

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

DATE: FRIDAY, AUGUST 12, 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 9:18 a.m. The following were in attendance:

**MEMBERS**

William Aila, Jr.  
Ron Agor  
David Goode

Jerry Edlao  
John Morgan

**STAFF**

Paul Conry/DOFAW  
Ed Underwood/DOBOR  
Russell Tsuji/LAND  
Randy Awo/DOCARE

Bill Tam/CWRM  
Dr. Bob Nishimoto/DAR  
Sam Lemmo/OCCL  
Barry Cheung/LAND

**OTHERS**

Bill Wynhoff, Deputy Attorney General  
Cynthia Farias, J-2  
Raymond Billami, J-2  
Curtis Iaukea, J-2  
George Parsons, J-2  
Mike Beason, J-6  
Mitchell Alapa, J-6  
Pua Kanahele, F-1  
Bettina Meinhart, K-1  
Rachel Neville, K-1  
Mark Fox, K-1  
Dr. Robert Toonen, F-5/F-6  
Randall Kosaki, F-2

Cheyenne Perry, C-3  
Sheila Lipton, J-2  
Woody Brown, J-2  
John Savio, J-2  
Robert King, J-2  
Brian Lansing, J-6  
Michael Sheehan, J-6  
Ron Weidenbach, K-1  
Marti Townsend, K-1  
Sterling Wong, K-1  
Shauna Tom, F-5/F-6  
Greg Kugle, D-3  
Richard Lewis, F-3

Heather Klotz, J-3  
Officer Rivera, J-4  
Patrick Miller, J-5

Melody Aduja, J-4  
Lee Williams, J-4  
Janet Mandrell, J-1

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

**Item A-1     June 9, 2011 Minutes**

**Item A-2     June 23, 2011 Minutes**

**Item A-3     July 8, 2011 Minutes**

**Item A-4     July 22, 2011 Minutes**

The above items were not ready for this Board meeting.

**Item C-3     Withdrawal of Geothermal Resource Subzone Designation Pursuant to Hawaii Revised Statutes (HRS) §205.5.1, 5.2 and Hawaii Administrative Rules (HAR) § 13-184-10 from Wao Kele O Puna Forest Reserve (TMK (3) 1-2-010:002 & 003) at Waiakahiula and Ka'ohe, Puna, Hawaii**

Written testimony from OHA was distributed to the Board.

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) conveyed some background on the Wao Kele O Puna that the Department is on a cooperative management agreement with Office of Hawaiian Affairs (OHA) to manage the forest for 10 years. The designation doesn't meet the requirements of what the property was purchased for and the Forest Reserve agreed to remove that designation. He related the processes of how that can be done and per advice of the Office of the Attorney General (AG) it should be done through a contested case process.

Member Goode asked what are we contesting where Deputy Attorney General Bill Wynhoff said the applicable statute says that the withdrawal has to be done by the Board after a contested case proceeding or after a proceeding pursuant to Chapter 91 and it also goes on to say that the Department shows it in the evidence. We have an old advice letter on that indicated that a contested case proceeding that it doesn't appear there isn't going to be any opposition to it and a contested case proceeding won't be too difficult.

Member Goode asked since there was previous opinion on that was there an actual action previously that withdrew some lands from the sub-zone. Mr. Wynhoff said that Mr. Tam wrote about that and he may know more about the circumstances.

Bill Tam, Deputy Director of DLNR testified that he was legal counsel to this Board back in the 1980s and 1990s on the geothermal cases that he wrote the rules on how this process works. In the opinion of the attachment whether you do withdraw you follow a process that could involve contested cases because contested cases grant due process rights to third parties that could be affected and rule making doesn't afford that opportunity. Unless someone requests it there is no contested case because there is nothing to have a case about. It is an opportunity for someone to request for a contested case if they have a property interest and if no one makes that request than its moot. You simply vote on the merits based on the finding of the staff submittal. The submittal provides sufficient information to make a judgment that facts on record support the withdrawal. In this case the landlord doesn't want to do geothermal and the money by which they acquired the property would prohibit it. If someone requests a contested case there is nothing to be contested and if that should happen you would follow that process, but in a split between rule making and contested cases on which avenue to go down. Simply vote on the finding of facts justify the withdrawal.

Member Goode asked if we find out today whether there is testimony for a contested case or not. From testimony otherwise...Mr. Tam said you can vote on it based the record before you.

Mr. Wynhoff disagreed with Mr. Tam that the advice they have was approved by the Attorney General is "We conclude that the language in the Statute requires the Board to hold contested cases on applications to withdraw property from geothermal resource sub-zones." That Mr. Wynhoff respects what Mr. Tam said since he wrote the original advice letter he thinks it would be appropriate ...that that advice letter is going to be changed being overruled by the advice of the Attorney General. Mr. Tam apologized, but disagreed with Mr. Wynhoff and said that contested case is a due process right where rule making is not. The opinion letter said you have to go down the contested case side because there is an issue that it doesn't mean to hold a contested case absence of anyone coming in that there is no one to have a contested case with. He reiterated what he said earlier to decide on the evidence of the record.

Cheyenne Hoku Perry representing OHA testified in support of this item that they have a letter that shows this.

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

**Item J-2      Recommend The Board Of Land And Natural Resources (Board)  
Approve The Issuance Of Commercial Use Permits For Commercial  
Catamaran Activities Taking Place On Waikiki Beach And Near  
Shore Waters To The Operators Listed In Exhibit A**

A number of written testimonies were distributed to the Board members.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reported that Hawaii Administrative Rule 13-251-76 was amended some time ago

requiring anyone working on or in Waikiki or Ka'anapali Beach or ocean waters to obtain a permit from the Board. He reminded the Board that staff came to them 3 years ago regarding the Ka'anapali commercial operations taking place which included catamaran operations and staff would like to apply the same permit requirements done there to Waikiki Beach as well. There are currently 7 operators and by rule it should be down to 4, but the permits are transferable which is why there are 7 currently. Staff would like to be able to issue the commercial use permit which has all the parameters that all the commercial users follow and the assessed commercial use fee that staff assesses all commercial operators. Staff provided the list of the 7 that are there now.

Cynthia Farias testified that she is from the law firm Freeman and Nakano representing some of the catamaran owners of Waikiki and the operators of the 7 catamarans are here to testify. The language of the regulation doesn't say anything about requiring commercial permits for catamarans which she read. It says "...written permit from the Board" it doesn't say commercial use permit. She noted other provisions for thrill craft are specific to that activity and referred to their written testimonies. The March 2003 amendment that was passed by DOBOR was clear that Waikiki catamarans were not thought of or intended to be included in the commercial use permitting citing the rule that it only talks of Ka'anapali. The Waikiki catamarans are required to have a registration and pay a fee. They do a huge amount to comply with on-going Coast Guard regulations which are a lot stricter. The owners already comply with the section and every operator has a written operator's permit and always had that to carry passengers for hire. The other concern that this industry had was they did not receive notice of this rulemaking in 2003 because it only talks about Ka'anapali and there were no hearings on Oahu. This is a broad sweeping significant change to the way these commercial operations were doing business in Waikiki. There were no notice, no adequate notice and no hearings on Oahu. They believe there are some constitutional challenges if it's going to be enforced this way. The notice is misleading because it talks about Maui and not about me (the Waikiki operator) and then have to pay 3% of my gross which is significant. Ms. Farias started to raise a Supreme Court case.

Mr. Wynhoff asked for clarification whether the issue was to change 13-256 or was it to change 251. Mr. Underwood said we are talking about the issuance of the permit. Ms. Farias said under 251-76, the enforcement of the regulation citing the Hawaii Supreme Court case in their written testimony and there was no question that the catamaran operators are an interested party and did not receive notice. Mr. Wynhoff asked Ms. Farias is saying that at the time this regulation was put into affect you didn't receive notice at that time. Ms. Farias said that is correct. Mr. Wynhoff said but not with respect to this particular proceeding. Ms. Farias said we're here so we did receive notice of this hearing. The court also stated the substance of a proposed rule in the notice means not merely the subject of it but in an intelligible abstract or synopsis of its material and substantial elements. That notice is devoid of any reference to Waikiki catamarans, to commercial use permits or these operators. We believe that is a significant concern with the implementation of this regulation as it applies to the Waikiki catamarans. Ka'anapali is different since they did have a hearing and some permits had been issued. The Waikiki group is a different category. Chapter 91 of the Hawaii Revised Statutes does require

noticing be sufficient and they are concerned it was not. Some catamarans have been operating for 40 years and they just learned of this and are very concerned. The 13-251-76 is vague and ambiguous, it doesn't say commercial use permit, and there is no definition of what written permit is whereas commercial use permit has been used elsewhere. We know what that is. Written permit – they could be compliant; they could be not that is another concern that the regulation is vague, ambiguous and maybe unconstitutionally so.

Member Morgan asked who is the agency that gives operator permits. Ms. Farias said DLNR. Mr. Underwood explained the operator permit is not to the company, it's to the individuals saying that the individual has experience operating the vessel. As for the Waikiki catamarans the operator permit goes to the captain of the vessel and they have to show they have at least 90 days sailing experience operating the vessel in Waikiki waters. Staff accepts the captain's license and a letter from the company saying they meet that requirement and they get an operator permit. By no way has to do with the company's operation and the exclusive use of Waikiki Beach. Ms. Farias said 251-76 is the regulation Mr. Underwood is citing for these permits which says no person shall engage in commercial activities and it doesn't talk about the company that the operator permit is directed to a person.

Member Morgan asked the reason why Ms. Farias raised the issue of no notice that happened in 2003 and he presumed the reason why she is bringing it up now is there have been no action since 2003 and no reason to get concerned. Ms. Farias said that is true. It has been eight years since this amendment passed.

Chair Aila asked for a definition of a "person." Mr. Underwood said the definition of a "person" includes corporations, partnerships and business entities - all are considered persons. The Chair asked we do issue these folks in Waikiki a registration. Mr. Underwood acknowledged we do. Chair Aila asked what the fee was and Mr. Underwood said \$8.50 a year. The Chair asked other than that do they pay any other fees. Mr. Underwood said there is no other use fee. Member Edlao asked whether in the rules "person" is clarified as he stated and Mr. Underwood confirmed that.

Mr. Wynhoff asked whether a copy of that operators permit was attached to anybody's materials. Mr. Underwood explained that it's a blue card that has the person's picture on it and it says they meet the 90 day requirement and they are a licensed captain and can operate the boat.

Ms. Farias said not to have the misconception that \$8.50 is a lot of money where someone passed the blue card to her. She said the Waikiki catamaran owners want to work with the State and DLNR to possibly raise that registration fee and the regulation is there to pay a fee.

Mr. Wynhoff asked how are they defined in the rules. Mr. Underwood said within the boating rules there is a section called use permits and it lists 13 various permits that we can use for issuing and the permit that staff issued for a commercial vessel is the same

throughout the State. It's the standard commercial use permit and that is what staff is requesting the Board to authorize staff to do for the Waikiki catamaran operators.

Member Morgan asked what is the substantive reason for the opposition. Is it a fee issue? If everyone in the State has to have a commercial use permit and these guys don't. If it's just a technicality there isn't much reason to oppose it but if there something besides requiring having it. Ms. Farias said they don't believe everybody in the State has a commercial use permit or don't need one at this time. DOBOR wants to have a comprehensive plan to deal with commercial uses in our State waters which is great, but let it be comprehensive instead of this (submittal) is piecemeal. It's been eight years and another point in time ask for another set of permits for another use. We believe it should be comprehensive but let's keep the status quo until we have something which is there for everybody and complies with the constitution and the statute.

Member Morgan asked what is the difference between the current written permit which is an operator's permit at \$8.50 and the financial implications of a commercial use permit. Ms. Farias said potentially many thousands of dollars which is a concern. Member Morgan said that is the underlying issue. Ms. Farias said if it was just a matter of having a commercial use permit and a piece of paper that would be rather diminutive it's just another regulation to have to comply with. It's very burdensome. I think the owners would like to express that – the high cost. The 3% of gross does not take into account what your costs are and because they are so highly regulated by the Coast Guard and the boats are always in need of repair it's a very expensive proposition. It's not a profitable enterprise in the sense of a big margin.

Mr. Underwood clarified the reason why it took so long is in the statute it only discussed registrations when it pertained to the Waikiki catamarans. House Bill 1566 was passed this past session (Legislature), the Governor recently signed it and it now says staff can register written permits and commercial use permits to the catamaran operators and that is why staff is coming before the Board because they have the authority now to issue the commercial use permit.

Chair Aila asked what do other commercial permittees in Waikiki pay. Mr. Underwood said all other commercial permittees are coming out of private property. Waikiki Beach is under the jurisdiction of Boating. It's considered our facility and that is why we charge the commercial use fee. Any commercial boat operating out of a DOBOR facility is issued a commercial use permit. The only operator statewide that don't get a commercial use permit are those coming out of private facilities and the Legislature is looking at that, but for now we only have the authority to issue from our facilities.

Member Morgan asked if you had a surfboard on private property and take it out in the water that's not covered. Mr. Underwood said correct. The Attorney General's office has told staff transit on the beach to gain access to the water is not considered a commercial activity. Right now we issue commercial permits to surf schools in Ka'anapali for the use of the water and staff is looking go down that same path for Waikiki, but Waikiki is much busier with much more activities taking place in the water.

They need to get everybody together and try to figure out the best way to address all those activities.

It was asked by Member Edlao whether staff plans to go down to 4 catamarans because there is 7 now. Mr. Underwood said that is what the rule calls for. If staff wanted to increase the limit they could change the limit in the rule which he has no problem with. Member Edlao wondered whether staff wants to keep 7 and Mr. Underwood said they would. The intent was to allow 4, but at the time the rule was implemented there was 7 and are grandfathered in.

Member Morgan asked we just learned the reason the Department made this action was because of House Bill 1566 and on the legal justification for this action what is her take and whether her argument is still for the due process. Ms. Farias said the submission before this Board was that 251-76 authorizes the issuance of commercial use permits to the catamaran operation in Waikiki. Our opinion is that section as applies to the Waikiki operators is vague, ambiguous and it was not passed without the proper notice and hearings and is unenforceable as to these Waikiki operators. We do comply with the literal terms of that section because we do have written permits. The people who are engaged in the commercial use of Waikiki do have operators' permits and does comply. Our arguments are still the same.

Mr. Wynhoff asked your challenge to the 2003 rule is that the rulemaking procedures didn't comply with the requirements of Chapter 91. Ms. Farias confirmed that it is one of their challenges. Mr. Wynhoff asked if there was a timeline to Chapter 91-7(e). Ms. Farias said well, these people didn't get notice of this until several weeks ago. It's hard to challenge something you don't know if it applies to you. Mr. Wynhoff asked that is you response to 91-7(e) that you didn't know until several weeks ago. Ms. Farias said well, the industry was never enforced on them. Mr. Wynhoff said okay that he wasn't trying to say she was wrong. Ms. Farias said if it was closer to that particular period of time 2003 to 2005 then there would be some kind of relationship between the amendment and the effort to issue the commercial use permit, but it has been 8 years. Also, given the way it was noticed and the way it was enacted with the public meetings on Maui and not in Waikiki. If it happened back then with public hearings in Waikiki then the operators would have had a chance to talk about it at that point in time and would have been more timely. Mr. Wynhoff asked is due process one of the arguments. Ms. Farias said that is one of the arguments and the ambiguity.

Sheila Lipton testified from her written testimony that she was one of the owners of a Waikiki catamaran with concerns for what is being proposed will impact negatively on their business and change Waikiki Beach. It's a challenge to adhere to the rules imposed on them by the Coast Guard. Issuing under a commercial use permit would be difficult to operate financially. Instead she asked to raise their annual catamaran registration fee.

Member Agor asked how many passengers she accommodates per day. Ms. Lipton said maybe about 15-20 passengers per sail.

Member Morgan asked for the cost per person per sail. Ms. Lipton said for a 1 hour sail its \$20.00 per person, children are \$10.00. They go out four times a day starting from 10:30 am to sunset, seven days a week weather permitting.

Member Goode asked whether she was aware of House Bill 1566. Ms. Lipton said no, they had no idea.

Member Morgan said all the catamarans provide a great service to all the visitors that come to Hawaii. Ms. Lipton invited the Board members to come out with them.

Mr. Wynhoff corrected the reference he made earlier which should be 91-3(e).

Raymond Rillamas (and Linda Coleman-Rillamas who wasn't present) read from their written testimony that was distributed earlier that they oppose the change of the word "registration" to "permit." It has been "registration" since 1994. He read what the differences were. They oppose any fees except the current one for decal and about \$10.00 for administration fees. They questioned what additional fees would be for and whether catamarans that operates below the high water mark is legal jurisdiction of DLNR. Mr. Rillamas cited the poor economy today.

Curtis Iaukea introduced himself as Woody Brown's partner.

Woody Brown testified by reading from their written testimony and related concerns for rising maintenance costs and a growing tax burden. He spoke of his family's history and how they service the marine industry. They have concerns for a hike in fees that a commercial use permit is unnecessary.

John Savio read from his written testimony that his catamaran business is his only livelihood that he keeps the rates low for his visitors and related how expensive it is to operate. Changes in Coast Guard regulations resulted in no profit for his business. There is no need for another layer of government and unfamiliar special use permits which would negatively affect them. They don't want to lose the catamarans from Waikiki Beach which would affect their visitors. Also, they have trained young people for a career in the marine industry. He asked to reconsider the possibility of a special use permit. They park their boat at Kewalo basin and already pay a 6% of gross and if this rule went through they would be paying 9% which is unfair. The boats in the Ala Wai small boat harbor don't pay any percent. If we are going to do this make it even and have everyone at the Ala Wai.

Chair Aila clarified that there is no commercial activity in the Ala Wai right now and no one is paying any gross receipts. Mr. Savio said there are commercial boats tied up in the Ala Wai and they don't operate out of there (Kewalo). Chair Aila noted that HCDA (Hawaii Community Development Authority) controls Kewalo Basin and not DLNR.

Member Goode asked what has changed with the Coast Guard regulations.

Mr. Savio said you need to get all new electrical system from an approved Coast Guard electrician that Mr. Savio had to fly in from New Mexico. The schematics go back and

forth with the Coast Guard on the mainland for approval and then you're allowed to do it. The railings had to be up to 44 inches high with 4-1/2 inch facing in between. They had to take the rigs down for inspection that cost thousands of dollars and you are out of business for months. In the last 4 years he spent 2 years in dry dock fixing everything required by Coast Guard. Even after the Coast Guard approves it an inspector comes out to tell Mr. Savio the rigging is all wrong and have to re-do it all costing him another \$7500.00. Chair Aila noted that the rigging was in response to accidents. Mr. Brown acknowledged that saying the one on Maui and here (Oahu).

George Parsons had written testimony distributed earlier and testified that they run the Maita'i Catamaran. All the Waikiki catamarans have to have a new stability letter that requires going into dry dock and having a naval architect measure the boat which is expensive. We want to keep our registrations and we understand that a fee increase on the registration would be necessary. A commercial use tax would hinder their business not like surfboard or umbrella venders who don't have to go through certification by the Coast Guard. They moor their boats below the high water mark on Waikiki and when he got the letter from Mr. Underwood it listed only the vessels in Zone A and not Zone B. It didn't mention any of the commercial vessels that venture into Waikiki shore waters to anchor, snorkel and shuttle. If this is a sweeping rule it should apply to everybody. They operate on Sheraton property and they pay Sheraton 3% of their gross as well as everything else. They would like to keep their registration. Mr. Parson's said the \$8.50 registration fee should be increased. Maybe a compromise could be had on the number of seats that catamarans use.

Robert King representing Welakahao Catamaran, Inc. testified reiterating previous testifiers regarding decrease in economy, increased maintenance fees, and regulations are costly. Last year they made a net profit of 4.3% overall on his gross which means he paid more in State taxes than he profited. Unemployment increased by 10 fold over the past 3 years. We would have to make adjustments in our business if you are going to put this fee on us. Mr. King said what they have to pay toward employees, licensing and Coast Guard and what it would cost for unemployment which is what he would have to do as a business owner. Because the State is charging tourists exorbitant fees tourists can't afford to pay for a catamaran service. These catamarans are indigenous to Hawaii and may be lost to fees and regulations. Each of the catamarans has saved people out in the ocean and they provide a bigger service than you may think. We are not able to survive any excessive fees and regulations.

Member Agor asked whether raising his fees would be a deterrent to his customers. Mr. King said yes it is because the tourists coming to Hawaii are paying excessive fees for their rooms. The type of tourists that come to Oahu are more the families on a tight budget compared to Maui who charge \$65.00 have different type of people. Instead of charging small businesses continually the State should take the incentive to come up with other things to stimulate the economy to bring more people here and create more investment. Small business owners are closing up and moving to the mainland because of the high cost. Many of the Matson captains or harbor pilots were trained by them. He suggested last year having a sit down between the catamaran owners and DLNR but it

didn't happen, but they are here now. They are willing to compromise and say they are willing to do this much.

It was asked by Member Edlao whether the Maui catamarans always charged \$65.00 where Mr. Parsons said the Maui catamarans are 65 foot luxury boats and can have food and snorkeling activities. The Waikiki catamarans are limited to 45 feet and are small boats and at Waikiki the clientele is looking for a deal. Mr. King explained on Oahu there are more FIT (free independent travelers) and on Maui the reservations structure is different and not as many people. The customers on Maui are generated through agencies as opposed to FIT.

There were some discussions between Member Edlao, Mr. Parsons and Mr. King on what they charge for catamaran rides and the use of discount coupons to be competitive.

It was questioned by Member Edlao whether the catamaran operators on Maui are paying the 3% and Mr. Underwood confirmed that. Every commercial operator in a State boating facility pays 3% or gross which is set in statute or \$200 per month whichever is greater. The only boats that currently are not are the 7 at Waikiki Beach. He clarified that this is not a piecemeal approach as the Board knows it came before you a month and a half ago regarding the Red Dolphin and we authorized that activity which includes the percentage as well. They are all paying the same percentage. Every commercial boat carrying more than six passengers is required to obtain a seal from the Coast Guard and all go through the same inspections that the catamarans do. Except the catamaran operators go through more now because of those unfortunate incidents that occurred with the masts.

It was asked by Board Member Goode whether other boating activities that pay 3% are operating in commercial harbors. Mr. Underwood said either harbors, or launch ramps, or beaches where we only have two beaches under Boating – Ka'anapali and Waikiki. Member Goode asked whether those other activities paying 3% are they getting other services, access to state facilities other than the beach – a slip or access to boating improvements. Mr. Underwood explained for Ka'anapali it's for exclusive use of the beach - they are the only ones that can use it for those purposes. DOCARE enforcement are sent out there. One of the harbor agents in Lahaina as well as Ala Wai small boat harbor whose primary function is management of the Waikiki near shore waters. They go out and walk the beach, but aren't able to do it as much right now because of staffing issues. Mr. Underwood walked Waikiki Beach on numerous occasions because of the pre-setting of the chairs, the set up on the beaches that aren't suppose to be occurring and those are the other types of costs that are covered.

Member Goode asked whether there has been any history of issues with the catamarans in violation of any sort or required a lot of staff resources and Mr. Underwood replied no that the catamarans have been self regulating. On occasion they set up signs and beach chairs and have people check in on the beach where staff have told them they can't do that and have to move back on to the private property. They have installed anchoring

devices in the beach to hold the catamarans. We can't issue anymore catamaran permits because it's limited. The only way anybody can get in is to buy out an existing operator.

Member Morgan asked how many of the 7 are at Kewalo Basin. Someone from the audience said 4. Mr. Underwood said part of HB 1566 now allows staff to run commercial boats out of the Ala Wai. Staff would have to find the space for them, but they can operate out of the Ala Wai small boat harbor commercially. However, the fee for operating out of the Ala Wai is 3% of gross or \$200 per month whichever is greater. It's the standard commercial fee statewide for all operators. Member Morgan asked whether it will be 6% coming from Kewalo to the Ala Wai or 3% total. Mr. Underwood said it is a one time 3%, but we would have to have the space available.

Member Agor asked what is the likelihood of finding spaces. Mr. Underwood said at this time it's not going to happen very quickly. They are re-designing the 500 row from fixed docks to floating docks to create more capacity which is where staff wants the commercial activity to occur because of the beam and casts is the hard part. It will be sometime next year. Member Edlao asked how would staff distribute. Mr. Underwood said it would be by wait list and would have to go on to get a mooring which is how the commercial permits work. Once you're issued a mooring then you can apply for a commercial permit. They will have to design births to accommodate catamarans of that size.

Member Edlao asked it doesn't sound like the operators get much from the 3% and because of HB 1566 is why staff is implementing this (3%), but prior to that was there even a need for that. Mr. Underwood said it's not only the 3%. We want to issue the commercial use permit because as part of that you need to meet a minimum of gross receipts each year so you can't sit on a permit and wait to sell it. You got to be a viable operation. If you sell your business there is a business transfer fee which we don't get. We've transferred hands numerous times and there is no fee to the State. The law says that no commercial permit should be issued unless there is a direct corresponding benefit to the public and \$8.50 is not a corresponding benefit. Adjusting the registration fee to a yearly fee then we would be getting into piecemeal. We'd be doing it one way on Oahu and one way on Maui. If that is the route the Board wants to take then we should be fair and apply that to the folks on Kaanapali as well. Staff is coming to the Board to do it the same as they have been doing it everywhere else.

Member Morgan commented that catamarans provide a valuable service, but dispute that it is the last indigenous activity. He is not in favor of any tax increases that 6% at Kewalo and then go to 9% is burdensome. The fees are reasonable and the \$8.50 is way low. With the Coast Guard that is the cost of doing business which is all about public safety. If it has to be done for good reason and the right reasons put that on the side. The due process and legality concerns him that 9% is really expensive will all the other taxes. He is not an attorney if it is not the right process it needs to go through the right process.

Member Agor said that he had concerns with the public notice, but he added the uniqueness of this activity might warrant us designating 7 slips for this business at the Ala Wai. Rather than putting them on a wait list. It was special enough for the Legislature to pass a bill and if they thought it was that special maybe the Board should. Mr. Underwood said now would be the time since staff is re-designing the 500 row if that is where the Board would like them to go. Member Morgan agreed.

Member Edlao said he has his own business and he doesn't like taxes especially targeting individuals. He agreed with Member Agor and to set a timeline for a year and hope the operators can weather the storm for a year knowing that you will have slips and he would support that motion.

Mr. Wynhoff said you are talking about designating spots in the Ala Wai where he advised against it since it is not on the today's agenda. The Chair said we could direct staff to come back with that. Member Edlao said they could suggest that. Mr. Wynhoff said that is no problem.

Member Goode said to defer the item, ask for more public notice process, but he was unclear about amending rules or trying to enforce rules on top of a new statute that's been passed but there is a Small Business Review Board (SBRB) and they are the checks and balances as it relates to new rule making which is the appropriate thing. Mr. Underwood said the rule is in place. He wasn't around in 2003 and how Waikiki catamaran operators may or may not have been notified, but they would have to follow the same rulemaking we all do. If the SBRB was around it would have been vetted by them and would have gone through the whole entire rulemaking process and that is what this rule did.

Member Morgan asked whether it was a problem to defer getting together with Ms. Farias and if it's outside of a year coming back having a motion to put it all together. Mr. Underwood asked or do we bring in the Ka'anapali catamaran operators as well. If we are going to do it we should do it fairly because Ka'anapali catamaran operators always paid 3% or \$200 a month. Why Waikiki was never implemented I don't know that nobody could give him a clear description. Staff went to the Legislature for the last 3 years where catamaran operators came down to testify and the bill did not pass at that time. This past year the Legislature did decide to pass and authorize staff to issue the commercial use permit because they did realize the fee staff is charging has been agreed to throughout and standardize it because other commercial operators testified at the Legislature and they said why are we being assessed this use fee and these folks aren't. We are making the playing field level. Chair Aila asked the Ka'anapali permit where do they moor. Mr. Underwood said they moor in the off shore mooring area or in the Lahaina small boat harbor. Chair Aila said that Lahaina small boat harbor has more slips.

Member Morgan pointed out it would be a win-win to make slips available and reduce their costs and the Department gets what it wants which is uniform treatment of commercial operators by deferring. Mr. Underwood said he is giving a good estimate of the building of that dock in design. Another option was the build did authorize us to issue a commercial use permit in the Ke'ehi small boat harbor and there is off shore

mooring available today if you want to same the 3% that is an option. Chair Aila said we can defer the item and direct staff to provide more answers to these questions.

Member Morgan moved to defer item J-2 and was seconded by Member Goode.

The Board discussed whether to put a timeline on this, but Member Goode said to go out to the operators and look at the Ala Wai that it may not fit within the requirements of the SBRB and confers with your Deputy AG on whether you followed all the right rules. Mr. Wynhoff said that is not the process for that, but you could talk to them. Their process is rulemaking which we went through. The Board members said it is for advice.

Chair Aila said we should defer this item and direct staff to investigate or analysis to allow for the accommodation of the 7 catamarans and then we could have a discussion of fees after that. Mr. Underwood asked you want us to meet with them on mooring their vessels at the Ala Wai. Chair Aila said an analysis first of what it would cost to change the design and an economic analysis of we could expect in return for the 3% of gross that we could get whether this is the proper business decision on our part.

Member Morgan moved to defer directing staff to come up with an analysis to accommodate 7 catamarans at the Ala Wai and what we could expect for the 3% of gross. Member Agor seconded it.

#### **Deferred (Morgan, Agor)**

**Item J-6 Request Approval to Adopt Amendments to Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, Part III, Hawaii Administrative Rules as follows: 256-39, which pertain to vessel operations in Hanalei Bay and river; 256-71, 256-72, 256-73 and 256-77, which implement the Kaneohe Bay Master Plan according to HRS §200-39; and subsections added: Chapter 13-256-72.1, 256-73.1, 256-73.2, 256-73.3, 256-73.4, 256-73.5, 256-73.6, 256-73.7, 256-73.8, 256-73.9, 256-73.10, 256-73.11 and 256-73.12, which implement the Kaneohe Bay Master Plan according to HRS §200-39.**

A number of written testimonies were distributed to the Board.

Member Morgan recused himself from this item.

Mr. Underwood reminded the Board that this item is for the Hanalei Bay and Kaneohe Bay rules that has been vetted through this Board on numerous occasions that staff held the follow-up public hearings that Board member Agor requested, staff answered the questions, and staff feels this is as close to a consensus as they can be. He asked the Board to approve these amendments and allow it to be sent to the Governor for final signature and adoption.

Board member Edlao asked on the Hanalei commercial use permit why can't they keep it at five instead of going down to three and Mr. Underwood said there is active three. This has gone through the public hearing process and this is what the community wanted and an agreement they reached. It will never go to three unless somebody loses a permit through the cost.

Member Agor asked what are the options for the other two if we don't issue five and the Board wants to keep it at five. Can they go out for auction? Mr. Underwood said a waitlist would have to be created which is how the rules are set up now, but no waitlist has been created because there is no permit to issue. The commercial rules say waitlist. Once you're issued a commercial use permit you follow under the commercial rules. There was some discussion that it works at five and keeping it at five and to come back which is the best way to do it per Mr. Underwood. Member Goode thanked staff for the hard work.

Chair Aila related some of the testimonies that were received and their concerns.

Mike Beason had submitted written testimony and testified asking whether the person who recused himself would be in the room to listen to what he had to say. The Board members said it's up to that Board member. Mr. Beason was here to testify on Section 13-256-39(b)(8) regarding commercial use permits. In 2003, his group Save Diamond Head Waters requested DOBOR revise rules for Waikiki ocean waters and were told that commercial use permits were subject to be addressed statewide. Now we have the rules for Hanalei Bay and they accept DLNR addressing this. After 8 years it should be comprehensive and well thought out set of rules being proposed. The only thing new is a limit of permits and one instructor. It's important to know how DOBOR has come to set these standards because it will become the standards for the State. The remaining rules do not establish any regulation for commercial activities. The way it is written it would allow 40 people to do commercial activity at the same time and place which is the issue that started this in 2003. If you don't specifically set the parameters of these rules there is no way to know whether the resource is being used appropriately and no way to enforce the misuse. Mr. Beason asked that the Board ask DOBOR these questions. DOBOR should revise this one paragraph and to set a time frame for DOBOR to address this issue.

Chair Aila asked whether the portion he is concerned about is surf instruction. Mr. Beason said its commercial activities. Surf instruction was the issue his group dealt with and was during a time when commercial permit process was being developed.

Chair Aila pointed out that Mr. Beason wants a generalized commercial permit, but finds it difficult given that each ocean activity is different and it's location is different (example: Between a jet ski and scuba diving or surf board instruction on south shore of Maui is different from north shore of Oahu). I don't believe having a generalized interpretation of a commercial permit and the conditions of those permits is possible given all those different conditions. Mr. Beason said that he believes that is what DOBOR is doing trying to create a commercial use permit as one umbrella entity and trying to apply to all these different uses.

Chair Aila asked whether it was the intent of DOBOR to apply the Hanalei rules systematically to every place else in the State of Hawaii. Mr. Underwood said similar to others, yes. Staff is working on that. The Chair asked whether the specific conditions and limitations in Hanalei are special because of the comments from the community and their needs are different. How would we apply that across the board to other communities? Mr. Underwood said the number is specific to Hanalei Bay. One of the hardest things staff is having to do is how do you regulate a specific surf wave? Years ago there was one surf instructor at Waikiki bringing 40 people out into the water, but we don't have any rules to address that. All our rules say is you get one of the operator permits and you are good to go. Staff is trying to get a reign on the various areas in the water. Primarily surf schools.

Mr. Beason said to set the hours of operation across the board. Chair Aila said it might be different at different places because of different conditions. Mr. Beason said he thinks you should establish when a commercial activity can happen. The Chair said it is dependent upon what the community is willing to allow in that particular area because staff has to go to that community and asked what do they believe the condition should be.

Mr. Beason said that this issue was brought 8 years ago and was not touched on and the Chair said that's because the communities have not agreed on what those hours should be and they have not agreed on what those conditions should be in regards to surf instruction. Mr. Underwood said because specific areas are so different within the commercial use permit they have these minimum conditions and then they can assess additional conditions for site specific areas within the commercial use permit. There is no way to make one standard "fit all" in Hawaii. It is not going to work. Mr. Beason asked how is that discussed and how is that analyzed and how is the amount of people using an area being defined. Chair Aila said that is a discussion that needs to occur and continue to occur, but your testimony has to be specific to the Hanalei rules because that is what is on the agenda. He asked what Mr. Beason would like to see pertaining to Hanalei and Mr. Beason referred to his written testimony that the areas must be delineated by DOBOR and the area of commercial activity should be prohibit outside of the defined areas. Member Edlao pointed out everything is listed in the submittal which Mr. Beason said he read.

Brian Lansing testified that he owns Whitey's Boat Cruises, but does business as Na Pali Catamaran and distributed his written testimony. They are one of the three companies that disagreed with the Attorney General, went to court and won, but since then there is no permit and are waiting for rules. They paid their 3% until staff refused to accept it because they have no permit. They operate on a court injunction permit. Mr. Lansing related how the surf doesn't break the same in the same spot. Where it's better for kids in certain areas and its better for advance in other areas which is not something you can't nail down. The surf school instructor moves around based on how crowded it is, if there are other lessons conflicting with theirs and safety is their first concern. He would rather these people have a surf lesson and an idea of who they are going to hurt if they make a mistake. You would have to find a number. All you need is five surfboards and it's a business. Don't want it to get to 300 and then you don't want to be on the beach. He is

impressed with the Board members with trying to put this together and put an end to it. Since they won their case 10 years ago they have seen thousands of passengers go on boats that breezed in and out whenever they want because there have been no rules and no enforcement. Since the HEMP Plan limiting boats to five permits and two kayak permits there was no enforcement of those rules. His company has operated against unbelievable competition with a blind eye. This is the first time we have a Board who is truly concerned with resolving the issues at Hanalei. We are okay with paying 3% although you give us nothing. There is nothing but a rotten ramp and a river mouth that silts in. Mr. Lansing explained how they get their customers to the bigger boat using a canoe and read from his written testimony.

Member Agor asked is it two trips the limit. Mr. Underwood said it takes three trips to hit the 45 mark. Member Goode asked how many days of the year accounting for the weather to hit three trips. Mr. Beason said it would average about a 150 to 160 a year depending on the surf, wind and rain. He explained how they pick-up customers at their office in the shopping center and shuttle them to the boat. Their destination is the Na Pali Coast and then they bring them back.

Mitchell Alapa testified that he had sent written testimony and was here on behalf of his surf school on Kauai and his son. Those numbers would not work for the surf schools because the numbers go up on beautiful days. Kauai rains a lot and the numbers are down a lot. They don't even get 16 people when school is in session. Mr. Alapa related his days growing up on Oahu and running a business in Waikiki during the 1960s. They had suggested numbers, but staff had twisted the numbers on them. He has four people per instructor, but he is willing to work it out and not have to lay anybody off during this bad economy. Mr. Alapa related cleaning up the beaches themselves that no one not even the County will do it and Member Agor said he could attest to that.

Michael Sheehan distributed his written testimony and some photos and testified relating growing up around boats that his has a company called Bali Hai Charters - one of the original boat companies. He distributed a copy of the Special Management Area Minor Permit from the Count of Kauai to the State of Hawaii DOT/DLNR. About 25 years ago, the NOAA gave money to the State Planning and Economic who gave it to the County of Kauai to do the Kauai Coastal Recreation Management Plan, North Shore Kauai prepared for the Kauai Planning Department, July 1986. Mr. Sheehan was asked by the mayor at that time to build a boatyard adjacent to the State's boat harbor at Hanalei pointing out the pier and the State road. He read a letter from Senator Lehua Fernandez which confirms that Mr. Sheehan was to operate the boatyard that he constructed and that within the year of completing the boatyard the State was to develop a Master Boating Management Plan that included rules on certain ocean recreational management all of which would be applicable to Hanalei Bay area including the use of his boatyard. He has a boatyard for what the Board is trying to solve today. The problem is the small business impact statement that was prepared for this problem doesn't address his boatyard. It doesn't mention the financial impacts where he spent over a million dollars that he has the only EPA certified, Department of Health certified filtration system in any boatyard in the State of Hawaii. There isn't anything in the rules indicating that anyone who gets

commercial permits should operate out of this boatyard to keep the environment clean. They are in negotiations with the County of Kauai who wants to buy portions of his boatyard to expand the park, but his concern is what will happen to that wash down facility. The question is where will people park pointing out people parking on the sand in his photo. The State of Hawaii is under an injunction from a Federal Court for interfering with commerce and navigation on waters of the United States at Hanalei Bay. Rules are necessary, but these rules will not do because it will amount to a partial ban and somebody is going to challenge it. Mr. Sheehan questioned the logic of picking a number and where it's coming from. The Federal judge was sympathetic to the community's wishes, but the United States Commerce Clause still rules and the State needs to find ways to accommodate Federal law. There are no legitimate scientific or factual bases for any of these numbers. He related the purpose of his boatyard and how it would accommodate 10% of the tourists on Kauai that they could shuttle them to Lihue rather than clog the roads with more cars. His concern is these rules will not solve the problem and for the Board to consider the small business impact statement that it should start with 46 boat companies and not start at zero and move up to 3. He thanked the Board.

Member Agor said we're at a good start and listening to testimony he suggested go with staff's recommendation and observe how it impacts the community over the summer and then have staff report back and maybe we'll make adjustments. As for the numbers, the increase that was requested today would increase passengers to 75 instead of 150. He was more inclined to go with the numbers now and then observe whether adding 75 more would have a significant impact on the community and if not in November we increase it to 75. The other way is to increase it to 75 now and see how it impacts the community and if we got to reduce it we reduce it. But, he was inclined to go with the rule as they are and make an observation of how it's working.

Mr. Wynhoff commented that this Board probably knows this better than I that at this stage in the process if you were to consider changing rules that are substantive changes we would have to go back to the community. I can't evaluate since he didn't know the abstract, but the Board member would know better. Member Agor said but if we adopt it as it is now and observe it over the summer and we want to make adjustments and open up to the public hearings would be okay. Mr. Wynhoff agreed to that. Member Agor suggested that the Department look at the impacts of the 150 versus the 75 seriously although he doesn't think there will be any, but he is following the community's lead. He is not happy with loading the passengers from the beaches, but that is the only alternative they have right now. He has met with the administration on Kauai and they feel they should have a central place for commercial boating people to operate from and he would help open dialogue with the Mayor to assist the County in its efforts to that end in whatever way they can. Whether in assisting purchasing the boatyard or maybe the State purchasing it for a joint venture that he wants the Department to look at the feasibility of it and if the results are not feasible than that is what we got to live with. Chair Aila asked whether Member Agor would give some criteria by which to make that assessment or from health and safety or traffic concerns or all of the above. Member Agor said it's an assessment of how the businesses impact the public beach.

A gentleman explained that they currently shuttle passengers in a van and don't use the public beach, but the river. If the river was flooding or there was giant surf they use the ramp or the safest place to board.

Member Agor said the rules have two areas and one of them is using 100 yards of the beach in front of residences. The gentleman said none of the three boats that operate don't do that or they are walked out to the channel in ankle deep water. The beach is solid parking and can't turn a truck with a trailer around. The Board members said that could be part of the assessment.

Member Edlao said that Member Agor's concerns are good concerns and agreed to use this as a starting point and make changes later. He supports the motion.

Member Agor made a motion to approve the recommendation and for staff to do an assessment of the number of passengers to a point of increasing to 75 and be earnest in that assessment saying that he will go out to watch and looking into the feasibility of working with the County and coming up with a solution of having one place for all this commercial activity to launch from. Member Edlao seconded that. All voted in favor

**The Board:**

**Approved staff's recommendation and added staff do an assessment of the number of passengers to increase to 75 and looking into the feasibility of working with the County in coming up with a solution for one place to launch all commercial activity from.**

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

**Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Dr. Pualani Kanaka'ole Kanāhele, University of Hawaii at Hilo, Kipuka Native Hawaiian Student Center for Access to State Waters to Conduct Autumnal Equinox Cultural Research Activities**

Written testimony from Marti Townsend for Items F-1 to F-3 was distributed to the Board members.

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) briefed the Board on item F-1 that this is was permitted previously and this is will be their third trip there. Some subsistence fishing would be done by rod and reel for cultural purposes and not for fishing. No one species would be targeted. DAR staff recommends that the applicant should be allowed to enter the Monument with special conditions.

It was asked by Member Edlao if no more than 10 people are on the island how many are going out. Dr. Pua Kanāhele said there are about 18 of us that they didn't want to impact the island and each person has an assignment. She described what the assignments were

pertaining to the summer and winter equinoxes and marked those positions and to make some sense of why all those manamana are out there.

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

11:48 AM RECESS

12:04 PM RECONVENED

**Item D-1 Cancellation of Revocable Permit No. S-7241 to Ernest R. Mendes, Jr. and Jeanie L. Mendes, and Request for Waiver of Level One (I) Hazardous Waste Evaluation Requirement, Kahakuloa, Wailuku, Maui, Tax Map Key:(2) 3-1-001:023.**

Russell Tsuji, Land Division Administrator conveyed item D-1 that staff went out and did an inspection and didn't see anything hazardous. It's pasture. Staff recommends the waiver of that requirement. A family member is here for questions.

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

**Item K-1 Adoption of Amendments to Chapter 13-5, Hawaii Administrative Rules (HAR), "Conservation District" by the Office of Conservation and Coastal Lands including minor punctuation, language consistency & clarity, reorganization, technical changes and as noted in Attachment A which is incorporated in this agenda**

Numerous written testimonies were distributed to the Board members.

Member Morgan disclosed that his company owns some conservation lands.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) said they regulate and enforce land use regulations within the State conservation district.

Chair notified others waiting for their agenda items to come back at 2:00pm since this will be a long one.

Mr. Lemmo thanked everyone for their patience and help over the last 10 years that these rules staff has been operating on was originally passed in December 12, 1994 about 17 years ago and have not undergone any substantial change whatsoever remaining as they are. Staff has had a lot experience during that time with these rules both good, working smoothly, doing what they are suppose to be doing, but there are sections in these rules that haven't worked that well. Staff had to be creative to make things happen that need to happen and there are simply mistakes, redundancies and things that don't make any sense. One of the reasons for that is when this rule was passed in 1994 the administration was about to change and they rushed it. We were under the same kind of situation here last year and staff could have come to the Board and rushed this rule in trying to steal an

approval before Chair Aila arrived, but staff decided not to. To make a mistake once is one thing, but to do it twice is criminal and decided to wait. Staff believes based on the Board's good judgment you'll understand what we are doing here. He thanked staff especially Tiger who was instrumental in getting all of this information before us all. Probably couldn't have done it without her.

Mr. Lemmo related that staff did a comprehensive rule amendment compilation and is trying to designate some conservation district sub-zones and they are here today to seek the Board's final approval. If the Board were to approve these final rules they would be forwarded to the Governor. If the Governor signs off on the rules it will take effect in 10 days and this will be the new regime under which staff will operate. The idea in doing this was to improve conservation in our State. To streamline certain actions that are clearly for the benefit of the resource, the ecological systems that we have and the people of Hawaii. Also, to try to be less in people's hair in things which we tend to and also maintaining a level of regulation to prevent people from abusing and doing bad things and there are consequences if you choose to do that on these new rules.

Mr. Lemmo said the first step was to look at all the definitions, laid out a staff report which essentially discusses all of the changes in the actual rule itself in much more detail and that has been posted to our website for several weeks. They are here for us to peruse. I don't think I'm going to go through each one. I will go through a few and the Board may have questions about a particular definition and then we'll move on to the next section. Essentially, as a highlight we added a definition "comprehensive management plan." This came up as a major issue during the public review process where people wanted a comprehensive review of actions, i.e. as in the Mauna Kea Comprehensive Management Plan. Staff added the term "emergency" to articulate circumstances under which the Chairperson or Chairperson's designee can authorize an action to take place in the case of an emergency. Staff added the definition of "invasive species" which will allow the Department to address invasive species problems. Staff added a definition that covers "minor alterations, moderate alterations and major alterations." These are to coincide with minor, moderate and major permits so there is a logical process to this whole thing. Staff added a new definition for public purpose use which essentially combines previous two definitions and essentially stipulated a public purpose use has to be defined as a not to profit use. There was an exception made under public purpose use that an independent, non-governmental regulated public utility shall be considered a public purpose use for the purposes of this chapter. Staff added the definition for shoreline. We never had a definition for shoreline and here we are the guys pushing everybody else to deal with shoreline issues and we never had one before. Now we have a definition for shoreline and this is to support any provisions for any shoreline setback system that we are also proposing in the rules. Those are some major definitions that staff has added or amended. There were some things that were appealed and he can discuss that later. Unless there are any questions he'll move on to other amendments.

Mr. Lemmo conveyed under non-conforming uses we took this section from the back of our rule and moved it to the front of our rule which is an important provision. As you know the Statute 183C talks about the relevance of non-conforming uses and how they

shall be allowed to continue. This is in the Statute and staff felt it needed to be up front in the rule. It also needed to be amended to be consistent with the Statute which is what staff did and also added provisions that if you have a non-conforming, single family residence and it is destroyed for some reason you may rebuild it pursuant to a sight plan approval.

Member Edlao asked to give an example of a non-conforming structure whether it's to building codes. Mr. Lemmo explained it was a structure that was built before there was a regulation in place or it was built and the regulation changed making it non-conforming. Those are typically the two types or uses of non-conforming structures. Say we have a person who builds a house in 1961 and our regulation came into affect in 1964 for a single family residence which is therefore considered non-conforming. If they are sitting on the slope up in Tantalus, they are in the limited sub-zone which is very restrictive. The house burns down. Under the existing rules they have to file for a new permit, but they can't because houses aren't allowed in a limited sub-zone on a slope. Recognizing the fact that these are people's domiciles, where they live, where their children grow up and where their lives are we don't want to take that right away from people. Staff made an exception that should your house burn down and you live in the limited sub-zone you can rebuild the house subject to the prevailing standard setback and other requirements. Another example is if you live on the shoreline and your house is wiped out by a tsunami you can rebuild the house, but you have to respect the new setback. You get to rebuild, but you got to do it in accordance with the rules that are set forth in the standards which are also described in the single family residential standard part of this rule amendment.

Member Edlao asked what if the structure is in need of repairs. Can they do that? Mr. Lemmo acknowledged that they can repair non-conforming structures up to 50% of total replacement cost.

Mr. Lemmo related staff identified uses in the protected sub-zone we did a couple things for instance fish ponds. We used to have a provision regarding fish ponds that said that you needed to get an A-1 permit for repairing a fish pond. I took it out. It was not necessary. Any kind of repair, modification, minor alteration, major moderation is handled in its own section. We don't need all these other sections describing it and conflicting with what that language says.

Mr. Lemmo said newly identified land uses in the protected sub-zone – power generation from renewable sources, land and resource management, telecommunications, shoreline erosion control, beach restoration. Staff included power generation from renewable sources. The conservation district offers many opportunities to develop renewable energy projects whether it's OTEC, ocean waves, wind power and possibly many others we put it in there. And, because the statutes and the government is excited to develop renewable energy projects and we have a requirement to develop renewable energy projects by a certain year that staff said they would expedite these CDUAs should they come in. Staff doesn't give them no special preference and just try to make them go faster. Staff developed a section on land and resource management which is one of his favorite additions and its very exciting which allows a land owner to take up routine

maintenance of their lands like pruning trees, cutting grass, mending fences, clearing streams from mouths, weeding, clearing of under story, etc. without having to come to staff and talking to them provided it's done in an area less than an acre. We don't need to see this stuff, but go over an acre than you got to come talk to us and it requires a site plan approval so that staff gets an opportunity to review what you are doing. If it qualifies for a site plan approval than you can get one, but if we see its something greater than that we can say "no" that it might need a departmental permit or a Board permit, actually.

Member Goode asked is that for per year, per month or per project because if you have a thousand acres one acre isn't very much how is that in the rule. Mr. Lemmo said if you're going to a thousand acres you've got to do a site plan for those. Member Goode said plus you could have 10 acres in problem areas and asked are you allowed to do an acre per year without a permit and is it in the rules. Mr. Lemmo acknowledged that. It isn't in the rules, but it's implied.

Member Morgan asked if you have 200 acres and you want to remove albizia (trees) that are 500 yards from one another where we are only talking about three albizias, but in way bigger that he presumed we are only talking about the albizias. Mr. Lemmo agreed asking that each albizia might be in a separate acre, but its just one tree where Member Morgan said that each albizia tree might be two feet in diameter and the issue is spot treatments. Mr. Lemmo said his interpretation would be you could go get them without a permit.

Mr. Lemmo conveyed that staff is adding a couple things under the protected sub-zone because it is the most the most protected and its hierarchal in nature so if its identified in the protected sub-zone you could potentially do it in a less restricted sub-zone which is why there is a lot identified in the protected sub-zone, but that doesn't mean you can do it there. A lot of stuff that is identified as protected sub-zone could never happen there because it would be too destructive, but we have things like small cabins, road construction, erosion control projects and water systems, etc. We are also adding telecommunications, shoreline erosion control subject to very specific performance criteria that you have to meet before you can even get in the door. This is typical general zoning language for shore protection. You can't build a sea wall unless you are deprived of all economic use of the property as one example. There are hurdles to jump over should you wish to get a shoreline structure to protect your property and beach restoration is put in there because we like to do beach restoration projects.

Mr. Lemmo spoke about a limited sub-zone staff took out botanical gardens and private parks and put that into the resource sub-zone and created a new category for the limited sub-zone called wilderness camp which is a lot less intense and less of a heavy footprint. Campsites, tents and maybe a small shelter, but if you want to build a commercial camp or commercial camp site you can do it in the resource sub-zone. To Mr. Lemmo he thinks that is more consistent with the objectives of the resource sub-zone which is basically a multiple use sub-zone judicious use, etc. A limited sub-zone got to be less intense and that is something that staff did. Staff made a lot of changes with respect to the landscaping issue which you can see in the rules in the limited sub-zone. Those also

apply to the resource and general sub-zones. Under 2,000 square feet site plan, over 2,000 square feet to 10,000 square feet departmental (permit), over 10,000 square feet grubbing and grading Board permit. This is landscape where people are going in and modifying the land for purposes of beautification.

Mr. Lemmo said one of the things staff did was there was a lot of uses in the rules that we added a management plan to, that didn't have them before and we also made it clear which is not clear in the rule that when the Board takes action on a CDUP they will also be taking simultaneous action on the management plan so it can all be done together which makes sense. Staff added management plans for aquaculture, astronomy, forestry, landscaping and possibly other things. To permits generally staff added a shoreline certification to one of the application requirements although we did provide an extension because obviously not all parcels are along the coastline. Why would you want a shoreline certification for someone who lives on Tantalus. There are a lot of other things staff added.

Mr. Lemmo said fees were a big issue. Staff increased fees. A departmental permit increased from \$50.00 to \$250.00. Board permits were increased from a minimum of \$250.00 to a maximum of \$2500.00. The method would be based on the value of the project. For instance if you had a \$100,000 project your filing fee is going to be \$2500 max, 2.5% of the value of the project. Staff is raising public hearing fees and we are going to require people to pay for the publication costs for the applications and petitions that we have to process for them.

Mr. Lemmo said staff is also adding things for emergency permits. The current rules allow us to allow the Board to do whatever is necessary to help people to recover from natural disasters - hurricanes, tsunamis, earthquakes, etc. There is nothing in the rules that allows the Board to help someone who has suffered from an individual situation like a landslide or erosion event. Staff has added a section in the case of an emergency the director or designee could take action to alleviate emergencies.

Mr. Lemmo said that staff added a section on management plans and added language on how the Board can require a comprehensive management plan if they should see that necessary. Staff has added language on single family residential standards. Basically the maximum square footage of a single family residence is 5,000 square feet with a possible 15% deviation from that and would have to be approved by the Land Board. Staff added fire protection zones. Staff added a number of standard conditions some of them for instance we are now prohibiting transient rentals. Transient rentals are defined as less than 180 days. Staff added conditions regarding constraining the spread of vegetation onto public beaches. Staff added conditions that control artificial light that is consistent with 205A and recent laws passed by the Legislature calling for the protection of beaches and dunes. And, for the protection of traditional customary or religious practices of Native Hawaiians. Staff is making changes on time extensions where there is a perpetual problem with people's permits expiring and having our hands tied. Basically saying if your permit expires you got a year to come in to ask for an extension and if you don't do

that you lose it. This is to reduce the workload and trying to make it more efficient without giving up the resource protection components.

Mr. Lemmo explained that staff is designating a number of sub-zones where in 1995 the Land Use Commission (LUC) re-zoned a bunch of land from the agricultural district to the conservation district and Mr. Lemmo presented them. We have all of these conservation areas around the State that have no sub-zone. The LUC will put it in the conservation district, but they don't give it a sub-zone. You give it a sub-zone – protected unlimited resource general. Staff looked at that and asked how are we going to do that. Go out and do studies to find out what is the best sub-zone for a piece of land and somebody said to go to the LUC and get the books that they used to designate these areas as conservation and they will have discussions of resource issues and other issues which they did. You will see these write ups are long largely based on what came out of these LUC books. Staff made recommendations based on what are in these LUC books. He pointed out that staff is making recommendations on the Big Island in the Kailua area, Pohakuloa and Papa, Punalu'u, Na'alehu; Wailuku, Maui; Kaena (Oahu), Honolulu and Koko Head. Staff made additional amendments under management plan requirements where staff re-vamped their management plan requirements which were written horribly. Staff rewrote it to reflect what goes into a management plan such as best management practices and recording requirements, etc.

Mr. Lemmo said for single family residential standards, staff made substantial changes by eliminating the minimum lot size and in lieu of that staff imposed a developable area of a lot of 25%. Up to 14,000 square foot lot you can develop 25% of the lot as a single family residence. If you have 10,000 square foot lot you could possibly build a 2500 square foot house. Over 14,000 square feet defaults to you can go up to 3500 square feet. Over an acre it goes to 5,000 square feet which eliminated the 10,000 square feet and staff thought that was unfair. Staff changed the MDA by simplifying it. Staff included pools, decks, and other things. If you felt you didn't have enough MDA you could ask for a 15% deviation from the Land Board. There is a section in the rules allowing the Land Board to make variances and deviations for some of these things. Staff added fire buffer zones where a lot of the conservation lands are on an urban/wilderness interface and when people develop in these areas staff likes to encourage them to do fire buffer plans to prevent the spread of fires.

Mr. Lemmo related there were two Board meetings, two press releases, public notices, six informational meetings, 12 formal public hearings, e-mail blasts to legislators, 20 State Libraries, and our DLNR website has constantly kept all of our drafts posted. Staff held stakeholder meetings with Nature Conservancy and hard core developers and made some changes based on what they said. It's been in the press the newspaper and TV. There were testimonies from Lorrie Santos and he related her concerns. You still have to do a public hearing for a Board permit for a commercial use. The YMCA would like the Board withhold taking action on some parcels today because of concerns with sub-zones. There were comments from Paul Conry regarding the removal of invasive species. We can discuss more, but Mr. Lemmo would like no changes. Staff would like the Board to

approve their request to amend the rules 13-5, HAR and authorize staff to forward to the Governor.

There were some discussions on P-13, land and resource management which is the second page of the latest submission, bottom of the page and someone from the audience said P-7.

Paul Conry representing DOFAW had distributed written testimony earlier and commended OCCL for streamlining the process. On page 5-27, P-13 Land and Resource Management he went over the amendments as noted in his written testimony. Mr. Lemmo didn't have a problem with (A-2), but explained that they wanted to be consistent by being clear in (A-1) that you can clear, but cannot grub and grade. Mr. Lemmo and Mr. Conry explained their reasons where Mr. Lemmo said this is all interpretation, but he doesn't want people intentionally grubbing and grading areas without a permit. Mr. Conry agreed to that and related Army Corp.

Mr. Lemmo said he and Paul discussed the excluding spot treatments language where Mr. Conry explained and the reasons and gave his interpretation. Mr. Lemmo didn't have a problem with that.

There were more discussions between Mr. Lemmo, Mr. Conry, the Board member and Mr. Wynhoff.

Ron Weidenbach representing Hawaii Fishing Company submitted written testimony and testified relating some background history on his parcel pointing out his concerns from his written testimony with his rentals and explained what his company does. He addressed things that would be minor and not have to go back out again.

Bettina Meinhart, Chair of the Board of Managers for Camp Erdman for the YMCA of Honolulu submitted written testimony and testified in support of Mr. Weidenbach. She read from her written testimony to withhold some parcels and that they support the amendments. After an inquiry from Member Morgan, Ms. Meinhart said they would like a general sub-zone. The Chair said this will have more discussions and will come back to the Board at a later time.

Marti Townsend representing KAHEA had distributed written testimony and testified in appreciation of OCCL's work that a lot of their suggestions were included. There are some things that needed to be improved which she related from her written testimony. They were concerned with the extension of time for allowing unpermitted activities that would otherwise be prohibited. Right now its 14 days and extending it for 30 days would encourage continued abuse given tenting as an example and suggested adding language that would make the violation occur at an accumulation of 30 days and if its 30 consecutive days that would qualify as a violation. Second, they were concerned with discretionary comprehensive management plan that it would be hard to get things with discretionary which is why the word "comprehensive" before management plan was needed. Third, she also shares the concern for energy protection done in a protected sub-

zone. She feels that it is better in this case for the protected sub-zone to encourage energy protection to be allowed as an exemption under the public purpose use. While an outcome there is no fundamental difference, but in practice in implementing these rules it would be far better to treat it as an exception of the rule than as a general rule that energy protection is allowed in every conservation district. This pits against resource protection against renewable sustainable energy protection. Lastly, our organization is concerned about protecting crown and ceded lands and profit made off of these lands where they would like to have public hearings on commercial uses of public lands. And to ensure that is not exploited and undermines the public purpose and use of these lands.

A gentleman from the audience stood up to testify that Hawaiian Electric Company and others acknowledge the hard work of OCCL staff.

Greg Kugle representing Damon Key Leong Kupchak Hastert Law Corporation testified that he had submitted written testimony and supports OCCL's work, but had a concern with the decrease on single family residences and explained what that was from his written testimony that they had concerns with further restricting building a house.

Rachel Neville representing O'ahu Invasive Species Committee (OISC) had distributed her written testimony and testified from her written testimony in support of OCCL's efforts. She was concerned about the requirement that a site plan approval would be necessary for invasive species control over an acre. Although it would be the combined acreage of individual plants that would be removed I don't think that is clear in the rules she was worried if the rules should change organizations like hers would have to submit an environmental assessment. The plants total may equal more than an acre. She didn't understand how the process is going to work if private landowners won't do the paperwork. I would prefer the DOFAW language although that might cause problems.

Sterling Wong representing Office of Hawaiian Affairs (OHA) had submitted written testimony and testified thanking OCCL. They share the same concerns with KAHEA about the comprehensive management plan changes where he referred to his written testimony on page 3, first bullet point of changing "may" to "shall." Second bullet, they like, but no where in the rules is it required, basically triggers for a project that has multiple uses or activities suggesting requiring a CMP for projects with multiple uses and activities. On the third bullet for fishponds, they are concerned with the confusing nature of the way it is written. "Restoration" was removed as an identified land use that restoration of fishponds is a little confusing and asked that it be returned as an identified land use. And, we have concerns allowing for new construction of fishponds because there will be issues and impacts to submerged lands. There are enough fishponds that we can focus on restoring.

Mark Fox representing the Nature Conservancy testified lavishing praises of OCCL staff's work that they were in support of previous drafts, but is not entirely in support of this one and its around this one acre trigger. The B1 categories in particular the removal of invasive species P-4 section and a bit in the P-13, B-1 paragraphs are recent acknowledging what Rachel Neville said earlier. It's an arbitrary designation when you

are working across 10,000, 20,000 or 50,000 acres and I am heartened to hear Sam's interpretation of that not being an aggregate of 1 acre, but a contiguous acre, but that is not what is written. Pointing out there are two phrases used in the P-4 definition which he read and the words are different. It sounds like you are working an area greater than 1 acre which is what the spot treatment exemption is for. Mr. Fox gave examples and it is not how he reads the words and he doesn't want to send it back. Maybe that phraseology can be addressed and preferred with the December 10, 2010 version of the wording which had some strong conditions. If they can't go back for the B-1 categories at least in removal of invasive species possibly in the B-1 categories or Land and Resource Management include a phrase where it says "removal of invasive species in an area not greater than 1 acre" use "not including departmental partnership programs that have a management plan on file with the Department." No matter how you go over an acre it wouldn't matter for these partnership programs under the DLNR.

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) testified that they don't use picks or chain saws to do spot removal of invasive and they prefer the December 10<sup>th</sup> version, but from the aquatics perspective are different kinds of issues.

Chair Aila said there were testimonies with concerns from the University of Hawaii, Manoa Pacific Corporation's Studies Unit with the same concern for the 1 acre. There were comments from Margaret Wyllie, Joseph and Emma Pickering and testimony in opposition from the Native Hawaiian Legal Corp.

Member Morgan said there was no transient in there for transient rentals and whether to put it in. Mr. Lemmo said 5-51 and he read it. Member Morgan was wondering if they were creating criminals of law abiding citizens. Mr. Lemmo explained how we have a huge transient rental problem where Member Morgan said but to put it in another section. Mr. Lemmo said everybody is already criminal and this defines more clearly that we don't want transient rentals, but long term rentals if people come to the Board for approval. It's already criminalized and he read the rules. Mr. Wynhoff said it's not criminal where Mr. Lemmo said it's a civil violation and there are unique situations. If we can find a way to accommodate Mr. Weidenbach that's fine, but if one person comes up to change the rule it's not an affective way to govern the process. He already has three houses on the lot. Mr. Wynhoff said to be honest with you a change from "no" to "maybe" is a major change and there is already a provision in our rules for the petition for deviation which would exactly cover the situation that has been positive in your testimony. Mr. Lemmo thanked him for mentioning that there is flexibility in these rules that allows us to take into consideration special circumstances. In fact, he did broaden the provision for deviation into more a variance type situation. Please don't change my rule.

Member Goode said he is not in favor of changing the transient vacation rule that people rent there homes all over the place, but instead of getting the Board's permission it would be a lot easier and probably still fit into the conservation district is to submit a copy of the lease for your files. Mr. Lemmo said maybe 20-30% of the houses in the conservation

district are under some type of long term rental, but he is concerned with the transient rental problem that is destroying communities.

Member Morgan asked what his comments were that Mr. Weidenbach wanted to change sub-zones. Mr. Lemmo said he did write comments and that it is a shotgun approach at Haena which is erodable and is the reason why the limited sub-zone is appealing. He had no problem withdrawing those parcels from consideration today and taking a closer look at the parcels and come back later which he was willing to do.

Member Morgan said another issue of the net affect of having small lots and not being able to build as big a house as they used to build. The net affect is not being able to build as big a house after the rules are in place. Mr. Lemmo said he looks at the rules as being more liberal, giving some, taking some, and some are looser. Houses are prohibited on 10,000 square foot lot or less if greater you could apply, but the maximum is 3500 square feet. It evens out. Member Goode pointed out when the rules apply and how it affects them. There was more discussion on the lot size and for the rules to apply.

Board member Agor brought up setbacks and suggested adding cantilever decks where he and Mr. Lemmo had some discussions about it. He will have to convince the AG's office on whether they can do it.

Member Edlao brought up the 1 acre thing and the Departmental partnerships. The Board commented that there were a lot of concerns with that. Mr. Lemmo said that they don't want to be subject to an EA. It triggers 343 and will have to ask for an exemption. They are putting themselves up here and everybody is down here because they say they are doing resource management. I am asking for a letter that tells me what they are doing. The concern is 343 and he does not want to go back to his December draft. If you want to put in language that Mark Fox wants you can, but there are other stakeholders out there. Chair Aila said now if you put it in there is it a substantive change. Mr. Wynhoff said he didn't know the answer to that. He doesn't see how it makes any difference with 343. The trigger is the use of State land or use of State funds or the use of the conservation district. The question is if there is an action that uses State land or funds using the conservation district then once an action you got to get into that. It is more likely not to trigger an EA, but I wouldn't bet on it. Mr. Lemmo agreed with Bill. We didn't develop or run 343. It is not our Statute. It is not about the permit, but what are you doing. He has no problem with the partnership. We agreed to A-2 at the bottom of the page, B-1 to include watersheds, include the term significant negative and spot treatments doesn't matter now. He went over what was said earlier by testifiers.

Member Morgan made a motion to approve staff's recommendation with several amendments:

- Withdrawing sub-zone designation for Ron Weidenbach and Camp Erdman.
- Revising the phrase in a sub-division.
- Including most of the recommendations by Paul Conry.
- Also, add Mark Fox's language.

Member Goode pointed out the long term rental – simply supply a copy of the lease. Member Morgan said he thinks they can be silent on that. It is okay the way it is. The Chair said let Sam come back and do a better one.

Mr. Lemmo said he will go and talk to the AG and if they tell him that he can't do some of these things. It's easy to do a minor rule amendment, just changing a few words and we can do that. Mr. Wynhoff suggested if you are making any changes that there be some provision for dealing with what the AG's say that these aren't minor. The whole rule package is going to be suspect. Member Morgan said subject to that provision and Mr. Wynhoff agreed saying believe me I'm not trying to delegate the power of the AGs because I don't care they aren't going to ask me, but you don't want to have the whole package fall because of something. I guess the idea is any amendments to these rules would be subject to vetting whether minor or major changes. Mr. Lemmo said so if the AG decides that you can't do that. Mr. Wynhoff said some portion is proposed...Mr. Lemmo said you guys say ok fine you drop it then go with what you got. The Chair said they will come back to that. Mr. Wynhoff said that is a neutral recommendation because he doesn't have any personal opinion on any of these changes because I haven't thought about them. He is just trying to help.

Member Morgan made a motion to approve as amended and Member Agor seconded it.

Chair Aila said we are going to approve these rules subject to the amendment, subject to the AG's review, but there is a severability clause in there that if one is not permissible via the AG's interpretation the rest of the package goes forward. He took the vote. All voted in favor.

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

**Item F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Robert Toonen, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Intertidal Biodiversity Survey Activities**

Dr. Nishimoto briefed the Board on item F-5 background and the intended activities. Dr. Toonen will gather specimens and share it with Shauna Tom on item F-6. DAR staff recommends allowing activity with special conditions in the submittal.

**Item F-6 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Shauna Kehaunani Tom, Friends of Papahānaumokuākea, for Access to State Waters to use Traditional Ecological Knowledge to Examine Intertidal Ecosystems**

Dr. Nishimoto said that Shauna Tom will follow Dr. Toonen and correlate seasons, weather conditions, the Hawaiian perspective of when these things are available or not

available, climatic changes or things of that nature. DAR staff supports both item F-5 and F-6.

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

**Item D-3 Amend Prior Board Action of October 14, 2010, Item D-16, Cancellation of Revocable Permit No.S-5117 and Issuance of a Grant of a Term Non Exclusive Easement to the Association of Apartment Owners of Lokelani (AOAO Lokelani) for Rubble Rock Revetment Purposes, Lahaina, Maui, Hawaii, Tax Map Key: (2) 4-3-006:065 (seaward).**

Mr. Tsuji reminded the Board that this is a revetment and staff didn't check on the survey that this was reclaimed lands. The appraisal was already done and was provided to the applicant and paid the money that staff is cleaning this submittal up because you need a certain statutory site when using reclaimed lands.

Greg Kugle representing AOAO Lokelani said the easement was approved a year ago. When the State survey came back and put the label "reclaimed land" on the document he didn't think it was reclaimed land because water flows in and out of the revetment. The certified shoreline is mauka of the revetment. He doesn't agree its reclaimed land, but if it needs to move forward to go ahead since they have to get it done.

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

**Item D-2 Grant of Term, Non-Exclusive Easement to Association of Unit Owners (AOUO) of Hale Kai Condominium for a Term, Non-Exclusive Easement for Seawall / Revetment Purposes, Honokowai, Lahaina, Maui, Tax Map Key: (2) 4-4-001: Seaward of 042.**

Mr. Tsuji said this was for revetment purposes.

Mark Roy was here for questions.

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

2:41 PM RECESS

3:10 PM RECONVENED

**Item F-2 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Randall Kosaki, National Oceanic and Atmospheric Administration, Papahanaumokuakea Marine National Monument, for Access to State Waters to Conduct Surveys of Deep Coral Reefs**

Dr. Nishimoto reported on item F-2 to explore 30-150 meters which has not been explored yet. The intent is to document the bio-diversity of deep coral reefs. There is support and DAR recommends approval of the permit with special conditions listed. Dr. Randall Kosaki was here for questions.

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

**Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Education Permit to Dr. Andrew Rossiter, University of Hawaii, Waikiki Aquarium, for Access to State Waters to Conduct Coral and Fish Collection Activities**

Dr. Nishimoto conveyed item F-3 and distributed a list of common species to be collected. This is to create a Northwest Hawaiian Islands (NWHI) exhibit at the Waikiki Aquarium and this is to collect specimens for it. There are 30 species and about 140-150 specimens. They will be very sensitive and pick up any pieces on the edges without destroying the colony. For fish collection there will be 12 species about 55 specimens all of them juveniles. There was a question why do we need to gather coral from up there when we have coral here and that's because coral they want to show is not from the Hawaiian Islands and need to gather from up there. Staff supports and recommends approval with special conditions.

Member Edlao asked whether these specimens are specifically for Waikiki Aquarium and will not be shared by anybody.

Richard Lewis representing the Waikiki Aquarium said these are for a NWHI exhibit opening this Thursday and there is no intent for these animals to go anywhere, but in this exhibit. He invited the Board members to attend the opening.

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

**Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Special Ocean Use Permit to Kyle Nakamoto, Red Sea Ocean Adventures, for Access to State Waters to Document Fieldwork and Conduct Filming Activities**

Dr. Nishimoto related background on item F-4 which was previously permitted for Hawaiian Skin Diver and for magazines. Staff recommended authorizing this permit with special conditions attached.

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

**Item F-7 Request for Approval of Special Activity Permit 2011-33 for Dr. Sam Kahng, Hawaii Pacific University, to Conduct Research on State Regulated Live Rocks on Oahu & Statewide**

Dr. Nishimoto briefed the Board that Dr. Kahng wants to study soft coral which lives on rocks and would have to take live rock or it will destroy his specimens. He read the recommendations with special conditions.

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

**Item F-8 Request for Board Approval to Allow DLNR to Enter into a Four-Year United States Army Corps of Engineers (USACE) Cost Share Agreement (\$2,727,270 Federal/\$909,090 State for a Total Study Cost of \$3,636,360) to Conduct the USACE Section 729 WRDA 1986 West Maui Watershed Plan – (From Signature Date through September 30, 2015) and Request Delegation of Authority to the Chairperson to Execute the Cost Share Agreement, Approve the Watershed Assessment Management Plan and Self-Certify a Non-Federal Sponsor's Financial Capability for Agreements**

Dr. Nishimoto distributed a map and related what the request is. The State cost share is in-kind and no money will be expensed. Ms. Athline Clark was here if the Board had any questions.

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

**Item J-3 Administrative Enforcement Action For Citation No. 1 AI-OA-ETV041 Issued To Heather Klotz On July 2, 2011 For The Emergency Rule Prohibition Under HAR Section 13-256-73.13, "Ahu O Laka Safety Zone"**

Mr. Underwood briefed the Board on item J-3 regarding the new rules that went into affect for Ahu O Laka and the alleged activity by Heather Klotz where an administrative citation was issued. Staff came before the Board before that they would be bringing these actions today and would like to defer to the Board on any administrative fine if any to be applied. The range is between \$50.00 and \$1,000 under Section 200-14, HRS or under 200-14.5 the Board could impose a fine up to \$5,000.00.

Heather Klotz testified that she hopes no fine is administered that she is a visitor to the island and is stationed her for the next 2-1/2 years. It was her first time at the Sand Bar and didn't know of any laws. She is a soldier in a barracks and don't have TV nor does she get the paper and doesn't have a car to listen to the message on the radio. From her understanding the boat owner said you couldn't drink on the Sand Bar, but you could drink on the boat and that is what they did. When DLNR came up asking what she was drinking and she said a beer she didn't know she did anything wrong. If she knew this law was in place she would not violate that law. I have a clearance that if I break the law I could lose my job and that is nothing I want to go through. I work really hard as a United States Army soldier that any possible violations could affect my job, promotion

and the fact that she is trying to go to school. She is sad if she has caused any civil problems that they weren't out there getting crazy and only on a boat drinking with friends and apologized for any misunderstanding and would never do it again now that she knows what the law is. I admit to the violation without knowing it.

After inquiry by Member Goode, Ms. Klotz explained the boat left from a private dock that this was a friend of a friend who just moved here two weeks prior and the rules weren't clear to anyone on that boat.

Member Goode asked whether information and posters are posted at the harbor and not at private docks. Mr. Underwood acknowledged that is correct.

It was asked by the Chair whether staff asked Ms. Klotz if she came from the Marine Base and Mr. Underwood said she said no, but there was media coverage on this. She did say she came from Schofield and they do give them a safety briefing before these 3-day weekends. Ms. Klotz said they do it every 3-day weekend about drinking and driving, but it wasn't put out to me that there was a law. I don't know what the break down was, but I had no idea the specifics of that law. I will do some research before I go out drinking and boating again. From what she thought were the rules and was obeying them and didn't know she was in violation.

After Member Edlao's question about her friend's information, Ms. Klotz reiterated what she said earlier what was told to them by the boat owner. Member Edlao asked if they thought of asking any of the DOCARE officers out there. Ms. Klotz said they were out there a long time and they were parked between boats that people must have known the law and nobody said to us that you are not suppose to have alcohol on the boat. She would not have violated if she had known.

Chair Aila asked what the consequences are to Ms. Klotz who said her clearance would be in jeopardy which means she would lose her job, I possibly would be kicked out of the Army or getting denied her promotion which would hurt her quite a bit since she has been working very hard and she deserves her promotion. The other thing that could happen is her tuition assistance that I applied for and gotten could be taken back if I get flagged for any violations which means I can't further my education. I am going to the University of Chaminade to get her prerequisites for a physician's assistant packet through the Army. This could have potential affect on my career and the Army as well as furthering my education.

Member Edlao questioned about being accused for a violation that already happened. Ms. Klotz said if I get penalized through the Board it will go to her Chain of Command which will show up in reports to them and I will be reprimanded for that by the Army. Her sergeant was here to support her and reiterated that she would have never done this if she knew.

Chair Aila asked whether Ms. Klotz knew why staff was curbing all the negative activities in the area and Ms. Klotz said when she talked to the officers who ticketed her

and they talked about not getting off the boat with the alcohol where she asked why. The people she was floating with said there were incidences Memorial Day weekend and someone was killed. The officers did educate her the specifics on a map and showed them the buoys where they didn't go back in and did everything to take care of the situation.

Chair Aila asked what unit she was with. Ms. Klotz said HHC 3VCT 25<sup>th</sup> ID on Schofield Barracks.

It was asked by Member Edlao that the ramifications are from her superiors or what in your mind will happen. Ms. Klotz said I know any ticket you get could jeopardize clearance and she knows that one for a fact. Her superiors didn't tell her, but she knows what the ramifications are for being flagged for something like this. Member Edlao asked what is the difference with this and DUI. Ms. Klotz said DUI I would lose my clearance completely, be flagged and kicked out of the Army. Because of the economy there are cuts and because the Army wants good soldiers the ones flagged are cut. I don't know what will happen from this, but I know what could happen because I know the standard just from being in the service with other soldiers. I work in administration and I see when people get flagged for smaller things than this.

Member Edlao asked assuming there is no penalty, but you are still fined and still violated something so how does that differ. That isn't going to make any difference from what she is telling me. Ms. Klotz said depending on the situation and how my commander wants to handle the situation and coming before the Board and getting a warning will say a lot about what happened. If I come back with a \$1,000 fine or a \$150 fine that is going to say a lot and how I will be punished. How the Board determines to punish her will determine how her commanders will determine how to punish her.

It was asked by Member Goode whether Ms. Klotz had the ability to get the word out to somebody who write those notices since there are 2 or 3 more 3-day weekends coming up. Ms. Klotz said that she could do something on her company level and say something to her commander or first sergeant and relay the message from there. It surprised her there wasn't more since there is a lot of military on this island.

The Board members asked how long she was in Hawaii and Ms. Klotz said 6 months and the first 3 was spent preparing for deployment and haven't gotten to go out to see the island especially that side. She hasn't been very mobile with a broken leg.

Member Morgan said there is a law and feel compelled to follow it and he is sensitive to what she is saying about being ignorant and she is not making any excuses for that. There is the law and there are circumstances and this is the first weekend I'm inclined to... understanding what Member Edlao is saying that you already go the citation and there is a range that he would go to the low end of that range. Member Edlao agreed and didn't want screw up anyone's career that maybe she could do community service, go to the media and all the stations and tell them what you went through for upcoming holidays – don't do this. We fine you \$50 bucks it could still cause problems for you and do some

community service around Schofield. Ms. Klotz said that she does work for Headquarters and is around a more influential crowd that she could always use an open door policy to talk to who she needs to talk to and is happy to do so. If she can get a soldier to stop from getting drunk and angry and getting in more trouble than she is facing right now she would love to do that.

Chair Aila suggested writing to the editor of Hawaii Army News. Ms. Klotz said from a media standpoint she could make a statement. The Chair said the goal is to let other soldiers know that from the remainder of the emergency rules that they can expect Enforcement to be out there whether they are aware of the rule or not. Ms. Klotz agreed to do that. Member Edlao said he really would like this to get out to all Schofield soldiers and she agreed and happy to do so saying she as a soldier didn't know.

Member Edlao said that hope her commander will take all of these things into consideration which put her on notice on what she did wrong, but you are going to make good and hope other soldiers will learn about that. Ms. Klotz said any leniency they can give her will be greatly appreciated and she would be more than willing to help to do what she needs to do to make sure people follow the rules and make it safer.

The Board members discussed the fine and warning where Mr. Underwood said you could go with either with the \$50.00 minimum or with a warning and additional letter to the editor, but you don't have to assess a monetary fine.

Member Agor suggested putting off the fine until the Board hears the other cases first.

**Item J-4      Administrative Enforcement Action For Citation No. 1 AI-OA-PJR031 Issued To Lee William On July 4, 2011 For The Emergency Rule Prohibition Under HAR Section 13-256-73.13, "Ahu O Laka Safety Zone"**

Written testimony from Melodie Aduja was distributed to the Board.

Mr. Underwood said that the next enforcement action is for Mr. Lee William who was cited for a single count of consuming or possessing alcohol within the Ahu O Laka H2 Zone where alcohol is prohibited.

Melodie Aduja testified that she was an attorney on behalf of Lee William and submitted to the Board on July 27, 2011 a (written) request for a contested case hearing which is what they want to do comparing this case to driving under the influence and that discovery needs to be had. Ms. Aduja listed a number of questions that she wanted answers, mainly addressing DOCARE officers:

- certification of the watercraft DOCARE Officers were using
- whether the alcoholic beverage had been tested – any records
- whether Mr. William was suppressed of his Miranda rights
- what is standard operating procedures in this case
- how officers were trained

- travel logs
- number of citations issued
- the general briefing given by Randy Awo prior to going out to look for these type of infractions

Ms. Aduja requested under the Hawaii Administrative Rules (HAR) to set a time for discovery so there can be an exchange of witness lists and documents.

Chair Aila said you are getting ahead of yourself. The contested case hearing is such that you would request verbally and then follow up within 10 days a written petition with a petition fee for the contested case. We would then ask for standing, staff would obtain a hearings officer and go through that process that Ms. Aduja is referring to. Ms. Aduja acknowledged what the Chair said. She pointed out that this happened 10 days before the Fourth of July weekend where one of her concerns was the issue of due process and notice. Also, not knowing how this Board would issue the order of the fine for her to consider what is in the best interest of her client. Chair Aila said how it would be done is there will be similar discussion to what we observed here and based on the principles of the case determine the fine. You need to weigh whether you want to go to a contested case hearing with all the additional costs be borne by your client or pay the fine adjudicated today. He suggested letting us process this first and make her decision at that time. Ms. Aduja said okay, very well.

It was questioned by Member Goode that based on Ms. Aduja's questions that it is her position that her client is not guilty of violating the law and Ms. Aduja said that is correct.

Mr. Underwood distributed a handout and said the alcohol was tested that she could get it through an OIP request to get the document. Chair Aila said if the go through a contested case hearing that would be part of that process. Mr. Wynhoff said there isn't discovery in a contested case, but on the other hand it is possible that we voluntarily turn it over without an OIP request.

Officer Rivera (DOCARE) testified that he was the officer who issued the citation. On July 4<sup>th</sup> at approximately 13:10 hours (1:10 pm) I observed on Mr. Lee William's boat a person with a clear bottle that resembled an alcohol type beverage. He put it down in the front of the bow of the boat. It was a clear bottle containing yellowish substance, alcohol type of beverage I made my way to his vessel. He approached me and said he was the owner, captain of the vessel and I asked him if that alcohol that was put down in the front. At that time he said he had no alcohol on top his vessel. He said you can come on board and look. At that time they asked "can we?" and he said "Okay. You can come on top." As I made my way on top the vessel on the port side, left side of the vessel there was a cup containing what appeared to be an alcohol type of beverage in plain view. I asked him if that was alcohol and he said he wasn't drinking it. But, I told him it was a violation to possess any type of alcohol within Safety Zone H-2. At that time I asked him if the bottle I saw was alcohol. He opened up his cooler in the front and there was some beer cans along with an unopened Corona bottle and the clear bottle that I saw was a Jim

Bean alcohol beverage. At that time I issued him the citation and said I know you weren't drinking it, but it's in violation to be in possession of any type of alcohol beverage – open, un-opened. There was evidence gathered. We took the blue cup what appeared to be an alcoholic beverage. Put it in a vial sealed it in front of Mr. William. We took the Corona bottle and the Jim Bean bottle. It was asked by Chair Aila whether any analysis was done and Officer Rivera said I wasn't sure if analysis was done. There was some discussion whether the bottles were alcoholic beverages and they were clearly labeled as you would purchase from a store. Officer Riviera said he took some pictures and didn't know if it was in this report and it was.

Mr. Wynhoff gave a copy of the violation report to Ms. Aduja's per her request for it.

Chair Aila said that the strategy in coming up with Administrative Rules was to go to a civil process rather than criminal based on a preponderance of evidence and summarized what the officer brought before the Board and asked whether the cup was tested and smelled of alcohol. Officer Rivera said he didn't know if the cup was tested. It smelled of alcohol. After reading the test results the officer said it was tested and concluded that it appeared to be an alcohol beverage. Chair Aila said that this sample was sent to Honolulu Police Department Scientific Investigative Section and read the results - 1A was the Corona bottle and appears to be alcoholic. 2. Was the ¼ full 750 mm Jim Beam glass that the beverage appears to be alcoholic. 3. One clear glass vial containing amber colored liquid and appears to be a beverage, alcoholic. He read the HPD's accreditation.

Ms. Aduja said that this is the first time she was seeing the results of the test and will still be part of the case. Mr. Wynhoff said the officers are not under oath and Ms. Aduja would do this in a different type of set-up.

Member Morgan said he finds that two different people with similar original circumstance with alcohol in a boat that the two responses are diametrically in opposite. One says they screwed up and asked for leniency and the other approach is I contest everything and it wasn't me that he wanted to make that unsettling observation.

Ms. Aduja pointed out that Lee William doesn't drink. Chair Aila said that is not what the citation is for.

Mr. William spoke saying it wasn't his boat and got on the boat and did whatever the officers' asked that his vessel was beside that vessel. Chair Aila asked who is the owner and Mr. William said Hawaii Pantoon Boats and named Josh who was captain, but he was not near the boat. If Mr. William knew there was alcohol on the boat he would not let them on it. Josh's guests from California brought something on the boat. Member Agor asked Mr. William which boat was the cooler in and Mr. William said that was the blue boat that he was on the red boat. He was trying to be helpful to DLNR. Member Edlao asked if it wasn't your boat why didn't you inform the officer. Mr. William said he didn't know there was alcohol on the boat.

Chair Aila asked the officer who did he observe holding up the bottle. Officer Rivera said he guessed his friend who was on the back of the boat. When we came up we were questioning the friend who said no, no, no. This is my boat. That is why I told him it's in violation to possess, consume...The Chair asked your response to the officer was you claim this was your boat. Mr. William said no. It was not my response because it is not my boat. Member Agor asked who the officer questioned first and Officer Rivera said Lee William. He was on the back of the boat. Mr. William said not on the blue boat. The Chair asked whether there was another officer with him and Officer Rivera confirmed that. After the Board's questioning he said he was not the one he saw put the alcohol into the cooler. Member Agor asked why did you cite him instead of the other guy. Officer Rivera said he (Mr. William) said he was the owner of the boat that Officer Rivera put it in his report that he made contact with owner operator because he said he owned the vessel. And I told him even though he didn't consume the alcohol it was in violation to be in possession of it. We are not citing you for consuming the alcohol.

Chair Aila explained that the Board will make a determination and you may request a contested case if you disagree with that.

Mr. Lee reiterated what he said earlier about the other captain and friends from California and that he was not on that boat relating what happened. He didn't know what to do because he knew the law that no alcohol is allowed out there and that it was a mistake. Mr. Lee hasn't drank in 8 years and he wasn't thinking that he should have grabbed whoever had a bottle and write them a ticket. What should I do, don't let them on board without a search warrant? It's not a major crime because they are not drinking. Ms. Aduja reiterated what Mr. William said earlier being unaware of any alcohol on the boat and the boat is not his.

Mr. William asked the officer about a breathalyzer and the Chair reminded him its possession of alcohol not consumption.

Member Morgan said it would have come off differently if there was an explanation of what happened first and then the launch into the due process part and appreciated the additional information. From his point of view the laws went up really quick and he doesn't dispute anything Mr. William said about what happened, but would have been easier if that explanation came first.

**Item J-5      Administrative Enforcement Action For Citation No. 1 AI-OA-ETV042 Issued To Patrick Miller On July 2, 2011 For The Emergency Rule Prohibition Under HAR Section 13-256-73.13, "Ahu O Laka Safety Zone"**

Mr. Underwood said what item J-5 was.

Patrick Miller said he was on the same boat as Heather that he agreed to what she testified and that he only came to the island June 3<sup>rd</sup>. He knew something happened, but didn't know about no drinking on the Sand Bar and didn't know what the Sand Bar was

until they got there. Mr. Miller put his trust in the captain of the Boat and I thought they were able to drink and clearly I wasn't tracking the new rule. I was drinking and had beer in my hand. I was putting the empty beer cans in the closed container for the trash and I looked up and seen the jet ski coming up because he saw Mr. Miller with beer cans in his hand. The boat captain thought you could drink on the boat, but not outside on the Sand Bar which is how they understood the new rule. After Member Edlao's question Mr. Miller said he works at Shafter Flats.

Mr. Underwood said as Ms. Klotz indicated the same potential negative outcome could affect him as well as her depending on what type of administrative action takes place.

Mr. Miller said like any rule or law especially with alcohol it's a touchy subject anymore. Drinking is not allowed. If you are in a safe environment and drinking is legal drink away, just responsibly. We thought we were all being responsible. He would have mitigated the situation had he known that he was new to the islands and don't know all the rules and laws.

There was some discussion with Ms. Klotz over how many people and who were in the boat where she related what happened on the boat putting their trust in the captain.

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

4:27 PM EXECUTIVE SESSION

4:34 PM RECONVENED

Chair Aila asked Mr. Miller if he was willing to write an editorial to the Army newspaper describing your experience as a deterrent to future service members going out to Ahu O Laka and possessing alcohol. Mr. Miller asked whether to help her or write another one. Member Edlao said you should write your own and it's not a matter if you're willing. Mr. Miller said he is going to.

Member Edlao said that he doesn't want anyone to lose their job and if you do the community service that they spoke of we do have to fine you and made a motion to fine them \$50.00 and to do the community outreach through the military and if possible through the media. Mr. Miller said he did talk to the media before coming in and he could do a before and after.

Ms. Klotz asked where does she go to pay the fine and the Board directed her to staff.

**The Board:**

**Approved staff's recommendation for items J-3 and J-5 with a fine of \$50.00 and to do community outreach through the military and if possible, the media.**

**Item J-3 was unanimously approved as amended (Edlao, Morgan)**

**Item J-5 was unanimously approved as amended (Edlao, Morgan)**

Mr. William thanked the Board and said they always held DLNR and apologized for any inconvenience he caused. If he had known there was alcohol on that boat he would have told them no because that is the law and he was aware of the rule.

Member Edlao said your circumstances are different from the other two and suggested a fine of couple hundred dollars because he was aware of the rule and that he did not clarify to the officers it was not his boat. It may be more if you contest it, but that is your option.

There was more discussion about those who were drinking and those who were in possession of alcohol and law enforcement.

Member Agor made a motion to levy a fine of \$200.00 and administrative penalty of \$200.00. Member Edlao seconded.

Ms. Aduja interrupted saying that they would be agreeable to doing some public service and felt that would have a greater impact on the public.

Member Morgan said that was excessive. Member Edlao said he would have been fine with just the \$200.00 fine.

Member Agor withdrew his motion and made a new motion to levy a \$200.00 fine. Member Edlao said he would second that the client said he was willing to do some kind of outreach and not knowing how – maybe with the media. Member Agor said it was ironic whether he knew or not. Its one word against the other and he knew what the law was and we want this person to be the model? Member Edlao withdrew that, but seconded the \$200.00.

Chair Aila took the vote and all the Board members voted in favor.

**The Board:**

**Approved staff's recommendation for item J-4 with a civil penalty fine of \$200.00.**

**Item J-4 was unanimously approved as submitted (Agor, Edlao)**

**Pay a \$200.00 civil penalty fine.**

Chair Aila said you have 10 days to submit a written for a contested case hearing. Member Edlao said a verbal before the end of the meeting and follow up in 10 days. Chair Aila said it was already submitted. Ms. Aduja confirmed that she already submitted and said she needed to speak with her client and she was told by the Chair that she has until the end of today's Board meeting.

**Item J-1      Delegation of Authority to the Chairperson of the Board of Land and Natural Resources (Board) to Solicit and Award Service Contracts for Janitorial, Electrical, Plumbing, Refuse and Buoy Maintenance at Statewide Small Boat Harbor Facilities**

Mr. Underwood reminded the Board that this was brought before them at the last Board meeting and related what this item is. The Deputy AG at the time suggested staff correct the wording which staff has done. After talking to Personnel they can meet the civil service exemption, but will do it district by district starting with Oahu and asked the Board to grant authority to the Chairperson and any revisions upon approval by the Attorney General's office.

Janet Mandrell testified she objected to consolidating contracts to one individual forever.

Member Edlao made a motion to approve as submitted. Member Morgan seconded that.

Member Morgan said he looks at the Chairperson as the CEO of an organization and should put some trust in the people who lead and not wanting to bog this Board down with every contract which is why it is worthwhile to pass this through.

Mr. Wynhoff commented in the procurement process what happens is typically it's not even the Chair. You would appoint three people to be on the committee and those three pick the top person and by law once that top person is picked by the committee that person has to be selected. It's important for this Board to realize that it comes up many, many times that once you approve procurement that is the end of issue. Even the Chair doesn't have that much discretion any more.

All the Board members voted in favor.

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

**Item J-7      Request for Authorization to Enter into a Memorandum of Agreement with the Department of Transportation Regarding the Maintenance, Planning, Installation, and Monitoring of Ten Day Use Moorings in Hilo Bay as well as Another One Hundred Day Use Moorings Statewide**

Mr. Underwood said that there were no changes to this item.

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

**Item B-1 Request for Authorization to Enter into a Production Agreement with PSG Motion Pictures, LLC to Allow PSG Motion Pictures, LLC to Ride Along With and Film Division of Conservation and Resources Enforcement (DOCARE) Officers and Allow the Footage to be Used in a Documentary-Style Series**

**Item B-2 Request Approval to Seek the Governor's Approval to Indemnify the City and County of Honolulu Department of Parks and Recreation for the Use of the Koko Head Shooting Complex on September 17 & 18, 2011 for the National Hunting and Fishing Day Celebration**

Randy Awo representing Office of Conservation and Resources Enforcement said there were no changes to items B-1 and B-2.

It was pointed out by Member Edlao that certain missions are occurring during these times and should not be interrupted during those times and Mr. Awo agreed to not conflict with other divisions' assignments.

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

**Item D-4 Consent to Lease of Lands under Governor's Executive Order No. 4345 to Hawaii Housing Finance and Development Corporation, Kakaako, Honolulu, Oahu, Tax Map Key: (1) 2-1-051:042 & 043.**

Barry Cheung representing Land Division read this item's background which is for a 75 year lease, but staff was notified of a change on page 2 and asked to amend the dates from April 4, 2011 expiring on April 30, 2086 to August 1, 2011 expiring July 30, 2086. Staff had a concern whether this was a Sunshine Law issue and Mr. Wynhoff said he didn't see any problem.

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

**Amended page 2, the term dates from April 4, 2011 expiring April 30, 2086 to August 1, 2011 expiring July 30, 2086.**

**Item I-1 Request Approval for Selection of Competitive Sealed Proposal and Authorized the Chairperson to Award and Execute a Contract to Develop, Coordinate and Implement the Process for a New Draft of the State Plan for Submission and Acceptance by the National Park Service.**

Randolph Lee representing State Historic Preservation Division (SHPD) presented staff's agenda item and gave some history as related in the submittal.

Member Agor asked what the time frame was and Mr. Lee said commencement is from mid-November to mid-September of next year which is roughly 10 months.

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

**Item J-4      Administrative Enforcement Action For Citation No. 1 AI-OA-PJR031 Issued To Lee William On July 4, 2011 For The Emergency Rule Prohibition Under HAR Section 13-256-73.13, "Ahu O Laka Safety Zone"**

Melodie Aduja requested a reconsideration of the fine due to the military admitting that they were drinking and possessing alcohol where in her client's case there was no alcohol consumption. She believes the fine of \$200.00 is excessive and should be the same on par as the other two cases. Chair Aila noted that all citations were for possession of alcohol and not for consumption that all citations were consistent, but the decisions were slightly different. He asked the Board members whether they wanted to revisit this matter.

Member Goode said no. While on board and with the officers it has to be the owner who is written a citation. Now he comes here saying he is not the owner and that sets a bad precedence in itself. He finds the circumstances are distinct enough to not warrant a change to his opinion. Member Edlao said he felt the same way. He admitted in the report it was his boat then he comes here and the story changes. It'll cost him more. Member Agor said he would not reconsider. Chair Aila said can't get the Board to reconsider.

Ms. Aduja said very well and thanked the Board. At this point I will be withdrawing my request for a contested case hearing.

**Item K-2      Conservation District Use Application KA-3588 for the Kuhio Highway Stabilization Project by the State Department of Transportation, Highways Division, in Hanalei, Kauai, TMK (4) 5-4-004:032**

Michael Cain representing Office of Conservation and Coastal Lands (OCCL) conveyed this item and asked to change on the cover page of the submittal under Location to delete "between mileposts 5.0 and 5.17" and should just say Hanalei. Staff recommended approval.

Member Edlao cautioned staff when doing this that traffic was horrendous on Maui and to ask people to be patient, but after it was completed it was the best thing that happened.

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

**Item C-1      Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contract(s) to Install Ungulate-Proof Panel Fencing within the Kuia Natural Area Reserve, Kauai**

**Item C-2 Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contracts for the Waianae Kai Forest Reserve Fence Repair Project and Request Approval of Declaration of Exemption to Chapter 343, HRS Environmental Compliance Requirements for the Waianae Kai Forest Reserve Fence Repair Project**

**Item C-4 Termination of Timber Land License No. H101 Commencement Date August 29, 2001 held by Tradewinds Forest Products, LLC.**

Mr. Conry pointed out under item C-4 that this is the official closing of the Tradewinds timber license and the reason staff is coming to Board to do this officially to seek the Board's approval to not require any further payments from parties who have already paid. Also, he wants to make sure any future parties to go forward when staff does reopen that they can come in on good standing and to put together a deal to participate in any future considerations for licensing.

Member Edlao moved to approve items C-1, C-2 and C-4. Member Morgan seconded that. All voted in favor.

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

**Item D-6 Issuance of Revocable Permit to Hilton Hawaiian Village LLC for Beach Activities Purposes to be held from September 2 to 3, 2011 at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portion of 021.**

**Item D-7 Issuance of Revocable Permit to Waikiki Roughwater Swim Committee, Inc. for a Swim Race Event to be held on September 5, 2011, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-37:por. 21.**

**Item D-8 Request to Extinguish an Existing Ditch Easement, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-025:010 portion.**

**Item D-9 Authorization of Bill of Sale to the City and County of Honolulu for Sand Island Wastewater Training Facility, Sand Island, Honolulu, Oahu TMK (1) 1-5-41: por.05.**

**Item D-10 Grant of Perpetual, Non-Exclusive Easement to Hawaiian Telcom, Inc. for Utility Lines Purposes, Kapolei, Ewa, Oahu, Tax Map Key: (1) 9-1-017:portion of 110.**

Mr. Cheung said he had no changes to the above items.

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

**Item D-5 Issuance of Revocable Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on September 3, 2011, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:021 portion.**

Mr. Cheung distributed a new exhibit A and said that the permittee requested replacing exhibit A and the Hilton Hawaiian Village didn't have a problem with that.

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

**Item E-1 Request for Approval to Issue a single Revocable Permit to Pepsi Bottling Group, LLC to Operate up to Two (2) Vending Machines for Business and/or Commercial Purposes, Wailua River State Park, Wailua, Kauai, Tax Map Key: (4) 3-9-004:010**

Dan Quinn representing State Parks reported that one of the machines was left by the last vendor and that staff wants to keep the machine there or there is nothing. There are no changes.

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

**Item L-1 Approval to Execute Supplemental Agreement to Contract for Professional Services, Contract No. 58307, for Job No. D00AO76A, Kawai Nui Marsh Levee Project, Oahu, Hawaii**

Carty Chang representing Engineering Division asked to amend wherever it says supplement #1 to change it to #2 that #1 was to exercise the first option and why staff wanted #2 is because they are going beyond the option period. The reason for more time is to develop an emergency action plan for the levy and DOFAW is developing this plan. Staff is still working out the details.

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

**Amend staff's submittal any where it says supplement #1 should say supplement #2.**

**Item L-2 Authorization to Enter Into a Memorandum of Agreement between the State of Hawaii, Department of Land and Natural Resources, and the State of Hawaii, Department of Transportation to Supplement the Memorandum of Understanding for the Ferry Pier and Landside Improvements at Kaunakakai Harbor/Small Boat Harbor Executed on May 17, 2004**

**Item L-3      Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 49 - Kolea Reservoir (MA-0097), Dam Alteration and Removal, Hana, Maui, Hawaii**

**Item L-5      Request Authorization to Select Consultants and Authorize the Chairperson to Negotiate and Execute Agreements with Consultants and/or Government Agencies as Necessary to Administer HRS Chapter 179D, Entitled the Dam and Reservoir Safety Act of 2007**

Mr. Chang had no changes for items L-2, L-3 and L-5.

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

**Item L-4      Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 58 - Napili 4-5 Desilting Basin (MA-0127), Dam Outlet Modification, Napili, Maui, Hawaii**

Board member Goode recused from this item.

Mr. Chang related agenda item L-4 that DLNR owns it and was maintained by Department of Public Works on Maui. It's to issue a permit for this project.

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

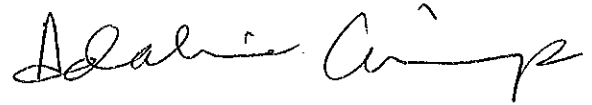
**Item H-1      Non-Action Item Open Discussion by Board Members about Issues, Policies, etc. affecting the Department of Land and Natural Resources (DLNR) or Board of Land and Natural Resources (BLNR)**

The Board had nothing to discuss.

**Adjournéd (Edlao, Morgan)**


There being no further business, Chairperson Aila adjourned the meeting at 5:08 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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