall and a pond in the background that is the bottom of that trail section that led to that waterfall and pond. Now doesn't it make sense to you that if you have a waterfall and a pond there is going to be a trail going down? That is a practical history of this particular location. You'll see other sections of the trail that have been designated as if there was none. Let's go to one of the complainants which Exhibit 2 shows Honoli'i Stream, no erosion or pollution issues are involved. The existing trail as it now stands after the restoration work and invasive species removal. If you take a look at the location of the trail, what it looks like, its width, its dimensions, its characteristics what it was is a restored trail. If you take a look at the estimates by

DOCARE which is 300 to 400 feet long and the average width of this trail which is 3 to 4 wide, what are we talking about here? We are talking about a trail that consists of less than 2,000 square feet.

Member Agor clarified he could see a trail would exist for the property owner and here you have a commercial venture that came in and cleared it for a commercial purpose. Mr. Yeh said while we are on that point of subject, if you take a close look at OCCL's recommendations what they noticed to you is that no commercial trail use prohibition in the limited subzone for which you are required to get a permit. In the process of trying to pigeon hole what has occurred of some sort of violation of prohibition and they (OCCL) said that this is closely akin to a botanical park or private park. This is not a private park, it's a trail. This is not a botanical garden, it's a trail. There is no commercial trail use provision. I think as Mr. Wynhoff could probably tell you the zoning laws basically say you can do what you can unless prohibited by zoning law. The common law principles are from a regulatory standpoint if you don't have regulations prohibited and now we are not trying to push that envelope. All we are saying is that if we are going to get cited for an alleged violation that claims prohibited use let's see what that rule is. That is my point here. We have an existing trail in the same dimensions and characteristics. Now one of the complainants, who we know who he is, if you take a look at Exhibit 3 – the first page shows what his website is, the second page shows him by some bamboo and the third page this is part of his guided tour operation that he advertised on his website with his visitors in the same waterfall and the same pool. If you compare that photo with the second photo of Exhibit 1 you will see it's the very same waterfall and pool. So who's violating what here? What that complainant did was not only trespassing, but also a violation of the so called commercial trail use prohibition. So we have to be consistent in terms of what the allegations are and how you fit that in with regulatory prohibitions that are trying to be placed on the restorer here. You'll notice it's the same photo and the same waterfall.

Mr. Yeh asked what is the next allegation. He said the allegation that OCCL sent you is that it appears to be that there is never ever any evidence in the DOCARE report because when I got the allegations from OCCL and said hey, don't we get to respond to the charges that you are basing this report on. Let's see the DOCARE report. The DOCARE report is not going to say there is any grading going on. There is a certain impression that is created to you that we have to respond to here today that is just not correct. We attempted to talk to OCCL and let us sit down and talk to you to understand really what it is you are saying we did and really what it is we should do. There has been no grading. One of the people who performed the work is all hand tooled work. Photos provided to you by OCCL shows the entrance to the trail, but that is on the Ag land side. There is another implication that OCCL gives you that the County has been investigating Kapohokine. Let's step back and find out what that investigation is about because one of the questions asked what kind of uses can be made in Ag zone. Well, open area recreational uses are specifically in Chapter 205. Building permits have been issued for a pavilion. There is a zip line going up that is an open air recreational use all cleared by the Planning Department. For two months the same complainants have called continuously from Engineering Division at Public Works saying this is illegal grading. They have

come up here three times and no violation. Complaints to the Building Division by the same complainant – no building permit. The Building Division finally said we are tired of this don't call us anymore. That is what these people have been trying to deal with in operating what is a legal business on that property. Member Agor asked if he had copies of this correspondence from the County. Mr. Yeh said that Mr. Morrow is going to talk about that and he can tell you exactly what's recorded. So these implications that there is somehow this investigation going on that somehow these illegal things have been going on – that is not true. We unfortunately have to secure to you in this kind of context have to explain this to you guys.

Mr. Yeh explained if you really take a closed look at OCCL's report, well, it's possible there was an existing trail so what is it – is it constructing a trail or restoring a trail? The submittal we provided to you today provides a pretty good analysis of what the actual rules are that govern when you need a department permit, when to determine an exempt activity, whether or not it's exempt from a Chapter 343 requirement. We look at what those applicable rules are and you can remove noxious plants for maintenance purposes without a department permit, but it does require a CDUA and we've acknowledged that and that's going to be explained in terms of why they went ahead and proceeded without a CDUA. It was an honest mistake. Replacement or reconstruction of existing facilities – is the term facilities defined? No. Isn't the trail a facility? From the memory of the public's standpoint, it takes me forever going through these rules and really understanding what is or isn't prohibited or what is or isn't allowed. The Board is either going through a process of people looking at these rules because when you take a look at the proposed rule changes you can use power tools to do restoration work. That wasn't even done here. That is the exemption portion. The Department permit, not a Board permit on page 4 of their memo you could farm in a limited subzone for a one acre. We are talking 1/20<sup>th</sup>. You can do landscaping including clearing and plant cover. You can remove noxious plants for maintenance purposes from an area less than 10,000 square feet even though it results in significant ground disturbance with a Department permit and not with a Board permit. You can do alteration of existing facilities, but that hasn't been done.

Member Gon asked and with the Board that has not been done. But, you just said a trail has been improved and that is an alteration of an existing facility. Mr. Yeh said that was restored. You are going to hear testimony that the location, width and dimensions have not been changed. Even if it was improved that is still a Board permit. Member Edlao asked wouldn't a restoration require permits. Mr. Yeh said it requires a CDUA and we are saying yes. One should have been done.

Mr. Yeh said taking a look at the recommended fines because OCCL has said the fine should be "X", but if you take a look at your own guidelines for penalties and fines the suggested fine is less than \$1,000 with the resources combined. This limited subzone, the reason it is a limited subzone is because it's for flood control and erosion purposes. The photos that we showed you Exhibit 2 were taken yesterday. This is like five months post work. You'll see there's been grass that's grown up and there are no erosion issues, there are no flooding issues whatsoever. The suggested fine for the actual work is when you

involve less than 2,000 square feet, as you have here then the fine is suppose to be \$1,000-\$2,000, not \$15,000. You have to take a close look at what's been recommended and try to fit what happened within the rules you're suppose to follow. That is all we're saying. What we suggest is this, we do an after-the-fact CDUA which is what is required and we are not saying it wasn't required. But, if you take a look at the work that was performed and compare it with the OCCL or DLNR rules on exemptions or Department permits that is where it fits. Not in a full blown Board permit with all the other gadgets that come with it. I just want to say we don't want to have to file a contested case that is not my position here. We just wanted to come down to and respond saying this is what really happened and take a closed look at what has had happened in comparison with the allegations and understand there is a difference between the two.

Gary Marrow testified that when he got this letter from Sam Lemmo it was kind of hurtful because in it says I willfully and deceitfully just went against the DLNR and everything I was doing was willful. I first started communicating with DLNR back in October and if you look at the letters at sent then every single thing we did to this trail is exactly what I put in those letters -- from the cinder to cutting the guava, putting in the steps that replaced the steps that were already there and the last letter I had received from the DLNR which was from Audrey Barker said I may need to do a CDUA. The very last paragraph said what you are planning to do is so minor in scope that it may even be exempt. I immediately called her on November 24<sup>th</sup>. I talked to Audrey and I said you know what we want to do and it says here it maybe exempt and I was also looking through the rules and regulations that said any dead, dying, diseased trees or anything that could be a harm to the public that is at least 6 inches at the base is allowed to be taken out. I said this to her that it says it may be exempt can we go ahead and do it? Audrey said I can't tell you to go ahead and do it, but I can tell you as long as you adhere to the rules and regulations you should be fine. At no point during our conversation did she say you know what I would suggest that you fill out the CDUA and send it in or we're requiring you to do that. She said as long as you adhere to the rules and regulations you should be fine. It was just Mr. Marrow doing this. Member Edlao asked who Audrey Barker was and Mr. Marrow said she was the DLNR he was dealing with during communications in Honolulu.

Mr. Yeh said to take a look at Exhibit 7 of the staff report which is the letter Mr. Marrow is referring to dated November 24, 2010. If you take a look at the third paragraph of that letter you will see a reference to landscaping that requires a CDUA in that circumstance. The next sentence or paragraph says staff has determined that the proposed project is minor in scope and may be considered an exempt action under HAR § Section 11-200-8(a)(4) minor alterations in the conditions of land, water or vegetation. Member Edlao said it says "may." Mr. Yeh said he understands. Member Edlao said he doesn't understand why he didn't take it one step further and make sure you were in compliance. Mr. Marrow said I made a mistake. Honestly, after talking to Audrey on the phone and the only thing she said to me was as long as I adhere to the rules and regulations you should be fine. I told her we wanted to move forward with this. Member Edlao pointed out if you look at the third paragraph in bold letters based on that interpretation. I can understand the next one says "may" I don't understand why you didn't take it one step

further. If you had you wouldn't be here. Mr. Marrow said that is exactly what he said to the DOCARE officer and that is in the report. I have been up front and honest with them the whole time. I said I really now wish I wouldn't have just interpreted that myself and thought hey, she said as long as I adhere to the rules and regulations that taking out these plants do not require a permit. Member Edlao said an administrative type permit should really clarify that. He doesn't understand why he didn't since he is a businessman. You got to touch all bases when you do something. If everybody said this is my interpretation we'd be here everyday.

Member Goode asked you said you wrote these letters and got these responses. The letters I see filed are letters from a Teresa...Mr. Marrow said yes since she was the landowner she would have to sign them. She wrote them and you are not cc'd or mentioned in here that there was no discussion about your company. The first letter in October and this is why we're having a hard time here. It starts off I'm having huge problems with wild pigs living in the gulch. I'm farming sweet potato and the pigs are causing a lot of problems. The first impression is I got an invasive situation going on here and I want to do some clearing. No mention about anything related to what Mr. Marrow is doing. And, I want to remove some trees, etc. There's a November 15<sup>th</sup> letter from the same woman that said DLNR said it may require, but what's represented here now is the trail is in pretty good shape. We need to remove some guava trees and some fern it looks like about 600 square feet and would be just beyond the trail and a small viewing spot from the top cliff line to view the falls from above. It doesn't say anything about going down to the water in this letter. Again, DLNR's response is based on the facts represented in Ms. Prekaski's letter. Just what it sounds like from what we are hearing about their stories what was represented and what her trying to respond to at least in writing barring any personal phone calls. Here we can hear some Board members having heartache about some representations. Mr. Marrow said even before they leased the property from Prekaski the neighbors came up to us and said hey, look it's 600 acres, it's out of no where, it hugs up against the forest reserve and they said we've been utilizing and going down to the river to collect 'opae and we've been hunting on this property our entire life. If you lease or purchase this property we hope we would still have access to use it. We said of course, absolutely, definitely will still allow you to do that. I talked to Teresa and there were three trails we discovered so far. One was the USGS trail that has been there since 1911 which is 200 feet above the one they found after the fact. It's not a safe way to get down. For us our insurance is on the line where they talked to Teresa and said the neighbors have come to us and they want to continue to use the property, but it's our insurance. We need a safe way for people to be able to get down there. Teresa said look, I've had tons of complaints with the farmers and there is sweet potato on about 300 of the acres right now. There are also cattle ranchers there as well. We already had complaints about the wild pigs and they said they can catch them down there in the morning and dusk so why don't I (Teresa) put a letter together and use that and see how that goes. After that happened and that was to build the trail to get down there because the one they were using was not safe at all. The letter Mr. Marrow got back they discovered Teresa said there was a trail I was using with my kids forever and I could show you that one. She took us to the property, showed us where this existing trail was and it was in really good shape that she just didn't think about it to

show it to us. That is the one they restored now. As things transpired throughout my letters, Mr. Marrow took over communications and just had Teresa sign the letter. She did the very first one, but I did pretty much did all of the rest. You can see I'm very specific on what we want to do and I'm completely up front with them about everything. Our original intent was not for tours at all and we don't charge people to go down there. We are building a zip line right now and if someone wanted walk down and see the river there is no way for the public to get up there to begin with since it's cane road for three miles and it's all gated and it's not going to be open for the public. The only way they can get there is us shuttling them there. If anyone wanted to see it or any of the neighbors wanted to continue to collect 'opae that was our goal to create a safe trail that people can utilize and we would feel comfortable allowing our neighbors and everyone to still continue to use it in a comfortable way.

Member Gon asked Mr. Marrow, you just said there is no way for people to get there without you shuttling them down there except for the neighbors that are around. So that suggests the only people using this trail are people who are paying you to be shuttled down there. Mr. Marrow said the only way they can get there is in one of our vehicles. We are opening our zip line and we are also doing a Volcano National Park Tour and we do a lunch there at the property. Most of our guests are older and they wouldn't want to any way, but if they want to walk down and see the waterfall I just don't see the harm in that.

Mr. Yeh said one of the things of wanted point out here which has kind of been lost in the shuffle is that there are many people out there who do this kind of work and don't even ask. I think you have to give credit. Member Edlao said we are dealing with this particular issue and there may be other people out there, they are not being fined. Mr. Yeh said he is not saying that. He is just saying recognize it. Member Edlao said he don't want to hear that kind of talk. Other companies are not on the agenda and I don't want to discuss that. We are talking about Mr. Marrow here and let's not talk about other businesses and Mr. Yeh agreed and said to recognize that Mr. Marrow did not do this work on his own without asking and without letting OCCL know and following it up. Yes. He did not get the CDUA, but it's not something that they would totally shine this process and he knows that.

Member Gon asked you saw the submission of OCCL to the Board here. Mr. Yeh acknowledged that, but he didn't see what Mr. Lemmo mentioned came in these last few days. Yes, he did see what is in the packet. Member Gon said in Exhibit 9 that was the work done. Mr. Yeh acknowledged that and referred to the first page of Exhibit 9. Photo #1 is in the Ag zone area and the width is a bit wider there. The second photo is where it skinnys up after the initial gravel location is basically the conservation area.

Member Gon asked to take them through these photos. Mr. Marrow said for Exhibit 3 the trail was not changed at all. Where you see on the left side the shear line that was all waiwi that was growing out of the side of the cliff where they just cut it using a pick ax and shovel to get the roots out and that's why it looks like that. It was waiwi growing out of the side. All the waiwi they took out they used for the railings. It wasn't anything

from the outside of the property brought in at all. Photo 5 is about the same, the trail going down. There really wasn't much. There were only a few spots along the trail that we had to get the waiwi taken out. Member Gon asked about the gravel in Photo 5 whether that was to keep the erosion down. Mr. Marrow said they put cinder down in certain spots and there were river rocks already impeding in the trail not knowing whether that was an ancient trail. The cinder they used came from Pepe'ekeo and was from the sugar cane days. There is a huge pit of it on the property right now and that was one of the major things from the letter from DOCARE is that we brought cinder in, but that was not true. We talked to soil conservation and they said the soil on this property is considered tibeki s and that is cinder and it's originally cinder and that the cinder that we used is from the same area and it would not harm. Even if all of it went into the river, none of that would harm anything because it is all from the same area. They didn't bring anything in. Photo 5 and 6 is part of the trail. Member Gon said it's pretty substantial clearing based on what he sees on the left side of Photo 7 is pretty thick. Mr. Marrow said that was all waiwi and on the side they had to take out that is all they did was cut it and get the roots out and that's it. Again, there were only a few spots like that. Maybe 50 feet of the entire trail that had overgrown waiwi that they had to take out like that. Member Gon went over the photos and said that photo 10 had more of the Pepe'ekeo ginger. Photo 15 has a contour going down. Mr. Marrow said there were two switchbacks going down. Member Gon asked photo 20 required a switchback. Mr. Marrow acknowledged that, but while they were doing the trail it was obvious it was a walking trail. It wasn't a pig trail or anything like that. It was definitely obvious. The complainant in a public blog which we have started there is three trails on the property and the only way to get down is to grab on to the waiwi and to go around and even the complainant states that.

Member Gon went over photos 23, 24, 25, 26 is the bottom to the stream. Mr. Marrow acknowledged that. Member Gon says 27 is the stream itself and 29 is getting closer to the water's edge. Mr. Marrow said correct and that 30 is right at the water. Member Gon said the pictures that follow that shows a stair. Mr. Marrow explained there were wooden steps going down over this one area because I looked at the rules and regulations and it said you are allowed to improve on existing structures, but what I didn't realize was you are only allowed to improve up to 50%. When I got the call from Andrew Ford, the DOCARE officer, he said you are only allowed to improve up to 50% so that was taken out the next day so that no longer exists. Member Gon said there is a life preserver thing on the side of the stream and a couple blue kayaks that people can use to enjoy the pool. Mr. Marrow confirmed that they had a group that day when the complainant trespassed onto the property and they had just set that up. They had four people that were coming to that property that day. Member Gon said so that was set-up for people to enjoy the pool that day. Mr. Marrow said right.

Member Edlao asked did you just say the complainant trespassed. Mr. Marrow said the complainant trespassed onto the property he took videos and photographs. Member Edlao asked if the public is allowed to go down there how can you say he is trespassing. Mr. Yeh said with permission. Mr. Marrow said its private property. The entire river

was owned by Mauna Kea Sugar Company which is private property. It doesn't go down to the center of the river. It's the entire river.

Member Edlao asked going back to the area where he stripped the waiwi, was there overhanging branches or did you have to dig up roots from the pathway. Mr. Marrow said it was growing out of the side of the cliff. Member Edlao asked whether there was any grubbing of the ground area of roots and things like that. It was just overhanging branches. Mr. Marrow said correct.

Chair Aila referred to one of the photos with the kayaks and asked did you charge people that day. Mr. Marrow said no, because that is not part of our tour. It's available there if they wanted to do it, but we don't have the kayaks there anymore anyway. We talked to DOBOR and they said anyone is allowed to kayak or swim in the rivers. It's a recreational activity as long as the kayak does not have a motor. I even checked with them (DOBOR) to make sure it was okay and they said yes, it's a recreational activity and anybody is allowed to do that in conservation. The Chair asked so you were taking people out on a tour that day and so you did charge people for a tour that day. Mr. Marrow said we do lunch at the property, yeah. If they wanted to walk down and enjoy the waterfall after lunch if they wanted to, but we're only at the property for 45 minutes. Most of the time people don't, but it is an option if someone wanted to walk down. We charge people for the tour. Chair Aila asked and as part of the tour you would allow them to use the kayak. Mr. Marrow said if they wanted to, yes. Chair Aila asked and you're stating that is not a commercial activity. Mr. Marrow said no because it's not something we publicize and it's not part of the main tour. It's kind of like an accessory. The Chair asked but, you accepted money and made kayaks available for part of the tour. Mr. Marrow said he accepted money for the tour at Volcanoes National Park and agreed that they made kayaks available as part of the tour.

Gwen Herrington testified (from her written testimony) that she and her husband live in the Honoli'i area on Kaiki Road for the last twenty years. Their land borders Bishop land and Bishop land borders the Honoli'i Stream. She is here because her community got together to buy a ticket for her to come here to share a group concern and not just theirs although they have been the most impacted. It is a community concern. Ms. Herrington related in October 2010 that they began to hear what sounded like bulldozers and their neighbors were wondering what was going on. Their dogs escaped and they got a call from one of the workers on the trail who found our dogs that they had gotten stuck and that was their chance to ask what is going on over there? This worker said they were building a trail down to the river, back to the waterfall and the pond. Ms. Herrington asked which one because they have used that waterfall and pond for years. She asked who is doing it and why? He said it was Kapohokine and they were going to be bringing a helicopter tours and van tours so people could come and enjoy the pond and the (Mother's) waterfall. And, they are going to build a zip line. She found it shocking because this would change how things are around here. Although, it's been referenced that we are complainants and what we really did was we started calling to find out if all those things were okay. We have gone out to our overlook numerous times just to see if we could see anything. We were led to call DLNR/OCCL and the Planning Department.

When we called OCCL it was for an inquiry to find out if these things were okay in this kind of area and that is what triggered this whole investigation. It wasn't like you got to do something. We were just concerned with what was going on. Also, my husband and I have never used that river in any fashion at all except for our family and enjoyment and for our neighbors who like to go there for graduation, 'opae and the fact that this has been alleged is very disturbing.

Member Gon asked that what was alleged. Ms. Herrington said that my husband has been doing tours for money in the river because there was a picture on his website. He is a tropical forester and we have a demonstration forest on our property and he had those pictures on his website because it was a beautiful picture. Then we got information from different blogs being accused that we were doing tours there for years and taking money. We we're what? I feel like I have a big target on myself.

Member Goode asked these photos that were given to us. Ms. Herrington said she hasn't seen them. Member Goode said it's from Forest Hawaii.com. Ms. Herrington said that is my husband's website. Member Goode said he just checked it on his phone and he didn't see anything regarding tours there. It seems to be what they represented here. Ms. Herrington said no sir and that is right. It's shocking since it's not true. Yes, the investigation happened. What the community wants to say and what we want to say is there never has been a trail on that side of the river. And, as many people that want to say there has been there has been just as many who've said no. We've live there for generations our entire lives. We've hiked, collected watercress and hunted and there are some exhibits to that from local folks.

Member Gon said he saw one from a Mr. Cross who indicated there was no trail. Ms. Herrington said he would know because he was working for the sugar plantation for many years. Member Goode asked Mr. Cross says it's a USGS trail and Ms. Herrington said yes, that was a trail. Member Goode said that your family has been here a long time and you know how to get in there from any direction and he asked if you've seen folks come from this other side. Ms. Herrington said never. We have not seen any evidence whatsoever and we have explored and enjoyed it. In fact, we've never really told anyone because we didn't want anything to happen to it. Another person has said there has been no trail there, but didn't want to come forward for fear of an altercation. During our exploring we have found hihiwai, opaekala'ohe that we found tons of them and we don't know what else (other endangered native species) might be there, but we felt it was too important that it be protected. It is protected by its isolation being difficult to get there. Mr. Wagner and Ms. Prekaski owned the property together from 2004 to 2010, but Mr. Wagner no longer owns it. Mr. Wagner used to work for the Herringtons and they have taken Ms. Prekaski up there when she first bought the property. Ms. Prekaski says she has been going down there since 2002 and Ms. Herrington doesn't see how that is remotely possible.

Member Gon said maybe Ms. Prekaski was on a tour and saw the property. Ms. Herrington said I don't know. The property changed to Aaron's name (Mr. Wagner) and

Ms. Prekaski's name in January 2004, but Ms. Prekaski has been looking at lots of land and bought considerable parcels from the C. Brewers sellout.

Ms. Herrington said they were told and they have seen it written that Kapohokine started in 2004 with one van which is really remarkable and created a wonderful company. But, we haven't figured out how all these connections had been made because Mr. Wagner said he didn't have any idea about the zip line because he doesn't own the property any more and he never heard of the company before. There wasn't a trail which was amazing to get down that pali because it is steep at great expense the only purpose is operating it as a tour and as an attraction. They can see three platforms for the zip line from their property and some work has been done on three out of eight. Because it isn't done yet people are coming up to go to the waterfall. There are articles and such that you can come there and it seems that is the sole purpose for carving that trail into the pali and that is all there is there. People have commented that this was the highlight of their tour. We (the community) support the staff's report and thanked them.

Member Gon asked if she thought there might be some other waterfall location in the ad and yes it does say \$395.00 per person to visit a pool and have a barbecue lunch and a swim. Ms. Herrington said and they have it combined with other things on the tour. Member Gon asked but, you're saying it's to this particular pool and Ms. Herrington said oh yes, sir. Looking at the pictures and comments it is all current that it's possible it could be to another waterfall, but it look's like Mother's falls.

There was more discussion about the property and Ms. Herrington learned that if they put their foot in the water they would be trespassing, but prior to that they enjoyed the river for a long time. Looking at the staff's report there was a suggestion an application was attached every time from OCCL on how things should happen. Several numerous times they were invited to fill out a full application for one place to be studied and reviewed by those people who know and advice given in that fashion and since it was never done and the letters did mention there was a tour company interested in working with Ms. Prekaski. If DLNR/OCCL understood there was a commercial interested in the conservation limited subzone it possibly could have triggered an environmental assessment or EIS because that wasn't done nothing in the river was looked into carefully. Mr. Marrow made numerous inquires and wasn't like they weren't aware this was a protected or limited subzone. This is a very important State resource that could impact Hilo Bay. In the photos they recognized some as the USGS trail and there might have been some confusion that the USGS trail is above Mother Falls and the newly built trail is below.

Ms. Herrington distributed some photos of before the trail and demonstrates how impenetrable that trail is. When she spoke to Mr. Medeiros he laughed that there is no way to get down there. If you want to get to the river you have to go the USGS way. He said he took Ms. Prekaski there himself. He said if there was another trail he would be down there. It's just too steep. Ms. Herrington said there is no existing trail and when the Hilo rains comes a manmade trail will be like a funnel which they are concerned about.

Ms. Herrington said they said that it's not for commercial purposes, but after the cease and desist letter was written on the 30<sup>th</sup> people continued to fly in on helicopters and come up in van loads using the river during those days. Member Gon asked where the helicopters land. Ms. Herrington said they occurred on an old sugar can landing strip and the vans come up near their friend's property in Pauka'a. The vans can be identified with the name Kapohokine on them. And, the structure is their lunch pavilion. She showed more pictures of the continuing tours with people kayaking and swimming from March 21<sup>st</sup>. From March 28<sup>th</sup> she has a video because they carry the kayaks down and then back up.

Member Agor asked should Mr. Marrow rectify the problem and get the proper permits how are you going to react to that. Ms. Herrington said neither she, nor her husband, nor the community are the least bit against tourism or eco-tourism as long as it's done that way. She reiterated that the initial intention was not a formal complaint, but they thought it was great that staff followed-up and that's where they wanted to find out what was going on. Having the helicopters landing and people screaming up and down the river during her retirement years that is really shocking to her.

The Board and Ms. Herrington gave their thanks for one another.

Tony Dulles testified he co-owns Kapohokine Adventures and was not involved in the contacts with DLNR and got the work started and facilitated it. He related that they had a zip line and for some reason the owner locked them out on December 1<sup>st</sup> and they would have to lay off 45 staff before Christmas. The company chose to do something else and found other positions for them. Mr. Dulles related what Mr. Marrow was doing and he felt what they were doing was really minor so Mr. Dulles had some of his zip line guys rehabbing the trail. Ms. Herrington kind of wants it both ways. He reiterated about Mr. Herrington's website which Mr. Dulles said was true and he described the Ag land and how the helicopters were used during plantation days. We really should have followed up with the CDUA and figured out where the may goes, but we didn't. There was no willful thing to mislead or anything. They have always had a good relationship with DLNR which he described.

Member Gon commented that there is a big difference between ways to get down to a stream and an actual trail down to a stream and I've found ways to get down that didn't require trails. I don't necessarily find the idea of someone saying there is three ways to get down to a stream to be in anyway contradictory to the fact that there might not be a trail at all down to the stream. Mr. Dulles said he would agree, but Mr. Herrington put on his blog the trails that go down. The first two months they couldn't find the entrance to any trail until Terry showed them.

Lucas Hubbard testified that he is a worker for Big Island Zip Adventures and clarified there was an actual trail there before they started work and did restoration work on that trail. The beginning of and end of the trail was definitely visible. The trail is in the exact same place that they took it down and people used it to collect 'opae.

Member Edlao asked what qualifies him to do trail restoration work. Mr. Hubbard has done other trail projects and he described them. Member Edlao asked whether he was knowledgeable of the requirements in a conservation subzone. Mr. Hubbard said he doesn't know all the laws and regulations that he always worked under someone who got the permits and he was not aware on any job he worked on that there's permits required for different things. He is aware of native plants and only cut down invasive plants relating what was there before. Member Edlao asked what is the plan and Mr. Hubbard said it was a verbal agreement for the plants where he is taking orders. They only followed where the trail went. Mr. Hubbard described more about the work they did on this project.

Member Gon asked whether he knew a Sean McConville. Mr. Hubbard said he didn't hear the last name, but Sean is one of their Big Island Zip Adventure workers.

Mr. Lemmo said that Audrey doesn't work for them any more and she can't defend what she said or didn't say. The cease and desist order was mailed to Teresa on December 30<sup>th</sup>. If they worked on the trail for two months they started in November. They are not telling the whole story. Staff corresponded to them after that. The letter staff sent to them telling them they needed a permit. We didn't say you may have to do a CDUA, this requires a CDUP. The may is related to the environmental issues and not the CDUP. We are definitively telling them based on what they told us they have to do a CDUP for this.

There was some discussion whether there was an existing trail or not. Mr. Lemmo said he has done a lot of bushwhacking himself, personally from what he has seen and he has said it in the report. If there was anything there is was extremely unpronounced. There may not have been anything there, but if there was there wasn't much of anything there and that does not change anything for us. They improved the land for the purposes of commercial tour operations. That is the basic allegation in this report. I cannot understand someone sit in front of you and represent that they are not economically benefiting with their clients walking over the trail to the river.

It was asked by Board member Agor whether the fine is \$15,000 each. Mr. Lemmo said it is one fine \$15,000. Ms. Prekaski was also identified since she is the landowner and authorized Kapohokine.

There was a question regarding if grading was a permitted use. Mr. Lemmo said Mr. Marrow misunderstands the nature of our rules. If it is not identified it is prohibited and which is why we have identified uses.

There were more discussions regarding the triggers for an EA/EIS, that and after-the-fact sets a bad precedence and there were questions on where Ms. Prekaski was. Mr. Yeh said he met her and she submitted a declaration and the work was done. She defers to the Board and is not hiding this. Mr. Yeh referred to Chapter 343 rules and could ask for a contested case hearing, but they want an after-the-fact.

Member Agor made a motion to approve staff's recommendation. Member Goode seconded it.

Member Gon said he would not go with staff's recommendation with the option of the after-the-fact CDUP. I have been reading through the materials and statements made and it's very clear to me, especially with the ads and the prices for a trip to this waterfall. With the picture of the waterfall there and the people enjoying lunch for close to \$400 a head and it's very clear why this trail was put down to the pool. As for the pre-existing route I can't agree that this improvement followed that route. The testimony given by one of the workers which he read "along with several others we were employed to build a trail from the top of the raven down to the base of the waterfall. Job duties included clearing large amounts of trees, brush and major digging. It required digging into the hillside due to the steep grade. The trail also required many switchbacks making the trail safer, but also increasing the length." That suggested they did not follow an existing route down. "It was not an easy job nor a simple job along the way. There was no trail in the beginning and we started from scratch. The first days of construction was scouting the trail and removing large amounts of plants and trees. Then we moved on to cutting into the hillside" (Which seems like grading to me.) "and removing large rock and boulders. The finished work was tons of gravel hauled down by wheelbarrow. It was a major undertaking and required much thought, planning and funding. The trail did not follow an existing trail and was completely new." Two months worth of work on a steep way down to a pool, coupled with an advertisement for a fly in barbecue just doesn't strike me as something I want to support, but an after-the-fact permit I would have to not support the existing motion.

Member Agor said in all due respect Member Gon, I don't think we should prevent a private property owner from applying for a permit that is available to be applied for. Whether or not it's approved they can go through the process and the Department will make that determination. But, to outright deny a property owner from applying for a permit that is available to be applied for I don't think I can support that.

Member Goode said I agree Ron that they have a right to apply and like Member Gon he is frustrated by this whole incidence and he agreed that he has done his share of bushwhacking, too. It seems clear to me that new trail wasn't there before. Clearly, commercial use is going on. That is grading. If you dig into the land you're grading, not grubbing where you are just moving plant material. You are grading. We at DLNR administer grading in conservation districts. Not the County. Also with the stop work, I think the fines should be more. I think we're being generous; Mr. Lemmo, but I will support the recommendation

Member Gon said I take the role of protecting the conservation district very seriously and was not inclined to approve this.

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

**Ayes – Members Agor, Goode, Edlao and Chairperson Aila**

**Nay - Member Gon**

**Item D-5      Withdrawal from General Lease No. S-4524 of approximately 45.14 acres; Set Aside to County of Maui, Department of Environmental Management for Landfill Expansion Purposes; and Authorize Issuance of a Right-of-Entry to the County of Maui, Department of Environmental Management; Kawaipapa, Hana, Maui, Tax Map Key: (2) 1-3-006:007 portion.**

Russell Tsuji representing Land Division conveyed that the lessee has no objection to this withdrawal. All the requirements were completed. The planner, Mich Hirano is here.

Member Edlao said this has been around a long time and is glad it has come to fruition.

It was moved by Member Edlao and seconded by Member Gon. All in favor.

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

**Item K-2      Request Board of Land and Natural Resources Approval of Construction Plans for Conservation District Use Permit KA-3460 for the Nickum Single Family Residence, Located at Haena District, Island of Kauai, Subject Parcel TMK: (4) 5-9-005:027**

Mr. Lemmo related that this item is a request for the Board to approve construction plans and generally we don't do that. Generally it's approved on the administrative level once the Board approves the CDUP, but in this case it involves a single family residence in Haena. Because staff shifted the set-back they needed to go back and design the house to fit the set-back. Now they've done that and are coming back with house plans for your approval. There is a letter from the Hanalei-Haena Community Association with concerns on the sandbag revetment issue. They seek sandbag removal from DLNR and the County. Mr. Lemmo said he can't pine on that particular issue at this moment, but there is a condition the Board imposed in the original CDUP that did talk about the sandbag revetment which is condition 15 that says "this action by the Board no way legitimizes the sandbag located seaward side of the property that DLNR has a right to seek removal of the structure. Should the landowner fail to comply with the County of Kauai, Emergency SMA Permit declaration or it's determined the structure is causing harm to the public beach." They hired a coastal engineer to look at these issues where the engineering firm came back with a report. Staff looked at the report. There are concerns still due to the sandbag revetment. Right now the sandbag revetment isn't causing a chronic problem. Potentially it could cause a problem with the beach narrowing during the winter and with a high surf event you might have trouble getting around the bags. Overall the beach recovers there and you have a nice wide sandy beach in front of these sand bags. If the situation may change in the future staff will push even harder to have them removed.

The Board members questioned why he is bringing up the sandbag revetment. Mr. Lemmo said it's because he has written testimonies. Member Agor said that he has a condition that will address that in the future.

Mr. Lemmo said he wanted to reiterate for all of these cases staff has a condition in the CDUP that in so far shall not be used for commercial vacation rental use.

Member Edlao asked whether this is a new land owner. Mr. Lemmo acknowledged this is someone new. Member Edlao asked whether or not this new owner agrees to all the original conditions. Mr. Lemmo said the architect is here. Also, permits go with the land and with the title. Member Edlao noted that we just had someone here who said they didn't know.

Timothy Bradley representing T&M Architecture, LLC said he agreed and read through the conditions several times.

Member Agor made a motion to approve staff's recommendation. Member Edlao seconded it. All voted in favor.

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

**Item K-3 Request Third Time Extension for Conservation District Use Permit KA-3121 for the Allen Single Family Residence (SFR), Swimming Pool, Pool Decking, Retaining Walls, Water Well, and Landscaping, Located at Wailua Ahupuaa, Kawaihau District, Island of Kauai, Subject Parcel TMK: (4) 4-2-003:002**

Mr. Lemmo said this is a request for a time extension and noted this is a third request since 2003. Mr. Allen says they are having finance issues and there has been some work initiated. Staff recommends this go forward and if Mr. Allen comes back to us, at least on the staff level we are telling him we may not support another one. Whether or not it happens is up to the Board, but, we are sending Mr. Allen a message in our recommendation that we aren't going to support any more extensions that this has gone on too long.

The Board commented that he (Mr. Allen) has an extension beyond an extension and has used up all his extensions.

Member Pacheco asked whether the Board can create a condition that allows no more time extensions. Mr. Lemmo said he thinks you can do that. You can come back in three years and the Board could say no.

Deputy Attorney General Bill Wynhoff said he would be reluctant to tell how a Board three years from now on what to do. I think you should be cautious about that. I know

the Legislature couldn't do it. This Legislature can't say the next Legislature in 2013 can't do something that is a difficult area. I would be careful.

Greg Allen (the permittee) testified that the permit they got in 2003 was questionable and had been denied earlier. They did engineering soil studies and took a year and a half to get permits. The land needed some foundation work which had been done. There was some erosion near a State highway that needed to be mitigated by building retaining walls which is 90% done. He related issues with a well and is in place now. Landscaping was requested so there wasn't a visual impact from Wailua River which has been done. Mr. Allen related issues regarding another property that he and some friends tried to save from bankruptcy. His claim is financial difficulty where he has a First Position mortgage inherited on a large sub-division that he never wanted to own and he was going to lose it last year which would have been good because anything he made could have gone to this house. At the same time the utility company wanted solar and he approached them. He got an agreement and project managed and completed the largest solar system in the State of Hawaii and that was sold to his First Position mortgage holder to off set his mortgage on the sub-division so they could do the affordable housing. He has done and complied with all the things on this conservation house deal and he thinks he is at a point with these other projects where he will have some liquidity and it is his intention to finish it that he does want to live there. Mr. Allen apologized that it has taken so long.

Member Good moved to approve as submitted. Member Edlao seconded it. All voted in favor.

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

**Item D-10 Termination of Revocable Permit No. 7481, Denial of Request to Issue Revocable Permit for Agriculture Purposes; Kalauao, Ewa, Oahu, Tax Map Key: (1) 9-8-011:006**

Mr. Tsuji said the Board got letters from Caprice Itagaki and WG Minami, Inc. regarding this item. He did pull those who signed up to testify outside to advise them on these letters. Ms. Itagaki who is the lawyer for the permittee, Wallace Len, III saying she can't make it today because she is out of town and requested to have this item be put off which was the first letter. There was a second letter from Ms. Itagaki with documents attached and staff may have seen those documents before, but Mr. Tsuji was not aware of them until later. When he saw them he was not comfortable with staff's recommendation or statement that the State has no access easement at this time. He doesn't know right now and he needs to further study it with the Attorney General's Office. But, the people who signed up today wished to come forward to make a statement before the Board and all are property owners in this area together with the State. The easement in questions runs through Angela Ka'aihue's property which Mr. Tsuji was not aware of. From his limited review of the documents it appears that this seems to been part of all of a development that was going on and agreements between various parties, who is going to sub-divide, etc. and access was an issue at the time. After reading the document Mr. Tsuji wasn't comfortable with staff's recommendation which was to terminate today the revocable

permit. It was his understanding that the State had a landlocked property that did not have access to the road and that is why he had staff check with the initial parties and see if they can work something out so everyone can have access. The response was they can't come to an agreement. Ms. Ka'aihue is not willing to grant the State an easement which is how the staff report is written and he was under the understanding that they had no legal access to the property at this time based on information he received. Mr. Tsuji questioned whether they have an easement because there is a State document that mentions having this access easement for pedestrian from the Kinoole Street.

Member Gon asked whether to defer this item. Mr. Tsuji recommended withdrawing, studying this and coming back to the Board that he doesn't know when at this time. We would need to sit down with the parties and get more documents than what was presented.

Chair Aila asked whether they should still take public testimonies. Deputy Attorney General Bill Wynhoff said you don't want to have their testimonies deferred and you should accept it. If you are going to withdraw you should allow them to testify today. Mr. Tsuji said when he spoke to the testifiers earlier they all wanted to say something.

Member Edlao asked whether to make a motion to withdraw and Mr. Wynhoff acknowledged that, but after public testimony.

Wallace K. Lean, III representing Friends of Waimalu Valley said he wanted to wait until his lawyer comes since she is away on the mainland and will wait to later to make a statement.

Stephanie Tom, Secretary Director of W.G. Minami, Inc. testified in support of administration's current recommendation to defer the request to issue a new revocable permit. Her family owns a nearby 30 acre property since 1953 that Waimalu Road was the only access road. She was raised on this property and her parents still live on it. There is a problem to access the State parcel which affects all the private landowners in the valley. Ms. Tom urged the Board to expedite resolving the problem with easement 341. She and her real estate attorneys researched this for the last five or six years and met with the Department's land manager about this easement. Staff acknowledged that this easement is a technical error because it exists on map 69, but is not recorded on the Land Board in granting easement to anyone. What it did was consolidate a lot of small easements into one easement which connects to Waimalu Valley Access Road, but it was never recorded and was never granted. It was a technical error on the Department's part and they would like that technical error corrected. They were never notified of the cancellation of the smaller easements or the creation of easement 341. They have been using this for years. They have a map and all of a sudden it disappears and they don't know. Although, this easement 341 is a 60 x 40 section the access roadway at the center of the problem is a section that is 15 feet wide and about 40 feet long and is a paved driveway which Horita created when he completed the estates. Ms. Tom contacted the Civil Engineering Division at the request of Land Division who said there is no subdivision created and the president of the company said it was already connected to an

existing access road. The new land owner of this access road has access to the property on both sides because it is a cul de sac where most of her property is on the Ewa side which she has access to by a sidewalk. She is restricting access to other land owners in the valley including the Board of Water Supply. She cannot access her property anywhere on this access road 'cause you'll have to cross the DLNR property or Waimalu Holdings property. My property does not abut hers at all. There is no way for her to get on to that property without having to cross a stream. There is no way to cross the stream without a bridge which she built already. Ms. Tom asked that this be resolved quickly because the new land owner, Angela Ka'aihue has been harassing and causing undue hardship on all the landowners since she purchased the property in 2009. They had no problems until she came. We had to obtain a restraining order which was issued in February of 2011 because she continued to visit Ms. Tom's parents without invitation at their home and she left obscene phone messages on her parent's voice mail. Ms. Tom strongly recommends the DLNR Deputy Attorney General contact her attorney quickly because they have done a lot of the research and they have a lot of the documents and they have recommendations to resolve this issue. She has made these recommendations to staff in their meetings and letters, but no action has been taken. For these reasons she is urging the Board to resolve the easement 341 problem immediately. They brought this issue to the Land Board years ago, but they haven't acted on it.

Member Gon asked what easement 341 is related to for the revocable permit at 7481. Ms. Tom explained that Kilinoe Street is a dead end street that is part of the Kumalani sub-division that Horita constructed and created easement 341 which is a paved driveway that goes down to a bridge which they constructed that accesses the DLNR land. The question is DLNR did not have access to easement 341 because it was never properly recorded. She asked that it be corrected quickly.

Member Goode said this easement is between this gap at the top of the cul de sac road and then it's Waimalu Valley Road. Ms. Tom acknowledged that. Member Goode said and you continue through State land to the Board of Water Supply. Ms. Tom said it was one of the original access road that was done in 1935 which she has a map, Map 1. It was one of those the State had and ran along side the stream. Somehow in 1981 Land Division staff looked for it and it was just erased with this gap. A small gap of 40 feet that she would like corrected as soon as possible. That is all she is asking for.

Member Pacheco said we were advised by our attorney to just take testimony and not engage in conversation on withdrawing this. Mr. Wynhoff said if you decided to withdraw it.

Angela Ka'aihue testified they are here today to discuss the uprising issues concerning the Royal Crown lands in the ahupua'a of Waimalu. As the steward of 82 acres of these lands we have experienced turmoil from the passing of Mr. Wally Lean who was a dominant figure in Waimalu Valley who was a land owner who leased the adjacent land parcels for his rooster farm business for approximately 20 years. Since his passing the State land, Mr. Wally Lean's lease has been placed into the care of his son, Wallace Lean, III known as Mahi. Since then they experienced solidity. We had mild conflicts to

include atrocious, portentous behaviors that are not to be taken lightly. She is glad to see the State take responsibility by moving forward and addressing these land issues. We too have done our diligent research on the easement regarding access for the State. I agree with the DLNR's Land Division's findings that there is no legal recorded access across my property. That access was cancelled back in the 80s. I'm not sure why an easement was not reassigned. Perhaps there were issues back then similar to the ones we are currently experiencing today. That of illegal criminal activities, grading and digging on State conservation land. Also, we have trespassing, drug use, harassment, thefts and people speeding and having sex in cars on the side of this easement. We know and understand the laws of the State of Hawaii and they are put in place to maintain orderly conduct for our society. There is a process they must be undertaken. These lands are registered in land court; therefore it is well protected within the jurisdiction of the State laws. There is no hostile or adverse possession of land in this situation. We know that these farmers' interest and hobbies are at stake and we tried to help by submitting an application for the leased land acquiring responsibility for a modulation or spiritual rebirth could occur. However, instead of delivering sincerity and understanding on the matter vexation and petulance prevail by the challenged parties. Perhaps a new hobby for these farmers maybe resonated later on in the future. We simply ask and request that our rights as a landowner be respected and that the easement is carefully reviewed to serve the better interest of the public and not for those who chose to maintain a hobby or for those who claim this is a public access road that runs across my property which it is not. This is a private easement. We ask the State DLNR continue to uphold the integrity and the dignity of our Royal Crown lands and will enforce and regulate all aspects of Hawaii State laws. We request the DLNR abrogate all illegal activities. Our livelihood will continue to be jeopardized if this is not resolved by the DLNR. It is the responsibility of the State DLNR to determine the outcome and fate of these Crown Lands based on Hawai'i's laws. It is the State of Hawai'i's decision and judgment and we will respect the State's decision and judgment. I come forward and thank you for allowing sharing my testimony. The use of this easement far exceeds the original intention and purpose that this easement may have served.

Mr. Tsuji pointed out as far as the easement number mentioned he is referring to the easement document attached with Caprice Itagaki's written testimony and is the only one he reviewed. I don't know about the number and maps. From reviewing this document it led him to believe that Wallace Lean, Sr. was a major landowner in that area and was seeking to sell and develop. One of his first sales was to Tobu and Tobu's obligation was sub-dividing going through some development. Mr. Tsuji wanted to make clear the RP that we are talking about to Wallace Lean; III is really an Ag RP. We have not issued to his knowledge any easement or access to any other party. And, it may have been and the reason you don't see that is because there was a question on whether the State has legal access to its own property.

Member Gon said if you withdraw this item which he is about to move that when it comes back to us those things would be clarified then. Mr. Tsuji said obviously it's a contentious issue among the property owners.

Member Goode seconded it. All voted in favor.

**Withdrawn (Gon, Goode)**

**Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Scott Godwin, NOAA Office of National Marine Sanctuaries, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct Reef Assessment and Monitoring Activities**

Francis Oishi representing Division of Aquatic Resources (DAR) said the Board members should have received a request for consideration of amendment to this item. Attached is a proposed declaration exemption from 343 HRS requirements. Staff requests it be clear that you're asking the Board to consider and declare that the proposed actions have little or no significant impact on the environment and therefore exempt from environmental assessment. If you agree with the determination for this exemption that the Board delegate and authorize the Chairperson to sign the declaration of exemption for the purposes of record keeping in conformance with Chapter 343, HRS.

Member Gon asked he presumed the revised recommendation is to just ensure that you've made the statement of compliance with 343. Mr. Oishi acknowledged that. Staff is requesting the Board's consideration and approval of the declaration of exemption. Member Goode asked whether this will be done for all future requests. Mr. Oishi acknowledged that for all of today's submittals as well as those in the future.

Member Goode asked to remind him how they did this the last time. As he recalled correctly there was a statement of exemption and analysis and the reason behind it. Often times signed by the Chair or the previous Chair, but he didn't recall that we as the Board make a finding as part of our recommendation. Mr. Oishi said he thinks with previous submittals dealing with permits that require a determination for exemption from Chapter 343. There's a memo attached providing the analysis. But, in consultation with the AG it wasn't clear that in the recommendation to the Board that we are asking your consideration and possible approval of that determination and we're suppose to be doing that. To make it clear that part we're amending the recommendation language to reflect as such.

Member Agor asked within this application we don't have the analysis. Mr. Oishi said it is included.

Member Gon said that is to draw attention to the fact that it is within the analysis as far as the staff's recommendation. Mr. Oishi acknowledged that.

Member Pacheco said he thinks the difference is in the past. It's just the vision has made a declared exemption and we past that now the Board is actually approving that and giving the authority to the Chairperson to sign of on that. Mr. Oishi said before this the

343 exemption was part of the package. It's just that staff wasn't including it as part as the recommendation. It is better that they do it in this fashion.

Member Goode said this is saying the Board now is making the exemption for final determination instead of Departmental action. I'm a little uncomfortable. I would think we would have been advised of this earlier. And to also understand what the implications can mean for us as the Board and as Board members.

Member Pacheco noted in the previous approvals that they've done they've actually done that. Now this is recorded in the submittal. And by us approving those submittals in the past with a declaration I think the Board was actually already agreeing and declaring that there will be an EA exemption. Maybe we should talk to our attorney.

Mr. Wynhoff said how it was in the past with respect to this. If you find that most of your packages involve any kind of land use or trigger on 343 will have in your recommendation the Board approve the exemption and the Board approve 343. Chair Aila is the head of the Board. The Chapter requires that the head of the agency make that determination. Again, I don't know exactly what's been done in the past. When I saw the submittals here, I told staff they should be clearer and he has done this with other recommendations. Sometimes a recommendation comes through and there the State has had an exemption determination has been made, but the exemption determination has to be made by the Board. That is just the way it goes. Now these guys have done the staff work for you and given you a detailed analysis of what an exemption is appropriate and hopefully you have enough information to make that determination or not you'll have to study it or take whatever action you deem appropriate.

Member Goode said so all the other Divisions submittals will have it too then. All will have this new language. Mr. Wynhoff said not all have as much detail as to it, but we've had this discussion with Chair Thielen, not sure if we've had it with Chair Aila, but we review them. When it's my turn to staff I go through them in advance and if it's not in there for the Board to make a determination we tell staff they have to make that. The last time he was here he asked the staff to amend a couple of them and they are getting better. Once in awhile between the Chair and staff and the AG's Office hope they pick them all up and hopefully you guys (the Board) are the ones to make the determination every time because that is the way it's suppose to be done.

Member Gon said essentially it goes before the Board and if any of us have any qualms about whether or not there are environmental requirements this is our opportunity to make those kinds of statements. I look at it as another set of eyes to assess the proposals being made and to take action as needed.

Member Pacheco approved as amended. Member Gon seconded it. The Board voted in favor.

**The Board:**

**Approved staff's amended recommendations that were distributed to the Board. Otherwise, staff's submittal was approved as submitted.**

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

**Item F-1 Request for Approval of Special Activity Permit 2011-63 for Dr. Alan Friedlander, Pacific Island Ecosystems Research Center, to Conduct Research on State Regulated Moi and Aholehole on Oahu**

**Item F-3 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**

**Item F-4 Request for Approval of Special Activity Permit 2011-68 for Dr. Sean Callahan, University of Hawaii, Department of Microbiology, to Conduct Research on State Regulated Stony Corals on Oahu**

Member Gon moved to approve staff's amended recommendations for Items F-1, F-3 and F-4. Member Agor seconded it. All voted in favor.

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

**Item I-1 Request Approval to Authorize the Chairperson to Sign Contracts with Minatoishi Palumbo Architects, Inc. and Mason Architects, for their Service as Architectural Historians to Conduct Reviews, Make Determinations, and Propose Mitigation as Mandated by the National Park Service (NPS) Under the National Historic Preservation Act of 1966 (NHPA), Section 106; and to Delegate Authority to the Chairperson to Sign All Future Contracts Approved by the Governor.**

Pua Aiu representing State Historic Preservation Division (SHPD) conveyed that they request the Board approve two contracts because staff was not able to hire an architect historian to meet our requirements. Lorraine Minatoishi has served in this capacity in the past. We didn't come before you because we didn't think we were suppose to, but now I'm here. Her contract is for little under \$47,000 and Mason Architect is for \$7,500. Ms. Aiu made one change in the recommendation in addition to authorizing this that you delegate the authority to the Chairperson to sign all future contracts approved by the Governor under a \$100,000. When you make the motion you may want to make sure that's clear because it's not on the agenda item.

Member Pacheco asked our attorney whether that is an issue for us in Sunshine. It's in the subject. Ms. Aiu said it's not the amount. We didn't ask for blanket authority or you could give it to the Chair if you want to, but our recommendation was for under \$100,000. Member Pacheco asked what do we have in our procurement law. Chair Aila

said you would still have to comply with the procurement. It would authorize the Chair to work with procurement. Mr. Wynhoff said it's still going to be covered by Sunshine and it's still going to be covered by procurement. It's a question whether you guys feel comfortable not being involved in future contracts. If you want to keep your fingers out of them you come to the Board. If you feel comfortable delegating to the Chair then I don't see a problem with that. Member Pacheco said he does feel comfortable, but at some point he would like an update beyond the on-going issues with...Ms. Aiu asked will the Board tell her when. Member Pacheco suggested maybe when there is significant progress or if you feel they reach some benchmarks or turning points.

Member Agor asked November 30, 2010 we received a \$150,000, is this yearly. Ms. Aiu said no, that was the Governor's approval for \$150,000. Annually, they get in the vicinity of \$550,000 through the NPS grant. Member Agor asked this \$150,000 is particularly for the architect for services right. Ms. Aiu acknowledged that saying which they took out both Federal funds and General matching funds. Member Agor asked whether we are going to be able to do that next year. Ms. Aiu said if we are able to hire an architect historian and they are recruiting one right now then they wouldn't do that unless they fell way behind. Member Agor commented that at that amount you can hire a really good person and Ms. Aiu agreed. The reason they asked for the authorization was because last year they only asked for \$50,000 and they spent it before the year was over.

Member Goode said he has worked with Spencer Mason on a project a long time ago and they are a really keen historic architecture firm and will definitely serve the best interest of the State.

Member Agor wondered why one has \$46,000 and the other is \$75,000. Is that something to do with AGPRA? Ms. Aiu said we did this through the electronic procurement system and Mason didn't quite understand it because afterward he asked her should I have bid \$50,000 and she said yes, you should have. They were trying to come in with a low bid and with this one we were going to take up to three bidders anyway. Do you want to know what the other contracts coming down the pipe are? I could tell you. Chair Aila said we'll keep them in the loop.

A motion was made to approve by Member Pacheco and was seconded by Member Edlao. All voted in favor.

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

**Item B-1 Request Board Approval to Enter into a Memorandum of Agreement**

Patti Edwards representing Division of Conservation and Enforcement (DOCARE) related that this is between the County of Kauai and Department of Land and Natural Resources for our officers to use the Kauai Police Department repel tower. Staff requests approval of this MOA and asked that the Chair be authorized to approve the final agreement once we send it to the AGs for approval.

Member Agor asked where this is located. Ms. Edwards says it's in Lihue, but wasn't sure exactly where.

Member Agor made a motion to approve staff's recommendation. Member Gon seconded it. All voted in favor.

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

**Item E-1 Request for a Special Use Permit from the Rock Island Riders to use the Mauna Kea Recreation Area on Saddle Road, Hawaii, for the 2011 Mauna Kea 200**

Dan Quinn representing Division of State Parks gave some background on this motorcycle road event and an ATV race the next day outside the park area. They use the Mauna Kea Park area as their headquarters for the activities. They don't do the motorcycle activities there other than breakfast and gathering there. The event has been on-going since 1976 out of the Mauna Kea State Recreation area. This is a routine one. Staff asked for a \$100 a day rental fee which is less than what the Board approved for the last event which was commercial and this is more a community event.

Member Pacheco said he experienced this event numerous times by traveling across the saddle and stopping at the Mauna Kea State Park while the event was on-going and the event staff was considerate and accommodating with the public coming through.

Member Pacheco approved as submitted. Member Edlao seconded it. All voted in favor.

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

**Item D-4 Denial of Petitions for Contested Case Hearing by Ms. Margaret Wille as to Extensions of General Lease Nos. S-4464, S-4465, S-4471 and S-4474, Parker Ranch, Inc., Lessee.**

Mr. Tsuji said that staff did receive Ms. Wille's document and after consulting with Bill (Wynhoff) she is not entitled to a contested case hearing. Chair Aila asked that is staff's recommendation.

Member Pacheco said and that is because extending a lease that is already in the lease is not a disposition of property. The disposition of property has to happen with the instigation of the lease. He asked Mr. Wynhoff if that is his opinion. Mr. Wynhoff said there is a bunch of reasons why she is not entitled to a contested case hearing and what I was thinking about is there is a difference between whether this was a good idea in the first place and I don't see any reason to think it was and whether she was entitled to a contested case. The fact that it's not a disposition is at least part of the reason why you guys were correct in ruling in the first place, but it really doesn't have much to do with whether or not she is entitled to a contested case. You got to file for a contested case because there isn't any law that says she is entitled to a contested case and she doesn't

have any property rights in here. That is basically an analysis of whether someone is entitled to a contested case or not.

Mr. Tsuji said I know Bill said don't do it, but I just want to let you know that she may not be legally entitled to a contested case but generally we've said to the Board with a big heart want to grant one, generally it's okay. The problem I have here is we have an existing lease that was auctioned to Parker and it's an extension provision - you meet certain things you get an extension. When we leased it back in the 70s they leased the whole thing. There was no reservation for any public right-of-way. They met the requirements, came forward and asked for the extension. She (Ms. Wille) is instead asking wait, don't grant it. I want have some right-of-way through the property. If we don't grant the extension the lease expires. Member Pacheco said he recalled they were up against a deadline. Mr. Tsuji acknowledged that and said secondedly is that the right thing to do for this particular lessee. Whether it's a big corporation or a big company like Parker or a small mom and pop it acquired by auction and that was the terms of the lease. We've been so advised by AGs a lot of times, too. Like both the State and the lessee want to try to modify an auction and we can't do that. It's strictly whatever was there on the lease you got to comply with. It's not an easy right-of-way, too. In hindsight of things maybe we should have considered reserving a right-of-way. Always the issue for the State as we've learned is that there are public right-of-ways. The big issue that it comes down to is maintaining some liability. We are getting hit with major liability. There is no public right-of-way. People just go there.

Member Pacheco said welcome to the land of private land owners. Mr. Tsuji said it's not that simple as she (Ms. Wille) may present. Member Pacheco agreed and said especially for these long term leases in some of these areas that go on for a long time and times change the population increases. In that area, I think there is a valid need for public access. There is plenty of hunting access, but for the recreational user they don't have that and he didn't know what the language is in the lease. He thought the Department could come in at anytime and say they want to work out some kind of public agreement over these leases. We reserve that right, is that correct? Mr. Tsuji said it's similar to the Pali mitigation area. There is a provision for withdrawal.

Member Pacheco said he would encourage the Department to work with Na Ala Hele/DOFAW and sit down with Parker Ranch to see if there is something that can be worked out in the future. He is in support of the submittal. Mr. Tsuji said one thing when he speaks to Na Ala Hele about trails it's a limited amount that they have under their inventory and they spend a lot of money on it. Member Pacheco said he meant to talk with them on their expertise if possible to work with the Ranch. Mr. Tsuji said he was hoping Parker Ranch and Ms. Wille and her group get together to agree on some area together with maintenance and liability to resolve it and not making the State responsible for that. Member Pacheco said maybe the State is not responsible. I think the State needs to take some leadership in trying to make that because it is not going to happen between Ms. Wille and Parker Ranch I can tell you that much. I support this.

Member Gon asked whenever we have these long term leases the whole idea of the conditions of the lease and in the case of Parker Ranch he would think some of those conditions might be with regard to fence upkeep or various other aspects of the infrastructure and conditions of the land. I am curious on how we assess those conditions. Do we regularly check on the conditions of leases or in compliance of all the conditions? Mr. Tsuji said they try to at Land Division. We got 1.3 million acres. For the Big Island they have three land agents for the entire island. Staff tries to inspect leases when they can at least every two years and even then it's a struggle. There is a Land Division standard they try to achieve, but they don't always comply with that. Getting out to the property to inspect every two years it's more like every five, six, seven years and a lot of times only when there is a complaint. Plus staff does submittals and analyzing contentious issues.

Member Gon said this leads to something...Mr. Tsuji said in the report when we granted the extension staff went out to inspect the site. Member Gon said when you look at the site and the particular parcel being considered for lease extension and that is part of the step and the other part of the step is the neighboring lands. In this case leased Parker Ranch lands often go right up to the edge of forest reserves or the Natural Area Reserves. He was wondering about the conditions that might affect adjacent State lands and whether or not the conditions of the lease that speak to that should be focused on just the leased lands themselves, but whether or not the conditions of the lease affect the adjacent lands. Mr. Tsuji said he could not speak for the subject Parker Ranch, but he does know for Big Island there are a lot of ranch pasture leases and they do go up to a forest reserve or NARS that there are provisions in there. He didn't recall it being in the Parker Ranch one, but it has been with other big ranchers where they have to fence to keep their cattle out of the forest reserve and they work with Forestry on that. Member Gon said that was his concern because he has been hearing rumblings from folks on whether or not enough attention has been paid to those kinds of conditions. Mr. Tsuji said it has on the Big Island and the Big Island has the most pasture leases.

Member Pacheco said he knows of situations where Hawaiian Homes Land and Forestry have alerted Land Division that the lessee's cows are going into the forest reserve and action to fix that. Some places around Mauna Kea where ranches that go down there are miles of fence line there that nobody gets to. Mr. Tsuji said a lot of times the fence gets broken when trees fall and cattle escape that way.

Member Pacheco said one thing he would like to see the Department try to do is especially with Land Division leases that are basically land locking forest reserves and have public recreational value to us and then on one hand we have the issue of not having enough funds and personnel to manage access points and that is a value to that lease. When we go forward and open up the leases we take a look at that recreational value to the State that those land uses use as far as access and make those conditions on the lease which is something they need to under the State's oversight to create and manage those access points to allow recreational opportunities. Especially on the Big Island the public has very few places. The only legal access they have is public hunting access points in leases. Times have changed and there is a need for the public. We have the ability to

capture value, monetary value from our lessees on those lessee lands to further one of the missions of this Department. Mr. Tsuji said he assumed he was talking about pasture type lands. Member Pacheco acknowledged that. Mr. Tsuji said that one of the reasons is because of DOFAW for the future. Several years ago we were faced with Act 90 a law passed by the Legislature to turn over Ag leases to DOA to manage it. What was made as a conscious decision by the Department at the time was to make sure we don't transfer the pasture leases because DOFAW has an interest often in every single one of them and is hoping to at the end of the term to acquire the use of those lands because they have adjacent forest reserve lands. That is why Chair Aila is saying we are retaining those for the sake of the Department. When those leases all expire it will be up to the Board at that time to continue the lease or retain it for the Department. That was the intent to always consult with DOFAW because DOFAW definitely has a major interest in retaining those lands.

Member Pacheco made a motion to approve this item. Member Edlao seconded it. The Board voted in favor.

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

- Item D-1** 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, the Department of Accounting and General Services, and the County of Kauai for the Kainahola Road/Upper Kapahi (Dam) Reservoir Remediation and Kahuna Road Realignment/Lower Kapahi Dam Removal; Kapahi, Kauai County, located at TMK Nos. (4) 4-6-007:011, 4-6-006:007, 4-6-008:999, and 4-6-032:022.
- Item D-2** Amend Prior Board Action of May 22, 2009 (Item D-2), Grant of Term, Non-Exclusive Easement to Shawna Carol and Thomas Cobb for Access and Fence Line Purposes; Rescind Prior Board Action of May 26, 2006 (Item D-1), Sale of Remnant to Shawna Carol and Thomas Cobb, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-008: Portion of 030.
- Item D-3** Amendment of State Water Lease No. S-3853 to the United States of America for the Hopukani, Waihu and Lilo Springs, Kaohe IV & V, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 (por.) & 4-4-16:03 (por.).
- Item D-6** Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics Inc. for a controlled logo burn for the Unified Grocers at Honuaula, Wailea, Makena, Maui, Tax Map Key: (2) 2-1-023: seaward of 003.

- Item D-7** Issuance of Revocable Permit to Hilton Hawaiian Village LLC for Purposes of Beach Activities to be held from May 28 to May 29, 2011 at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portion of 021.
- Item D-8** Amendment of General Lease No. S-5468 to Waimanalo Teen Project, Lessee, for Multi-Purpose Community Facility Purposes, Waimanalo, Oahu, Tax Map Key: (1) 4-1-9:265.
- Item D-9** Consent to Mortgage and Extension of Lease Term, General Lease No. S-4008, Walter & Evelyn Chong Trust, Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:014.

Member Gon asked if there were any changes and Mr. Tsuji said there were none.

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

- Item L-1** Approval to Execute Supplemental Contract No. 1 to Professional Services, Contract No. 59308, Job No. D00XO60A, Wetland Restoration at Kawai Nui Marsh, Oahu, Hawai'i
- Item L-2** Request to Hire a Consultant for National Flood Insurance Program (NFIP) Development of Phase II of the Mobile Device Application for NFIP Site Inspections
- Item L-3** Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 44 - Upper Kapahi Reservoir (KA-0013) Dam Remediation, Kapaa, Kauai, Hawaii
- Item L-4** Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 47 - Wailua Reservoir (KA-0060) Dam Remediation, Kapaa, Kauai, Hawaii
- Item L-5** Approval to Execute Supplemental Contract No. 1 to the Agreement for Professional Services, Contract No. 58069, for Job No. J41BS17A, State Water Projects Plan Update
- Item L-6** Certification of Election and Appointment of West Kauai Soil and Water Conservation District Directors

Dickie Lee representing Engineering Division said there were no changes to these submittals and staff recommends approval.

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

**Item M-1 Issuance of a Hangar and Facilities Lease Hawaii Pacific Aviation, Inc., Kona International Airport at Keahole**

**Item M-2 Amendment No. 1 to State Lease No. DOT-A-09-0003 Helicopter Consultants of Maui, Inc. dba Blue Hawaiian Helicopters, Lihue Airport**

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

Member Pacheco said as a Board member it would be beneficial to have open discussions on policies without decision making to make sure the Department runs a certain way, but the only way is through a Land Board meeting.

The Board and Mr. Wynhoff discussed this matter.

**Adjourned (Pacheco, Edlao)**


There being no further business, Chairperson Aila adjourned the meeting at 12:30 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:

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