

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

DATE: THURSDAY, JANUARY 12, 2006  
TIME: 4:00 P.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 4:13 p.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Toby Martyn  
Ms. Taryn Schuman

Mr. Gerald DeMello  
Mr. Ron Agor

**STAFF**

Ms. Holly Leong, Personnel  
Ms. Yara La Madrid-Rose, State Parks  
Ms. Tiger Mills, OCCL  
Mr. Robert Masuda, CO  
Mr. Morris Atta, Land  
Ms. Lauren Tanaka, State Parks  
Mr. Randy Kennedy, DOFAW  
Ms. Debbie Ward, CO  
Mr. Mike Constantinides, DOFAW  
Mr. Dean Aoki, CO

Ms. Juliet Kazanjian, Fiscal  
Mr. Francis Oishi, DAR  
Ms. Jennifer Bethel, CO  
Ms. Betsy Gagne, DOFAW  
Ms. Jolie Wagner, DOFAW  
Mr. Curt Cottrell, DOFAW  
Ms. Jeannie Fujikawa, CO  
Ms. Athline Clark, DAR  
Ms. Christen Mitchell, DOFAW  
Mr. Gary Moniz, DOCARE

**OTHERS**

Mr. Kepa Maly  
Mr. Sam Gon  
Mr. Clyde Namu'o  
Ms. Theresa Dawson

Mr. Manu Boyd  
Ms. Haunani Apoliona  
Mr. Jonathan Scheuer  
Ms. Diana Leone

Chairperson Young pointed out at the December meeting of the Commission on Water Resource Management, Kepa Maly spoke to those present about the cultural importance of water. After hearing Mr. Maly's twenty minute presentation, Mr. Young invited him to conduct a presentation before the Board dealing with the cultural importance of Hawaii's natural resources. The presentation began with Manu Boyd and Sam Gon recited an ole.

Mr. Boyd performed an ole that asked the question "Where is the Water of Kane" to which the reply is that the water of Kane is everywhere – it's at the rising sun, the setting sun, the mountains, the valley's the ocean, the stream's, the rainbow's, the springs of the earth and the rain. The ole ends by saying water sustains life, water is everywhere and water is important.

Sam Gon performed an ole regarding the changes that happen to the land and how we can make the correct changes for the resources that are on the land and in the water. Prior to the ole Mr. Gon chanted about how the lands are decorated with the beauties of the forest which are fed by the mist of the tradewinds.

As background information Mr. Maly disclosed he was raised on Oahu and Lanai. His kupuna on Lanai were born in 1892. His wife's kupuna was an esteemed woman of Hawaiian history. Over his lifetime Kepa has spent time with kupuna's to gather their stories. It is Mr. Maly's wish for the Office of Hawaiian Affairs to capture the voices of our kupuna's in detailed oral history programs because once they die the experiences die with them.

If those present get nothing else from his presentation Mr. Maly wants everyone to remember when people talk about issues of land, water and the ocean in the truest sense of the Hawaiian context they are speaking about family, their gods. He stated people can not focus on only what was lost. Mr. Kepa's presentation dealt with the knowledge he has obtained over the years but he noted that not all knowledge comes from one school but he will speak on what he has learned. Mr. Kepa told those in attendance that we must share our knowledge with others so it can be passed on to future generations. Mr. Kepa asked those present to keep the knowledge he has shared with them that is good but if he says something offensive that they do not agree with to please set it aside.

Mr. Maly spoke of a book titled "Fragments of Hawaiian History" by John Papa Ii. He spoke of Mr. Ii's role in life which was to tend to the children and grandchildren of Kamehameha I. He observed the last human sacrifice at Papaenaena, witness the reawakening of the heiau and the putting to sleep of the heiau after the death of Kamehameha I. In the 1860's Mr. Ii wrote a series of articles for a Hawaiian language newspaper and these articles have been translated into "Fragments of Hawaii." Mr. Kepa questioned if the articles were fragmented at the time Mr. Ii wrote those articles it would mean that changes would have already occurred to the original work.

Mr. Maly went on to talk about the issue of land ownership. He pointed out in 1848 to 1855 when native tenants of the land were granted the right under a western system to private land ownership many Hawaiian's applied for land they lived on and were actively working on. But during that time 5,000 of those Hawaiians died and their claims were lost. So when dealing with land issues, Mr. Maly asked the Board to remember that a lot has happened but the Board needs to be able to listen to the issues while putting aside people's anger so that they can read through

the issues and understand it. While we need to understand what tradition is at the same time we need to do what we can to save something because so much has been lost.

Mr. Maly encouraged the Board to read an ethnographic study he conducted dealing with the native traditions, lore's and historical accounts of Mauna Kea. This seven hundred page document consists of native and historical accounts of Mauna Kea and it does not include any science. (Mr. Maly also conducted a study on the oral history of Sacred Falls.) He spoke of Mauna Kea being likened to a sacred landscape in which each part contributes to the integrity of the entire mountain. Mr. Kepa let it be known he has spoken with Hawaiian's that worked the mountain during the time of construction and they've stated that no burials were found or disturbed during construction phase. Upon speaking with kupuna's regarding on this issue he noted many of them feel that what's there is there and we can't do anything about it but, those using the mountain need to show us that they can be good stewards of the land by taking care of it and respected it. The kupuna's also asked that no other construction be allowed on Mauna Kea instead we should make good use of what is already there.

Mr. Maly indicated when Hawaiians look at land, its family, it's and embodiment of the gods. Mr. Kepa spoke of a tutu that was taught to call upon the gods before traveling into the mountains. Should the mist come down upon them while traveling in the mountains it might mean they've done something wrong. Tutu then stated they would proceed to communicate with the gods telling the gods they were lost and asked for help. Through this story Mr. Maly is not saying we should live like they did in the past but to recognize that maybe we are not the masters of the land but if we are good servants to the land we'll be rewarded by the resources from the land, the food.

Mr. Maly asked the Board when making decisions regarding the land and the water to remember it is not just a commodity. He noted the western way of looking at the environment is to measure how much you can get out of the land because they are detached from the land, but Hawaiians have a cultural attachment to the land so they view it differently. Mr. Maly told the Board they must arrive at a balance in order for the land to provide for future generations.

Mr. Maly invited those present to ask questions which he would try to answer. Questions were raised dealt with beach access, construction at Mauna Kea, and the items found at Forbes Cave.

Haunani Apoliona, Chairperson of the Board of Trustees of the Office of Hawaiian Affairs (OHA) told the Board they were happy to be here to listen to Mr. Maly's presentation. Ms. Apoliona spoke of having the same concern the Board has which is to protect the land. She made it known through today's presentation she can appreciate the job that the Board has. Ms. Apoliona let it be known if we can honor, respect and accept the genealogy and lineage of Hawaii it will make the decision process easier. She told the Board the view of OHA is to "talk story" to avoid any disconnect so things can be solved the right way.

Mr. Maly ended the presentation by asking everyone to remember this phrase, "O Ka mea maka'i malama, o ka mea maika'i ole, ka pae ia" which translates to "Keep the good and set the bad aside."

There being no further business, Chairperson Young adjourned the briefing at 5:56 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review.

Respectfully submitted,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, JANUARY 13, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Gerald DeMello  
Mr. Ron Agor

Mr. Tim Johns  
Mr. Toby Martyn  
Ms. Taryn Schuman

**STAFF**

Mr. Richard Rice, DOBOR  
Mr. Sam Lemmo, OCCL  
Mr. Russell Tsuji, Land  
Mr. Curt Cottrell, DOFAW  
Mr. Bill Stanley, DOFAW  
Ms. Charlene Unoki, Land

Mr. Eric Hirano, Engineering  
Ms. Dawn Hegger, OCCL  
Mr. Dan Quinn, State Parks  
Mr. Scott Fretz, DOFAW  
Mr. Dave Smith, DOFAW

**OTHERS**

Mr. William Wynhoff, Deputy Attorney General  
Ms. Linda Chow, Deputy Attorney General  
Mr. Peter Schall, J-1, J-2  
Mr. Robert Oakrider, J-1, J-2  
Mr. Phil Hauret, J-1, J-2  
Mr. Bob Hampton, J-1, J-2  
Mr. Jim Tolson, J-1, J-2  
Ms. Janet Ely, J-1, J-2  
Mr. John Whalen, K-5  
Mr. Gary Nakamura, K-5  
Mr. Paul Gaynor, C-3

Mr. Virgil Adonis, J-1, J-2  
Mr. Rick Egged, J-1, J-2  
Mr. Alan Cambra, J-1, J-2  
Mr. Robert Finley, J-1, J-2  
Mr. Clayton Tsuchiyama, J-1, J-2  
Ms. Cappy Fasi, K-5  
Mr. Warren Bucher, K-5  
Mr. Gil Keith-Agaran, K-6  
Mr. Mitch Hirano, D-10

Mr. Steven Lim, K-2  
Mrs. Mary Carroll, K-2  
Mr. Bob Graham, K-2  
Mr. Tim Lui-Kwan, K-3  
Mr. John Sutton, K-3  
Mrs. Maureen Gapp, K-4

Mr. David Carroll, K-2  
Ms. Keolani Hanoa, K-2  
Mr. Earl Hanoa, K-2  
Mr. Garrett Saikley, K-3  
Mr. Bill Barber, K-3  
Mr. John Gapp, K-4

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

**Item A-1: November 18, 2005 briefing**

Member Martyn recused himself.

**Unanimously approved as submitted by the remaining Board members (Johns/DeMello).**

**Item A-2: November 18, 2005**

Member Martyn recused himself.

**Unanimously approved as submitted by the remaining Board members (Johns/Schuman).**

**Item A-3: December 9, 2005**

Motion to defer due to lack of quorum.

**Unanimously approved to defer (Johns/Agor).**

**Item J-1: Issuance of Right-of-Entry Permit to Hilton Hawaiian Village LLC, Waikiki Oahu, Public Right of Way as shown on Map 4 of Land Court Consolidation 64; Grant of Easement to the Board of Water Supply Waikiki Oahu, Public Right of Way as shown on Map 4 of Land Court Consolidation 64; Grant of Easement to Hawaiian Electric Company, Waikiki Oahu, Public Right of Way as shown on Map 4 of Land Court Consolidation 64.**

Member Johns recused himself.

Richard Rice, Administrator for the Division of Boating and Ocean Recreation (DOBOR) made it known the purpose of this submittal is to issue a right of entry to the Hilton Hawaiian Village to construct and maintain water and electrical easements. Hilton seeks to install certain water and electrical lines under the Public Rights of Way in order to service the Grand Waikikian, the Duke Kahanamoku Lagoon and the Ala Wai Small Boat Harbor. Upon completion of the construction project the Hilton will be asked to grant an easement to the Board of Water Supply and Hawaiian Electric Company, Inc. for on going maintenance of these lines. Mr. Rice recommended the Board authorize the issuance of a right of entry to Hilton Hawaiian Village LLC and its contractors covering the subject area, following the completion of the Water Line Improvements authorize the issuance of a non-exclusive, perpetual easement to the BWS covering the subject area and following the

completion of the Electrical Improvements, authorize the issuance of a non-exclusive, perpetual easement to Hawaiian Electric Company covering the subject area.

**Item J-2: Issuance of Right-of-Entry Permit to Hilton Hawaiian Village LLC, Waikiki Oahu, Tax Map Key: (1) 2-3-037: 012, 021; Grant of Easement to the Board of Water Supply Waikiki Oahu, Tax Map Key: (1) 2-3-037:012, 021; Grant of Easement to Hawaiian Electric Company, Waikiki Oahu, Tax Map Key: (1) 2-3-037: 012, 021.**

Member Johns recused himself.

Mr. Rice pointed out this submittal is similar to the previous submittal in that the Hilton would like to request a right of entry to construct water and electrical lines in the subject area. This submittal is also requesting redirection of the drainage which is currently flowing to all areas. The Hilton will construct a drainage system which will allow water to be properly deposited into a captured culvert system with separation boxes that will eventually flow into the harbor. Mr. Rice recommended the Board authorize the issuance of a right of entry to Hilton Hawaiian Village LLC and its contractors covering the subject area, following the completion of the Water Line Improvements, authorize the issuance of a non-exclusive, perpetual easement to the Board of Water Supply and following the completion of the Electrical Improvements, authorize the issuance of a non-exclusive, perpetual easement to Hawaiian Electric Company covering the subject area.

Peter Schall, former Senior Vice President and Managing Director of the Hilton Hawaiian Village Resort & Spa and currently a consultant to Hilton Hawaiian Village, LLC and the Grand Waikikian development project appeared before the Board to provide testimony in support of staff's submittal. Mr. Schall indicated the Honolulu City Council awarded a permit for the subject area to Hilton 3 ½ years ago after proper notice and public hearings were held. Today, Hilton is simply seeking to implement and satisfy certain conditions of those permits and is asking the Board for a right-of-entry permit and easements to install and maintain utilities beneath portions of Dewey Land and a right-of-entry permit and easements to install and maintain utilities in the Duke Kahanamoku Lagoon area. Mr. Schall indicated there are individuals present today from the Ilikai Association of Apartment Owners (Ilikai Owners Association) who would like to provide testimony with regards to traffic and traffic management in and around Dewey Lane but he believes this issue is the responsibility of the Department of Transportation not the Board. With respect to a future submittal relating to this issue, Mr. Schall noted that Hilton will be coming back to this Board at the end of this month for consideration and approval relating to the widening of Dewey Land and certain pedestrian and vehicular access easement. In closing, Mr. Schall confirmed Hilton is committed to cooperating and maintaining an open dialogue with the Ilikai Owners Association while moving forward with the Grand Waikikian development project. Mr. Schall requested the Board approve the utility submittals before them and allow Hilton to move forward with this critical part of the Grand Waikikian development project.

Virgil Adonis, a co-chair of the Filipino International Trade Exposition of the Filipino Centennial Commission testified in support of a joint use agreement for Hilton Hawaiian Village. He believes this is a win win situation for all concerned and will be a better utilization of the subject property. Mr. Adonis believes any improvement to a tourist facility is a welcome event that should be supported by the community. Mr. Adonis spoke of Hilton's effort to work with the community.

Mr. Young communicated to those present that the submittal before the Board today does not deal with a joint use agreement with Hilton Hotels but deals with a right-of-entry and utility easements.

Robert Oakrider, a long time resident of the Ilikai Hotel Building confirmed with the Board that today's hearing dealt with the easement to Hilton for underground utilities. Mr. Oakrider noted the Hilton has been a very good neighbor and is doing the right thing. He believes the new addition to the Hilton will be an enjoyable and attractive addition to the neighborhood.

Rick Egged, a member of the Waikikian Improvement Association spoke in support of Items J-1 and J-2 as necessary first steps to moving this project along. He believes the project in general is a good one and urges the Board not to delay this project.

Phil Hauret, Land Agent with HECO spoke in support of the submittal but had some comments on the easement. He let it be known that HECO does not believe they need an easement over Dewey Lane because based on material they've reviewed Dewey Lane appears to be a public road right-of-way owned by the Department.

Alan Cambra, President of the Association of Owners of the Ilikai Apartment Building (Ilikai) testified in opposition to Hilton's request for the State of Hawaii to enter into a joint use agreement and related grants of easements and permits to allow for certain improvements to be made to Dewey Lane. Mr. Cambra explained with respect to the creation of a new intersection at Ala Moana and Dewey Lane, the Ilikai's concern is with the proposed access and usage of Dewey Lane. Mr. Cambra believes the expansion of Dewey Lane and the creation of a new intersection at the corner of Ala Moana Boulevard and the expanded Dewey Lane must be considered in tandem and unless the Ilikai's concerns are addressed their association will be in opposition to proceeding with any portion of the widening of Dewey Lane, including the proposed grants of easements.

Bob Hampton, President of the Waikiki Beach Activities spoke in support of the easements and permits Hilton is seeking from the Department. Mr. Hampton specifically noted his support for the drainage improvements for the lagoon.

Robert Finley, Chairman of the Waikiki Neighborhood Board noted the topic of the Hilton's improvement project has appeared before his Board as an agenda for the past three years. He stated the Hilton have been very forth right with their plans.

Jim Tolson, President of the Chamber of Commerce of Hawaii testified is support of Hilton obtaining the subject easements as requested in Items J-1 and J-2.

Clayton Tsuchiyama, Senior Vice President and Chief Financial Officer of MC&A (a local destination company) spoke in support of Hilton's request to expand and improve Dewey Lane. Mr. Tsuchiyama noted Hilton has been responsible managers as well as very good corporate citizens who are supportive of the community.

Janet Ely, President and CEO of the Alzheimer Association provided testimony in support of the easements requested by the Hilton.

**Unanimously approved Items J-1 and J-2 as submitted by the remaining Board members (Martyn/Schuman).**

**Item K-5: Alleged Unauthorized Construction of Shoreline Structure(s) at Keehi War Memorial, Keehi Lagoon, Oahu, TMK: seaward of (1) 1-1-003:04.**

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) clarified that the subzone of the subject area should be listed as "Resource". He noted on July 2005, OCCL received information regarding possible shoreline violations at the War Memorial Park. Their investigation revealed three main alleged Conservation District violations: 1) Concrete Drainage Canal built in 2000; 2) Shore Structure A (Mauka Seawall) built in 2004; and 3) Shoreline Structure B (Makai Seawall) built in 2004. The Keehi Memorial Organization (KMO) a tax-exempt 501(c)(3) has retained a perpetual lease for the Keehi Lagoon Memorial Property via the Pacific War Memorial Commission. Staff has considered the merits of the case with respect to the Department and Board's criteria and finds that the structures should be removed. He communicated the wall and drainage were constructed without permits after the adoption of the "no tolerance" policy. Although Mr. Lemmo recommended the removal of the unauthorized structures he disclosed that the structures are not thought to have a negative impact on the sandy beach and to adjacent down drift properties due to the existing conditions present at the site. The primary concern with the shoreline structure is the "locking up" of sediment resources that would normally be delivered to the beach through natural erosion. In this case, there is minimal to no sand in the littoral system and the area behind the seawalls is composed of dirt fill and would serve no practical benefit to allow this material to erode to the beach. In addition, the quality of the shoreline recreational resources is low due to the muddy nature of the stream mouth environment, diminished water quality, mangrove river bank and limited recreational opportunities. Mr. Lemmo recommended the Board find the alleged violator violated the provisions of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes by failing to obtain the appropriate approvals for the construction of a shoreline structure and be subject to the conditions listed in staff's submittal.

Cappy Fasi who spoke on behalf of the KMO requested that the coastal encroachments be allowed to remain in place as is. Ms. Fasi went on to speak of the history of the Keehi Memorial and how it was developed. In 1961, the first master plan for the area was submitted and Ms. Fasi noted four important points 1) the area complement the Keehi Lagoon Park; 2) plans called for a majestic memorial to be erected to the heroic dead; 2) 2 ½ acres would be set aside exclusively for use by youth groups and the community for camping and outdoor activities; 3) a modest rehabilitation facility would be maintained for the DAV; and 4) the park had to be self sustaining. In July 2005 the KMO submitted an updated master plan for the area which was approved in November of 2005.

John Whalen, representing KMO pointed out most of the lands around the lagoon are filled lands, not natural shorelines. The site was created from fill from the construction of the H-1 freeway. Mr. Whalen provided the Board with a State Land Use Map which shows the configuration of the property in relation to the land use boundaries. He pointed out the urban and conservation district lines do not necessarily follow the contours of the property itself or the shoreline. Mr. Whalen reminded the Board the original master plan for the area was adopted in 1961 and last year KMO was asked to submit a current master plan which was approved in November of last year.

Warren Bucher, a coastal engineer spoke of the alleged encroachments. He pointed out the seawall was constructed to protect part of the shoreline and the drainage canal was constructed to direct water run-off from the area. The seawall is a CRM wall which is made up of cement, rock and masonry which is a typical type of wall used in Hawaii. Mr. Bucher provided maps of the seawall and drainage structure. Mr. Bucher feels the seawall should be allowed to remain in place as it protects

the land fill area from erosion and potential degraded water quality (due to erosion). He also noted the seawall would not affect the sandy beach as the beach there is not natural and the sand is not sand but instead crushed coral. He announced safety is a big issue for KMO and feels the seawall provides some security. With regards to the drainage canal, Mr. Bucher noted the soil in the area is soggy and needs to be drained out or the area will remain unusable. He believes the drainage channel has minimal or no impact on stream flow as the end of the channel barely touches the water. As far as shoreline configuration, he feels there would be no change. If KMO is asked to remove the seawall and the drainage canal Mr. Bucher feels the immediate result would be a lot of debris in the water, more pollution in the water, shoreline erosion would occur behind the wall and recreation areas to wet to be used.

Mr. Whalen made reference to the Department's "No Tolerance Policy" which states "the policy of no tolerance means that all structures that encroach on conservation district beaches that are illegal built or illegal repaired following the announcement date will be torn down or a form of compensatory mitigation will be applied." Based on the department's policy, Mr. Whalen feels that not all structures need to be torn down. He feels the board can exercise discretion on how the policy is applied especially since the structures serve a public benefit and the removal of the structure would be contrary to good coastal zone management practices. With regards to mitigation, Mr. Whalen feels the structures themselves are a form of mitigation as it stops the erosion of the embankment.

Gary Nakamura, an officer of KMO testified on behalf of the members present at the hearing. Mr. Nakamura acknowledged that the subject facilities were built through the dedication of volunteers. He asked the Board when making a decision today to keep in mind the history and intent of the law which is to preserve and maintain the property of Hawaii. Mr. Nakamura stated there was no willful intent to disregard any regulations or laws that were imposed by the Department. Their primary intent in building these subject structures were to reduce liability, to maintain the property and to make the property available to the youth of Hawaii at no cost. Mr. Nakamura believes the removal of the subject structures would not benefit the State or the youth of Hawaii and asked the structures be allowed to remain in place. In closing he noted the law was not made to punish people but to preserve the land.

#### **The Board amended the following**

**1. Amend Recommendation 3)**

**"That upon payment of the fine by the alleged, within sixty [(60) days] 6 months of the date of the Board's action, the alleged shall [remove the structure and restore the shoreline area to its previous condition] submit a Conservation District Use Permit for the structures and/or subdivision and process it diligently thereafter;**

**2. Amend Recommendation 4)**

**"[If the structure is not removed within sixty (60) calendar days] If the Conservation District Use Application is not filed within six (6) months, fines of \$2,000 per day shall accrue on the landowner until these conditions are met; and**

**3. Amend Recommendation 5)**

**“That in the event of failure of the alleged to comply with items [~~B and C, and D~~] 2, 3 and 4, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.”**

**Unanimously approved as amended (Johns/Martyn).**

**Item L-1: Approval of Amendment to the Plan of Operation for Puna Geothermal Venture, Geothermal Resources Mining Lease R-2, Kapoho, Puna, Hawaii.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item E-1: Selection of Projects for Federal Grant Awards through the Land Water Conservation Fund Program for Fiscal Year 2005 and Proposed Change to a LWCF Application from Fiscal Year 2004.**

Members Johns disclosed he is the Chairman of the Advisor Board for the Trust for Public Lands.

**The Board amended the Recommendation Section by adding**

**“4. Approve State Parks’ application for the LWCF grant funds totaling \$688,891 and authorize an appraisal for the acquisition of 1,129 acres at Pupukea-Paumalu.”**

**Unanimously approved as amended (Schuman/Johns).**

**Item E-2: Annual Renewal of Revocable Permit (RP) SP-0201, Lanihuli Community Development Corp., Malaekahana State Recreation Area, Island of Oahu.**

**Item E-3: Forfeiture of Mobile Food Concession Agreement No. SP-0051, Dana Y.K. Shim-Palama dba Aloha Valet Services, Concessionaire, Kalaheo, Kauai, TMK: (4) 1-2-02-024 (a portion of).**

**Unanimously approved as submitted (Johns/Schuman).**

**Item K-6: Conservation District Use Permit Violation Regarding the Construction and Operation of a Wind Farm and Associated Facilities to Supply Wind Generated Electricity at Kaheawa Pastures, Ukumehame, Maui, TMK: 4-8-01:01 & 3-6-1:14.**

Mr. Lemmo refreshed the Board’s memory by reminding them on January 24, 2003 the Board approved a CDUA MA-3103 for a wind farm and associated improvements at Ukumehame, Maui. Subsequently on June 24, 2005 the applicant requested modifications to the permit some of which were approved by the Board. Construction plans for the access road were approved on August 29, 2005 and construction work was initiated on the access road on or around August 30, 2005. Mr. Lemmo went on to reveal on September 27, 2005, the Department issued a Notice and Order to cease all road construction. The reason for the stop work order was to investigate potential permit violations and to prevent a potential sedimentation event due to an impending rain storm and any

future rain storms. The alleged violation involved improper road construction and failure to contain earth material within the approved project alignment. As a result of this unauthorized action, the Department asked Kaheawa Wind Power (KWP) to reduce the width of the road to the original road width. On October 7, 2005, OCCL received and approved the plan to reduce the road width and imposed a number of conditions. In the approval letter sent to KWP by the Department it noted that the Department would process a violation case for the unauthorized fill that was pushed over the side of the road. Mr. Lemmo pointed out there are two major violations: 1) the expansion of the access roadbed beyond the width of the approved construction plans and 2) the spoiling of the slope and gulch with borrow material from the road cut. Although it may not be possible to remove the cut material from the slope and gulch as it may cause additional damage, Mr. Lemmo is instead requesting a penalty based on the cost to remove the excess cut material from the slope. Mr. Lemmo recommended the Board find KWP in violation of Chapter 183C, HRS and Title 13-5, HAR for unauthorized road work and pushing earth material into a gulch and is subject to the conditions listed in staff's submittal.

Gil Keith-Agaran, representing KWP appeared before the Board to provide testimony. Mr. Keith-Agaran let it be known KWP believes strongly in the benefits that renewable energy brings to the State of Hawaii and understands that the benefits of the project can not be fully realized if the development and construction of this project are not handled properly. He pointed out from the beginning KWP has stated that its goal was to construct a model project and has acted in good faith throughout the design, entitlement and construction stages of this project to meet that goal. Mr. Keith-Agaran confirmed KWP has met every request from every agency for additional surveys or studies in an effort to satisfy all parties. As background information Mr. Keith-Agaran communicated that KWP began construction based on the approved plans. On September 28, 2005 KWP received a Notice & Order to cease any further improvements on the access road until mitigative and Best Management Practices (BMP) were in place to protect the resources. KWP ceased work immediately as instructed. Mr. Keith-Agaran disclosed that KWP was not contacted or consulted during the inspections of September 23 & 26 and that those inspections were not carried out by State personnel with engineering credentials. On September 28, 2005, KWP management and its contractors met with the local DLNR land agent and personnel from the Department of Health (DOH). A site inspection was conducted and the DOH representative confirmed verbally that all Best Management Practice's were in place. Because of an impending storm, KWP took immediate voluntary measures to ensure as much protection was put in place as possible before the storm arrived. KWP 1) shaped and bermed all areas under construction to control water flow; 2) added several hundred feet of additional silt fencing, and 3) built two levels of rack dam silt filters in the Malalowaiaole gulch. KWP also flew their civil engineer from Oahu to Maui to inspect the site and recommend any additional measures that could be taken. All of this was done voluntarily. After the threat of the storm passed DLNR conducted an additional site inspection and determined that KWP had two non-conforming issues; a section of access road apparently wider than called for in the plans and excess fill material from the cut slope exceeding the bottom of the fill slope as depicted in the construction plans. KWP inspected this situation and found that the contractor had made an inadvertent error and that excess material was in the fill slope and some material had reached the bottom of the gulch. Over the next several days KWP worked with DLNR to develop a remediation plan and provided a \$200,000 bond to guarantee the completion of the work. KWP also requested that DLNR assign an engineering representative to the project to strengthen communications and oversight and KWP offered to pay that expense. Since that time, there has not been any deviation from the construction plans that has not been reviewed, discussed and documented with the concurrence of DLNR engineering. On January 2, 2006, KWP notified the Department that the remediation was complete. In summary, Mr. Keith-

Agaran believes KWP acted responsibly and took immediate and voluntary action beyond what was required to mitigate any negative effects of its construction on the environment. Mr. Keith-Agaran acknowledge an unintentional mistake was made during the construction but when the mistake was discovered, KWP took immediate actions to rectify the situation. Remediation of the affected area has been completed at KWP's expense and with DLNR's oversight and approval. In addition the access road which is being constructed at a cost to KWP of approximately six million dollars, while necessary for construction of the facility actually belongs to the State. However while KWP takes responsibility for the activities at the site, there is nothing in KWP's activities to warrant a punitive action by the Board. The alleged damage has been repaired and KWP has offered to reimburse DLNR for administrative engineering costs and is willing to reimburse the DLNR for its other administrative costs. KWP does take issue with the staff position that the DLNR engineering review cost be characterized as a fine. In closing, KWP request the Board consider administrative costs of \$7100 as a more appropriate alternative to punitive fines and that the Board eliminate the \$10,350 of punitive fines.

The Board questioned Mr. Lemmo on how he arrived at a remediation fine of \$8,350. Mr. Lemmo indicated in resource damages cases, restoration costs has been used as a proxy for a penalty. He indicated KWP would pay the penalty to the Department and we would decide what actions to take.

Mr. Keith-Agaran believes his client has done enough work to remedy the damage that was caused. He also pointed out his client's engineers have concern about whether the boulders should be removed from the gulch.

#### **The Board amended**

##### **1. Recommendation 1)**

**“The permittee violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR) , in two (2) instances by failing to obtain the appropriate approvals for unauthorized road widening and for the spoiling of the slope and gulch with borrow material form the road cut. The permittee is fined a total of \$2,000 for the road widening and [~~\$8,350~~] \$2,000 for the spillage on the slope and gulch.”**

##### **2. Recommendation 3)**

**“The permittee shall pay all fines (total [~~\$17,450~~] 11,100) within thirty (30) days of the date of the Board's action;”**

**Unanimously approved as amended (Johns/Martyn).**

#### **Item C-3: Request for Approval of the Kaheawa Pastures Wind Energy Generation Facility Habitat Conservation Plan and Accompanying Incidental Take License and Implementing Agreement.**

Curt Cotrell, Na Ala Hele Program Manager and Scott Fretz, Wildlife Program Manager with the Division of Forestry and Wildlife appeared before the Board. Mr. Fretz notified the Board there is an issue concern the adequacy of the financial guarantee that was provided by the applicant to comply

with the Habitat Conservation Plan (HCP) and Incidental Take License. A final review was conducted by the solicitor for the Fish and Wildlife Service and approval was received from the Endangered Recovery Species Committee (ERSC) which will resolve the issue in question. Mr. Fretz recommended the Board amend the Kaheawa Pastures Wind Energy Generation Facility Habitat Conservation Plan and accompanying Incidental Take License and Implementing Agreement to require an increase in the amount of the letter of credit financial guaranty to \$1,000,000 if the unmitigated take of any species should ever rise to the “Notably Higher than Anticipated” level, either annually or a cumulative total and if in subsequent years the level of take declines back to the anticipated level or lower, the letter of credit can likewise be reduced back to \$500,000 and approve the amended Habitat Conservation Plan and accompanying Incidental Take License and Implementing Agreement by the required two-thirds vote of the authorized membership subject to the review and approval as to form by the Attorney General.

Paul Gaynor, CEO of UPC Wind (one of the sponsors of Kaheawa Wind Power) acknowledged he has reviewed and is in agreement with the proposed changes to the HCP. Mr. Gaynor reminded the Board at its meeting on June 24, 2005 the Board gave final approval of the draft HCP and since that time, they’ve begun implementing all the conditions in the draft HCP which included a public hearing and comment period. Mr. Gaynor pointed out this process has taken a lot of time and they are running out of time. He reminded the Board they need to acquire the State and Federal Incidental Take License by February 1, 2006 or their creditor will find them in default. He asked the Board if they are inclined to approve the HCP he would like the Department to deliver the State License to them by January 31, 2006.

Mr. Fretz informed the Board the Department can not issue the State Incidental Take License until the Federal License is issued.

Bill Stanley, of DOFAW indicated that once the Board approves the HCP the paperwork will be forwarded to the Attorney General’s Office for final review as to form. Upon approval the Chairperson has the authorization to sign the Incidental Take License but the License will not be valid until the US Fish and Wildlife Service License is issued. Mr. Stanley believes the Department can meet the January 31 deadline but he has no control as to when the Federal License will be issued.

Linda Chow, Deputy Attorney General working on this submittal informed the Board she has no problem completing the review of the HCP by January 31.

**The Board amended the Habitat Conservation Plan for Kaheawa Pastures Wind Energy Generation Facility Ukumehame, Maui, Hawaii as follows**

**1. Page 61:**

**“To further ensure the success of the mitigation effort, Kaheawa Wind Power will establish a \$100,000 Seabird Contingency Fund that will be made available prior to construction of the proposed turbines. The value of the fund will be adjusted at 2.5% for inflation over the 20-year term of the HCP. ~~license. ; indexed to the US Consumer Price Index All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5% annually for 20 years is assumed, for.~~ This results in a total maximum of \$163,861.64 (if left unused through year 20). If drawn upon at any time, the 2.5% would continue to accrue on the remaining balance. The fund will be available to implement adaptive management strategies to ensure mitigation is commensurate**

with take. If at the end of the 20-year period, mitigation implemented is not commensurate with take, any remaining funds will be used to continue to implement mitigation measures.”

2. Page 63-64:

“To further ensure the success of the mitigation effort, Kaheawa Wind Power will establish a \$264,000 Nene Contingency Fund prior to construction of the proposed turbines. The value of the fund will be adjusted ~~for inflation~~ at 2.5% over the life of the project ~~indexed to the US Consumer Price Index All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5% annually for 20 years is assumed, for.~~ This results in a total maximum of \$432,594 (estimated 2025 dollars) over the 20-year term of the HCP. If drawn upon at any time, the 2.5% would continue to accrue on the remaining balance. If at the end of the 20-year period, the Hanaula Nene population is smaller than the population existing at the time the permit is issued as a direct result of project operations, the Nene Contingency Fund will be available to construct an additional new release pen, to operate this new pen for up to five years beyond the life of the project, and to supply the new pen with up to 50 Nene.”

3. Page 66:

“To further ensure the success of the mitigation effort, Kaheawa Wind Power will establish a \$20,000 Bat Contingency Fund that will be made available prior to construction of the proposed turbines. The value of the fund will be adjusted at 2.5% for inflation over the term of the HCP license indexed to the US Consumer Price Index All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5% annually for 20 years is assumed, for. This results in a total maximum value of \$32,772.40. If drawn upon at any time, the 2.5% would continue to accrue on the remaining balance. The funds will be available in the event that adjusted take exceeds the estimated 20 bats or as required to implement adaptive management strategies to ensure mitigation is commensurate with take. The fund will be used to fund on-the-ground measures such as, but not limited to, implementation of technologies to reduce the likelihood of collisions with the wind turbines and protection of roost sites as agreed to by USFWS and DLNR. If at the end of the 20-year period, mitigation implemented is not commensurate with take, any remaining funds will be used to continue to implement mitigation measures.”

4. Page 76:

“The applicant is offering other financial assurances as well. Kaheawa Wind Power will provide a rolling letter of credit (LC) or bond in the amount of \$500,000, which will be available to fund mitigation in the unlikely event of a revenue shortfall or, in the worst case scenario, bankruptcy. The LC will name the USFWS and DLNR as beneficiaries. The LC will have a term of four years, and will be automatically renewed prior to expiration, unless it is determined to no longer be necessary by the USFWS and DLNR. In the event of a revenue shortfall or bankruptcy the LC could be drawn upon by the USFWS or DLNR to fund any outstanding mitigation obligations of the project. This LC would be in addition to the \$1.5M LC already in place for DLNR to fund turbine removal and site restoration in the event of bankruptcy. During the first 10 years of operation, the value of the LC or bond would increase to \$1,000,000 in the event that unmitigated take at the Notably Higher Take level occurs for any species, either annually or as a cumulative total. At the end of year 10, and in subsequent years,

if the \$1,000,000 bond is in place, the applicant, in cooperation with the DLNR and USFWS, will conduct an assessment to determine whether the value of the bond is sufficient to assure funding over the remaining years of the HCP. The assessment will be based upon an accounting of the amount spent to date, relative to the maximum \$3.76M amount. The maximum amount of the bond would be the difference between these two, although the actual amount would be determined by DLNR and USFWS at the time the assessment is made.

The applicant will establish an additional, single bond or letter of credit for the value of the three contingency funds (\$384,000). The amount of the bond will increase at 2.5% annually over the term of the HCP. If contingency funds are used, the amount of the bond would be reduced accordingly, and the net amount would continue to increase at a 2.5% annual rate.”

5. Attachment III, Implementing Agreement

Change date to January 12, 2006

6. Section 4.1.1:

“(c) Permittee will pay the mitigation obligations described in Appendix 11 of the HCP out of (1) project operating revenues; (2) a bond posted in the amount of the contingency funds described in the HCP (“Contingency bond”); (3) a bond posted in the amount of \$500,000 (“Mitigation bond”); and (4) a Guaranty Agreement provided by third-party equity holders in the project. The Mitigation Bond shall be renewed each year for the full amount of \$500,000 for the life of the project.

(d) FWS, DLNR and Permittee shall review the amounts of the two bonds during the annual meetings held pursuant to Chapter VI, Implementation, of the HCP. If circumstances warrant, in accordance with the HCP, the amounts of the bonds may be decreased, increased or eliminated during the annual meetings. If unmitigated Notably Higher Take is occurring, either during any given year or cumulatively, then Permittee shall increase the amount of the \$500,000 Mitigation Bond to \$1 million. If unmitigated Notably Higher Take continues to occur during Year 11 or thereafter, the Parties agree during the annual meeting to evaluate the adequacy of the Mitigation Bond based on the amount of mitigation funds already spent in relation to the total mitigation obligation of \$3.76 million for the project. If FWS/DLNR believe an increase in the Mitigation Bond is warranted after the amount of the Mitigation Bond has been increased to \$1 million pursuant to this paragraph, FWS/DLNR may require an increase in the Mitigation Bond amount. FWS/DLNR will consider the following factors in deciding whether such an increase is warranted: length of time the project has operated under the Notably Higher Take scenario; difference between the total project mitigation obligation of \$3.76 million and \$1 million; financial condition of Permittee; and Permittee’s history of performance of mitigation obligations.

(e) The Guaranty Agreement provided by Permittee shall be for the maximum amount of \$3.76 million, which is the total amount of estimated costs of all mitigation and monitoring measures, including contingency funds, that may be expended in the unlikely event that Notably Higher Take occurs for all four species covered under the HCP, as described in Appendix 11 to the HCP. In no event shall the Guaranty Agreement provide a guarantee for, or the Permittee be obligated to pay, more than \$3.76 million for mitigation over the life of the project. The

**maximum Guaranty Agreement amount will be reduced over time by the actual amount expended by Permittee for mitigation and monitoring.”**

**7. Section 8.1:**

**~~“[Permittee-initiated a]Adaptive management. [Permittee]Parties will implement the adaptive management provisions in Chapter VI and Appendix 10 of the HCP when changes in management practices are necessary to achieve the HCP’s biological goals and objectives or to respond to monitoring results or new scientific information as provided for in the HCP. [Permittee will make such changes without awaiting notice from FWS/DLNR, and will report to FWS/DLNR on any actions taken pursuant to this section.]”~~**

**8. Section 8.3:**

**~~“[Reductions in mitigation]No reduction in conservation benefit. Permittee will not implement adaptive management changes that may result in less mitigation than provided for Covered Species under the original terms of the HCP, unless FWS/DLNR first provide written approval. The amount of money spent on mitigation may be less than the estimated amounts included in Appendix 11 of the HCP, provided the mitigation is sufficient to provide a net conservation benefit to the species. Permittee may propose any such adaptive management changes by notice to FWS/DLNR, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 120 days of receiving such notice, FWS/DLNR will either approve the proposed adaptive management changes, approve them as modified by FWS/DLNR, or notify Permittee that the proposed changes constitute permit amendments that must be reviewed under Section 12.2 of this agreement.”~~**

**Unanimously approved as amended (Johns/Martyn).**

**Item D-10: Grant of Term, Non-Exclusive Easement to Snowed Inn Hostelry, Inc. for Seawall and Filled Land Purposes, Kahana, Lahaina, Maui, TMK: (2) 4-3-19:seaward of 47.**

Mitch Hirano, attorney representing the landowner asked the Board to reconsider the fine for the illegal encroachment onto State land. Mr. Hirano noted the rock revetment was in place in 1977 and in 1980 the land was reconsolidated and sold by quit claim deed to the upland owner. He feels that at the time the land was sold an easement over the portion of the rock revetment on submerged lands should have been obtained in order to complete the land consolidation and remedy the encroachment issue. Mr. Hirano pointed out the current landowner made improvements to the rock wall which was deemed a conservation district violation which they paid a fine.

Mr. Tsuji also questioned why these issues were not resolved back in 1980 when the applicant purchased the reclaimed lands. With regards to the \$500 fine, Mr. Tsuji noted that it was a standard condition on all encroachment issues and if this issue was resolved in 1980 Mr. Hirano’s client would still be assessed the fine.

**Unanimously approved as submitted (Johns/Schuman).**

**Item K-2: Conservation District Enforcement File HA 05-19 Regarding Construction of a Single Family Residence Not in Accordance of Approved Construction Plans & Mitigative Measures to Reduce Impact to the Natural Resources Located at Hokukano, Ka'u, Island of Hawaii, TMK: (3) 9-5-016:036.**

Member Johns recused himself.

Mr. Lemmo let it be known this item was deferred from the Board meeting of September 23, 2005 in order to review the records of the February 23, 2001 Board meeting regarding the approval of the Conservation District Use Permit. Upon advice from the attorney general office they indicated that the Board has the power to 1) Revoke the permit for failure to comply with all permit conditions; 2) Require the landowner to build according to the original plans and 3) Require the landowner to submit plans to connect the two separate structures. Mr. Lemmo pointed out there was one other issue that has come up in which the previous landowner was in the middle of land exchange when he passed away and this exchange was never consummated. Part of the agreement to the land exchange required the previous landowner to file for subdivision/consolidation for the land exchange. Mr. Lemmo recommended the Board find the landowner in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules and is subject to the thirteen (13) conditions listed in staff's submittal.

Mr. Steven Lim, attorney for the landowner, (David and Mary Carroll) appeared before the Board. Mr. Lim handed the Board a packet involving this case and went over it. He pointed to two letters in his packet which stated that if a hedge were planted along the Carroll's mauka property line between the house and the highway it would greatly reduce the community's concern. With regards to the area being used by turtles to nest, Mr. Lim confirmed he has consulted with Dave Gulko of the Division of Aquatic Resources and Larry Katahira of the National Park Services on this issue. Mr. Lim asked that before his clients be required to do any light mitigation plan they be able to work with Mr. Gulko and Mr. Katahira to conduct a study on turtle nesting. Moving on to address the issue of the Carroll's grading beyond the original footprint, Mr. Lim provided a affidavit from Michael Tonini stating that the Carroll's did not impact the area outside of the previous graded area and a declaration from Jas Bahadur Rai taking responsibility for placing a one foot high dry stack rock wall around the edge of the property so no one would drive over the edge. Mr. Lim acknowledged his client did not follow the approved plans submitted to the Department and has no problem with the recommended fines by staff but they have issue with the subdivision requirement. Mr. Lim believes the former landowner was required by the Board to prepare the necessary mapping and obtain approval from the County of Hawaii to consolidate the two subject parcels. He also pointed to his Exhibit S which is a letter from the Chairperson of DLNR instructing the Department of Accounting and General Services (DAGS) to prepare the necessary mapping and approvals from the County for consolidation of the two parcels. Mr. Lim believes the issue of consolidating the two parcels should not fall upon his client since the previous landowner and DAGS failed to complete the task. Should the Board require the consolidation of the property DAGS should do so per the Department's letter to DAGS dated July 6, 1977. Mr. Lim went over his suggested changes to the staff's recommendations.

Keolani Hanoa, a community member and former member of the Hawaii Island Burial Council appeared before the Board to provide testimony. Ms. Hanoa feels this case isn't about personality conflicts but the violation of State Land Use Laws. Ms. Hanoa asked that copies of Mr. Lim's written testimony be made available to her. She also pointed out the Carroll's applied for an exemption of the SMA permit as there was to be no tractors or grubbing in the conservation area which in fact occurred on the property. Ms. Hanoa believes the main issue in this case is the non-compliance to the original

CDUA of a single family dwelling which called for one wing. She reminded the Board we can not make new laws to break laws. With regards to the letters of community support submitted by the Carroll's attorney, Mr. Hanoa let it be known they are only two people in the community and do not represent the views of the rest of the community. Ms. Hanoa informed the Board she is an advisor under Cindy Orlando, the Superintendent for Volcano's National Park and was told that Larry Kitahara can not participate in private matters such as this. Ms. Hanoa believes the Board is incapable of coming to the legal questions or getting answers because truth and integrity is not important and has stated that Kau Preservation has no other stance then to file litigations on this house.

When questioned by the Board Ms. Hanoa stated her belief is that there should be no house on the subject Conservation Land but if the State made a mistake in allowing the Carroll's to build their home the Carroll's should receive compensation from the State and the house should be removed.

Bob Graham, a resident of Kau announced that what's been going on here is the condoning of one violation after another without anything being done. Mr. Graham disclosed that the subject area is on record as being a cemetery and nothing has been done. He has been to the subject area and feels the home is a beacon that will blind you and must surely effect the turtles. He disclosed at the December 7, 2004 community meeting a lot of people turned out in opposition to the subject home being built.

Earl Hanoa, a life long resident of Kau let it be known as a youngster in the early 1970's he did not see a lot of grubbing in the subject area. He feels that the Carroll's desecrated the land by grubbing the land and the Board needs to set things straight. Mr. Hanoa stated that Kau is the last undeveloped land in the State and needs to be protected.

#### **The Board amended the following Recommendations**

**1. Recommendation 6)**

~~“[The landowner shall submit to the Office of Conservation and coastal lands potential shades and hues of brown, gray, or green for painting of the Single Family Residence to blend in with the surrounding environment within 90 days of the Board's action]~~ To mitigate views of the Single Family Residence, the landowner shall submit to the Office of Conservation and Coastal lands a revised landscaping plan which mitigates view impacts, including a listing of all proposed plantings which will be implemented within 90 days of the Board's action:”

**2. Recommendation 7)**

~~“[Upon approval, the landowner shall paint the Single Family Residence within 90 days of approval]~~ To determine the potential impacts of lights from the Single Family residence on Hawksbill Turtle nesting behavior in the area, the landowner shall, in consultation with the State Department of Land and Natural Resources-Division of Aquatic Resources and the national park Services-Hawaii Volcanoes National Park-Resources Management prepare and submit a report to the Office of Conservation and Coastal lands within 90 days of the Board's action;”

3. Recommendation 8)

~~“[The landowner shall submit to the Office of Conservation and Coastal Lands a residential light screening and mitigation plan within 90 days of the Board’s action] If it is determined by the Department of Land and Natural Resources-Division of Aquatic Resources and the Nation Park Services-Hawaii Volcanoes National park-Resources Management that the lighting from the Single Family Residence has a significant impact on the Hawksbill Turtle nesting behavior in the area, the landowner shall submit to the Office of Conservation and coastal Lands, a residential light screening and mitigation plan within 90 days of that determination;”~~

4. Delete Recommendation 9)

~~“[Upon approval, the landowner shall implement the residential light screening and mitigation plan within 90 days of approval;]~~

5. Delete Recommendation 10)

~~“[There shall be no outside lighting on the north and east sides of the SFR;]~~

6. Recommendation 11)

~~“[That an After the Fact Conservation District Use Application be filed for the subdivision/consolidation for the land exchange of December 8, 1975 with the State of Hawaii] 9. Staff shall work with the permittee cooperatively to determine the need for a subdivision/consolidation for the land exchange;~~

7. Renumber Recommendation 12)

~~“[12] 10. That in the event of failure of the alleged to comply with any order herein, the landowner shall be fined an additional \$2,000.00 per day until the order is complied with; and”~~

8. Renumber Recommendation 13)

~~“[13] 11. That in the event of failure of the landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.”~~

Unanimously approved as amended by the remaining Board members(Demello/Agor).

Item D-15: Approval in Principle of Direct Lease to Coalition for Specialized Housing for Low-Income Rental Housing Purposes, Waimano, Oahu, TMK: (1) 9-7-19:35.

Unanimously approved as submitted (Martyn/Agor).

**Item D-2:** Amend Prior Board Action of October 16, 1992, Item F-14, The Direct Sale of Abandoned Road Right-of-Way; Set Aside to Trail Alignment to Division of Forestry and Wildlife, Na Ala Hele Program, Wailua, Kauai, TMK: (4) 4-2-07: abutting 12.

**The Board amended the Title to Read**

**“Amend Prior Board Action of October 16, 1992, Item F-14, The Direct Sale of Abandoned Road Right-of-Way.”**

**Unanimously approved as amended (Agor/DeMello).**

**Item D-1:** Amend Prior Board Action Dated January 25, 1985 under Item F-11, Issuance Direct Lease to Hawaii Methodist Union and Hawaiian Association of Seventh-Day Adventists, Waimea, Kauai, TMK: (4) 1-4-02; 24, 55, 56, 57 & 58.

**Item D-3:** Amend Prior Board Action of February 13, 1981, Agenda Item F-2, Direct Sale of Remnant to Anthony De Mattos; Manowaiopae Homesteads, North Hilo, Hawaii, TMK: (3) 3-6-09:Portion of Homestead Road Reserve.

**Item D-4:** Rescind Prior Board Action for the Sale of Flume Right-of-Way Reservation to John A. McCall and Marla Y. McCall, Manowaiopae Homesteads, North Hilo, Hawaii, TMK: (3) 3-6-06:91.

**Item D-5:** Cancellation of General Lease No. S-5552, Hamakua-North Hilo Agricultural Cooperative, Lessee, Kemau 2<sup>nd</sup>, Hamakua, Hawaii, TMK: (3) 4-3-05:01.

**Item D-6:** Consent to Assign General Lease No. S-4962, Robelto Kaleianuinui Martines, Assignor, to Rose M. Olsen, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:07.

**Item D-7** Consent to Assign General Lease No. S-4964, Mona K. Kahele, Personal Representative of the Estate of Abel Pepe Kahele, Lessee/Assignor, to Sheldyn Elizabeth Baniaga, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:10.

**Item D-8** Grant of Perpetual, Non-Exclusive Easement to Brian Burke for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-1-5:portion 77.

**Item D-9** Amend Prior Board Action of February 23, 2001 (Item D-8) Grant of Term, Non-Exclusive Easement to Lawrence A. Lance and Mary C. Lance for Encroachment Purposes; Ahuakeio, Hana, Maui, TMK: (2) 1-5-5:07.

**Item D-11:** Re-submittal – Acquisition of a Perpetual, Non-Exclusive Subsurface Communication Easement from the City and County of Honolulu, and Set Aside to the Department of Accounting and General Services; Mililani Street, Honolulu, Oahu, TMK: (1) 2-1-25:04 (Portion of adjacent roadway).

- Item D-13:** Re-submittal – Amend Prior Board Action of September 26, 1986 (Agenda Item F-9) – Set Aside to City and County of Honolulu for Solid Waste Collection Site, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-09:283.
- Item D-14:** Amend Prior Board Action of November 19, 2004 under Agenda Item D-4, for Grant of a Term Non-Exclusive Easement to Patricia Watanabe for Seawall Purposes, Kaneohe, Koolaupoko, Oahu, TMK; (1) 4-4-18:82 seaward.
- Item D-16:** Amend Prior Board Action of October 14, 2005 (Agenda Item D-12), After-the-fact Approval of Lease of Federal Property with the Secretary of the Air Force on behalf of the Department of Education, for Public School Purposes, Hickam Air Force Base, Oahu, TMK: (1) 9-9-01:13 (Portion).
- Item D-17** After the Fact Approval of the Leasing of Private Property, and After the Fact Extensions of the Lease, for the Mauna Kapu Communication Station in Makakilo, Oahu.
- Unanimously approved as submitted (DeMello/Martyn).
- Item D-12:** Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access and Utility Purposes, Auwaiolimu, Honolulu, Oahu, TMK: (1) 2-2-03:13.
- Member Johns recused himself.
- Unanimously approved as submitted by the remaining Board members (Agor/Schuman).
- Item M-3:** Issuance of Revocable Permits to The Associated Press; DR Partners dba Stephens Media Group; Oahu Publications, Inc. dba Honolulu Star-Bulletin; Gannett Co., Inc. dba The Honolulu Advertiser, at the State Capitol, 415 S. Beretania St., basement level, Honolulu, Hawaii 96813.
- Unanimously approved as submitted (Johns/Schuman).
- Item M-1:** Conveyance of Remnant Parcels 4-A and 4-B, Kauai Belt Road, at Hanamaulu, Lihue, Kauai, Tax Map Key: (4) 3-8-8:Road (Portion).
- Item M-2:** Conveyance of a portion of the Road Remnant H-1, adjacent to Mamalahoa Highway, Federal Aid Project No. WPH 8-F, REMNANT H-1-A, County of Hawaii, Tax Map Key: (3) 8-3-13:Road.
- Item M-4:** Amendment to Prior Land Board Action of January 28, 2000, Under Agenda Item K-2 Regarding Second Amendment to Harbor Lease No. H-98-2, Issued to Aala Produce, Inc., dba Aala Ship Service, Adjacent to Pier 32, Honolulu Harbor, Oahu.
- Item M-5:** Amendment to Lease No. DOT-A-77-0031 U.S. Federal Administration Kahului Airport.

**Unanimously approved as submitted (Johns/Schuman).**

**Item K-3: Enforcement File No. OA-06-12 Regarding Alleged Unauthorized Placement and Storage of Two Containers and Signage on State of Hawaii Encumbered Lands - Paiko Lagoon Wildlife Sanctuary, Kuliouou, Island of Oahu, TMK: (1) 3-8-001:073 and 001.**

Mr. Lemmo stated on August 8, 2005, OCCL, DOFAW and the Division of Conservation and Resource Enforcement (DOCARE) staff conducted a site inspection of the subject parcel. The inspection revealed two large containers on the subject parcel. Staff also noted tree debris pushed over the bank towards the ocean, landscaping of the area and placement of unauthorized signage. Although the violations were not major violations because the area is in a protective subzone staff viewed any violation as being a seriously violation. After the submittal was written, Mr. Lemmo had time to sit down with staff from DOFAW and it was revealed that DOFAW did not get the cooperation they needed from Mr. Saikley in fact DOFAW felt they were being let on. After the meeting with DOFAW, Mr. Lemmo requested some changes to his recommendation which included a fine of \$2,000 for stockpiling of dirt, increasing the landscaping fine from \$100 to \$2,000 and a \$2,000 fine for storage of construction material.

Dave Smith, of DOFAW pointed out the landscaping should be removed from the site since it is made up of non-native species.

Tim Lui-Kwan, attorney representing the landowner appeared before the Board. Mr. Lui-Kwan stated his client spoke to staff at OCCL and requested the specific dates the photos in the submittals were taken. To this day Mr. Saikley has yet to receive those dates. Mr. Lui-Kwan came today prepared to address the violations in staff's submittal but feels blind sided by the additional fines staff is requesting. Mr. Lui-Kwan went over the chronology of events. He stated by saying that Mr. Saikley purchase property in 2002 and at that point began communicating with Mr. Smith with regards to the care of the sanctuary. In Mr. Saikley's conversations with the Department they discussed what types of plantings would be used on the subject area. With regards to staff's report, Mr. Lui-Kwan does take issue with staff stating that his client dumped dirt on the subject land as well as when landscaping violation occurred and what was seen by staff when they went out to the property on August 8, 2005. With regards to extensive landscaping, Mr. Lui-Kwan confirmed the plants are long gone (planted in Spring of 2003). As far as the dumping of the dirt, he states that his client has never been told about the dirt. In fact they deny that they brought dirt onto the subject parcel. Mr. Saikley stated that he has never been told by the Department to remove the dirt. Addressing the placement of the unauthorized signage, Mr. Lui-Kwan communicated that Mr. Saikley's yardman installed one "No Trespassing" sign but took it down upon the request for the Department. He believes the Department is citing his client for other signage that were placed on the property by others as those signs were in place prior to Mr. Saikley purchasing his property. Mr. Lui-Kwan went on to mention in early August 2004, Mr. Saikley received a message from Dave Smith stating that it appears that his client had installed a gate and erected "No Trespassing" signs at the beginning of the driveway which his client denies doing. Mr. Lui-Kwan admits that during construction/renovation of Mr. Saikley's property his client contacted Mr. Smith by telephone and asked if he could bring a trash bin on to the subject property. Mr. Smith said it was okay and he believed it would be no problem to obtain a right-of-entry permit to bring in the trash bins. Mr. Lui-Kwan is not here today to contest the placement of the trash bin but is frustrated with staff not contacting his client to try and resolve these violations. Addressing Mr. Lemmo's claim that Mr. Saikley was uncooperative, Mr. Lui-Kwan made it known that he believes

Mr. Smith did not speak to Mr. Saikley or his partner but instead spoke to their gardener about the violations. Mr. Saikley's understanding is that the yardman spoke to Mr. Smith in 2003 and was asked to remove the "No Trespassing" sign and the gardener complied.

Mr. Lui-Kwan requested a contest case hearing.

John Sutton, of Sutton Construction took responsibility for the dumpsters that were placed on the subject parcel. He informed the Board that there was a change in personnel managing the job when this problem occurred. Mr. Sutton noted his intent is to be a good caretaker of the land and expressed an interest in working with the Department to keep the area clean.

**Motion to defer.**

**Unanimously approved to defer (Johns/DeMello).**

**Item K-4: Enforcement File No. HA-04-37, Regarding Alleged, Unauthorized Grubbing and Grading, Tree Removal, Construction of Pathway, and Removal of Rocks to Create a Pond on Privately-owned land Located in the State Land Use Conservation District, Puna, Island of Hawaii, TMK: (3) 1-5-010:032.**

Mr. Lemmo conveyed on January 5, 2003, DOCARE investigated a complaint of 1) an area 140' x 75' had been cleared approximately 70 feet from the shoreline; 2) a hole approximately 10 feet wide and 10 feet deep had been dug; 3) a path approximately 70 feet long and 16 feet wide extended from the cleared area east to the shoreline and 4) piles of rocks were left on the path and appeared to be removed from the shoreline area. On January 14, 2003, Maureen Gapp went to see staff from DOCARE at the Hawaii Branch at which time she admitted conducting the work. Mr. Lemmo clarified that it has taken a long time for this case to appear before the Board due to the Gapp's profession which takes them out of the country. At the time the case was ready to be taken to the board the Gapp's indicated they would be out of the country for 1 to 1 ½ years. On November 2, 2005 staff sent a letter to the Gapp's asking that they contact the Department and on November 4, 2005, Mrs. Gapp contacted staff as well as faxed a letter. Mr. Lemmo recommended the Board find the John and Maureen Gapp did in fact authorize, cause or allow four (4) unauthorized violations to occur on the subject parcel and is subject to the conditions listed in staff's submittal.

Maureen Gapp, representing the landowner submitted to the Board a timeline of the events that have transpired. She noted on January 9, 2003 she was contacted by the Department regarding unauthorized work. A day later she contacted Mr. Lemmo to discuss what had occurred. On January 14, Mrs. Gapp met with DOCARE and gave a statement. Later that month on January 27, 2003, Mrs. Gapp sent a letter to Mr. Lemmo and Chris Yuen (Planning Department) regarding what had happened and that she would be leaving the State for 1 to 1½ years but made arrangements to have all correspondences sent to them. In July 2005 she received a letter from the Department saying the case was being reviewed and staff would be in touch. On September 13, 2004 Ms. Gapp received a call from Dawn Hegger that the hearing date was set for September 24, 2004 and which time they purchased tickets to travel to Oahu. On September 22, 2004, Ms. Gapp spoke with Tiger Mills and was informed her case was not on the agenda. In October 2004, Mr. and Mrs. Gapp left the State and pretty much forgot about the case when they arrived back to Hawaii in late January. Mrs. Gapp acknowledged the next time she heard from the Department was in November 2005 when she received a letter from Mr. Lemmo indicating he had not heard from them since February 2003. Mrs. Gapp informed the Board the subject property location is in an area called the Makut Tidepools due to

existing Tidepools. In the 1980's the then property owner bulldozed the lower portion of the property to create an orchard farm which was not developed. In November 2002 when the Gapp's purchased the property they had no intention of building a home but instead went to clean the property of the large amount of debris. Due to the fact that they had no intentions of building a home, the Gapp's never inquired about the permitting process and didn't know what they could and could not do on the property. Mrs. Gapp believed it was okay to clean the property of debris. Mrs. Gapp acknowledged they removed debris, rubbish and albizia trees but they deny moving rocks to create a pond and creating a pathway.

Mr. Lemmo informed the Board the DOCARE report regarding this violation was not included as part of the submittal due to attorney client privilege but Mr. Lemmo revealed that the DOCARE officer investigating this incident indicated the rocks were encrusted with coral material and appeared like they came out of the water. Furthermore he remembers the report stating that the pathway and pond were excavated as a favor to the Gapp's by a friend.

**The Board amended the following**

**1. Recommendation 1)**

**“That John and Maureen Gapp violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in [~~four (4)~~ three (3)] instances by failing to obtain the appropriate approval for the alleged unauthorized grubbing and grading action; 2) [~~rock removal for the pond's creation~~] tree removal; 3) construction of a pathway on subject parcel TMK: (3) 1-5-010:032 within the Conservation District. John and Maureen Gapp are fined [~~\$8,000.00~~ \$5,000.000] for [~~four (4)~~ three (3)] conservation District violations.”**

**2. Recommendation 3)**

**“That John and Maureen Gapp shall pay all fines [~~\$9,000.00~~ \$6,000.00] within thirty (30) days of the date of the Board's action.”**

**Unanimously approved as amended (Demello/Johns).**

The Board advised the Gapp's that they have a right to a contested case hearing and should they choose to they would need to follow up their verbal request with a written application which should be filed within 10 days.

**The Gapp's requested a contested case hearing.**

**Item C-1: Request for Approval to Hold Public Hearing on Proposed Amendments to Hawaii Administrative Rules Chapter 13-209 (Rules Regulating Activities within Natural Area Reserves).**

**Item C-2: Request for Approval to Enter into Eighteen Contracts to Implement the Hawaiian Invasive Species Council Research and Technology Grant Program Projects: with the Bishop Museum for “Implementing Early Detection;” with the University of Hawaii for a Study of “Dinoflagellates in Ballast Water;” with the**

University of Hawaii for a Study of “Invasive Ant Control;” with the USDA National Wildlife Research Center for Determining “Rodenticide Efficacy;” with the USDA National Wildlife Research Center to Research a “Brown Tree Snake Attractant;” with the University of Hawaii for Finding “Erythrina Gall Wasp Parasitoids;” with the USDA National Wildlife Research Center for Testing “Brown Tree Snake Baits;” with the University of Hawaii for “Invasive Species Database Enhancements;” with the Hawaii Department of Agriculture for “Management of Erythrina Gall Wasp;” with the USDA Agricultural Research Service for “Nettle Caterpillar Lure Applications;” with the University of Hawaii or Tri-Isle Resource Conservation and Development for a “Coqui-Free Certification Program;” with Bishop Museum for “Aquatic Invasive Species Expertise;” with McClay Ecoscience for a “Miconia Biocontrol Survey in Mexico;” with the USDA Institute of Pacific Islands Forestry or the University of Hawaii to Survey for a “Himalayan Blackberry Biocontrol;” with the USDA Institute of Pacific Islands Forestry or the University of Hawaii for a “Miconia Biocontrol Evaluation;” with Colorado State University to Study “West Nile Virus in Parakeets;” and with the US Fish and Wildlife Service or the National Wildlife Research Center to Refine a “Multi-Pest Exclusion Fence”

Unanimously approved as submitted (Johns/Schuman).

**Item K-1:** Waive the Timeliness of Written Requests for a Contested Case Hearing & Appointment and Selection of a Hearing Officer to Conduct All Hearings for One Contested Case Hearing Regarding Conservation District Use Application (CDUA) HA-3250 for the Commercial Use of Hand Quarried Volcanic Ash Located at Pu'u Nene, Kaohe, North Hilo, Island of Hawaii, TMK: (3) 3-8-001:001.

Unanimously approved as submitted (DeMello/Johns).

**Item L-2:** Approval for Award of Construction Contract – Job No. F00CF35A Individual Wastewater System Improvements at Akaka Falls State Park Hilo, Hawaii.

**Item L-3:** Approval for Award of Construction Contract – Job No. J00CF64A ADA Barrier Removal, Mauna Kea SRA, North Hilo, Hawaii.

**Item L-4:** Approval for Award of Construction Contract – Job No. J00CH87B ADA Barrier Removal, Kekaha Kai State Park, Kona, Hawaii

**Item L-5:** Approval for Award of Construction Contract: Job No. J00CF29A, Kukaniloko Birthstones State Monument ADA Barrier Removal, and Job No. J00CF23A, Puu O Makuka Heiau State Monument ADA Barrier Removal, Oahu, Hawaii.

**Item L-6:** Approval for Award of Construction Contract – Job No. J00CF54B Wailua River State Park, Kuamoo Road Facilities ADA Barrier Removal Wailua, Kauai, Hawaii.

**Item L-7: Approval for Award of Construction Contract – Job No. J00C105A Wiliwili Nui Trail ADA Barrier Removal Honolulu, Oahu, Hawaii.**

**Unanimously approved as submitted (Johns/Schuman).**

There being no further business, Chairperson Young adjourned the meeting at 2:10 p.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, JANUARY 27, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Ted Yamamura  
Mr. Ron Agor

Mr. Tim Johns  
Mr. Toby Martyn  
Ms. Taryn Schuman

**STAFF**

Mr. Sam Lemmo, OCCL  
Mr. Francis Oishi, DAR

Mr. Charlene Unoki, Land  
Mr. Richard Rice, DOBOR

**OTHER**

Mr. Colin Lau, Deputy Attorney General  
Mr. Sidney Fuke, D-3  
Mr. Keola Nakanishi, K-2  
Ms. Alyssa Miller, F-2  
Mr. Peter Maiopo, F-2  
Ms. Kim Hun, F-2  
Mr. Fred Madlener, F-2, J-2  
Ms. Carol Wilcox, F-2  
Mrs. Linda Shay Flanders, F-2  
Mr. Peter Schall, J-2, 3, 4  
Mr. Art Stonehill, J-2  
Ms. Randy Allen, J-2  
Ms. Charlian Wright, J-2  
Ms. Muriel Anderson, J-2  
Mr. Alan Cambra, J-2  
Mr. Bob Hampton, J-2

Mr. Michael Yamasaki, D-7  
Mr. Gerald Park, K-3  
Mr. Tony Costa, F-2  
Dr. Jim Anthony, F-2  
Mr. Jason Philibotte, F-2  
Mr. Terry George, F-2  
Mr. Kurt Flanders, F-2  
Mr. Bruce Anderson, F-2  
Ms. Lavonne West, J-2  
Mr. Robert Globetrotter, J-2  
Mr. Rick Egged, J-2  
Mr. Jim Mazur, J-2  
Mr. Robert Finley, J-2  
Mr. Clayton Tsuchiyama, J-2  
Mr. Paul Wilson, J-2

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

**Item A-1: Minutes of December 9, 2005**

Member Schuman recused herself.

**Unanimously approved as submitted by the remaining Board members (Johns/Yamamura).**

**Item A-2: Minutes of January 13, 2006 briefing**

**Motion to defer.**

**Unanimously approved to defer (Agor/Johns).**

**Item A-3: Minutes of January 13, 2006**

Member Yamamura recused himself.

**Unanimously approved as submitted by the remaining Board members (Johns/Schuman).**

**Item D-3: Approval in Principle of Direct Lease to Hospice of Hilo, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-01:24.**

**The Board amended Recommendation 1.a and 1.b. as follows**

1. **“a. At its own cost, Hospice of Hilo shall pursue satisfactory compliance with Chapter 343, HRS and obtain a FONSI within [8] 12 months of the Board’s approval;”**
2. **“b. Should Hospice of Hilo fail to obtain satisfactory compliance with chapter 343, HRS, within [8] 12 months, the Board’s approval shall be considered rescinded;”**

**Unanimously approved as amended (Johns/Yamamura).**

**Item D-7: Issuance of Right-of-Entry Permit to URS Corporation on Lands Encumbered by General Leases, Maunalaha, Honolulu, Oahu, Tax Map Key: (1) 2-5-24:various.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item K-1: Conservation District Use Application (CDUA) HA-3247 for the Replacement of Pi'ihonua Reservoir No. 2 for the County of Hawaii, Department of Water Supply Located at Pi'ihonua, South Hilo, Island of Hawaii, TMK: (3) 2-3-030:005.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item K-2: After the Fact Conservation District Use Application (CDUA) OA-3268 for the Halau Ku Mana New Century Public Charter School located at 3737 Manoa Road, Manoa, Island of Oahu, TMK:(1) 2-9-054:018.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item K-3: Conservation District Use Application (CDUA) MA-3245, Berliner Single Family Residence (SFR), Hana, Maui, TMK: (2) 1-3-009:002.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) let it be known the landowner was previously found to be in violation of our rules by failing to obtain the appropriate approvals for landscaping of the subject area. Upon paying a fine the Board required the landowner to apply for an After the Fact Conservation District Use Application (CDUA) for the landscaping. Mr. Lemmo recommended the Board approve CDUA MA-3245 for the Berliner's request to construct a single family residence in the Hana District, Island of Maui subject to the terms and conditions listed in staff's submittal.

Gerald Park, attorney representing the landowner informed the Board the subject property is located within the County's Special Management area and would like the information in staff's report to be corrected to reflect that change. He also pointed out the County of Maui, Department of Planning has determined the proposed activities is not a development and is therefore exempt from the requirements of Chapter 205A, Hawaii Revised Statutes.

**The Board amended "13-5-30 Criteria" as follows:**

**"3) The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.**

**The project is [~~not~~] located within the County's Special Management Area. It does comply with the provisions identified in Chapter 205A, HRS in the following areas: Managing Development, and Scenic and Open space Resources."**

**Unanimously approved as amended (Yamamura/Johns).**

**Item F-2: Request Approval to Hold Public Hearings to Amend Hawaii Administrative Rules, Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, To Further Restrict the Use of Lay Gill Nets and for Prohibiting their Use in Certain Waters of the State.**

Francis Oishi, Program Manager for the Division of Aquatic Resources (DAR) announced the proposed amendments would add requirements for the use of lay gill nets. Specifically, the proposed amendments would require the registration and identification of all gill nets, limit the maximum dimensions of lay gill nets, restrict their fishing or soak times, require attendance and inspection of nets when fished, not allow more than four hours of soak time in a 24 hour period of one net per person per day and prohibit the use of lay gill nets in streams and stream mouths. Mr. Oishi went on to say the proposed amendments would also ban the use of lay gill nets in certain waters around the State. Specifically, the proposed amendments would prohibit lay gill net use around the entire island of Maui, and on Oahu between Portlock Point to the Pearl Harbor channel, from Makapu Peninsula to the northern boundary of Bellows Air Force Base, and in Kaneohe Bay between the two ship channels to include Ahu O Laka. Mr. Oishi recommended the Board approve the holding of public hearings for the proposed amendments to the HAR, Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, to further restrict the use of lay gill nets and for prohibiting their use in certain waters of the State.

Those present were made aware of the fact that the proposed rules before the Board is the result of an input over a period of time. Mr. Oishi communicated that DAR held two statewide rounds of public meetings in 2002 and 2003.

Alyssa Miller, Coordinator for Malama Maunalua which is a community based coalition of representatives from various groups testified in support of staff's recommendation. It is the hope of Malama Maunalua that through education, outreach and collaboration we can all work toward a culturally and environmentally sustainable Maunalua Bay region that will result in increased fish populations in the area.

Tony Costa, Spokesperson for Hawaii Near Shore Fisherman spoke in opposition of a gill net ban. Mr. Costa made it known he participated in the Gill Net Task Force which met to address various gill net issues and practices that were deemed inappropriate. The Task Force was made up of fifty percent of gill net supporters and fifty percent of that opposed gill net use. Mr. Costa conveyed The Task Force Group has worked long and hard to come up with a thirteen point rule change and agreed to go through the Chapter 91 process to change the rules. This was the last the Task Force heard about those rules as the Department did not move ahead with their proposed rule changes. Mr. Costa pointed out he heard that the Department did not move ahead with the rule changes because of a small but vocal group of supporters who preferred an outright ban on gill nets which were not part of the Task Force groups recommendation. He stated about three years ago the Department decided to go out to public hearings on the proposed rules which are before the Board today. Mr. Costa announced at the public hearings held by DAR in 2002 and 2003 at no time did the public request an outright ban on Mr. Costa believes the rules

before the Board today is a result of a survey conducted by DAR in which 1095 respondents were polled. The results of the survey were broken down island by island. With respect to a one hundred percent ban of gill nets the islands of Maui and Oahu were in favor while Hawaii, Molokai, Lanai, Kauai and Niihau were against the ban. Mr. Costa strongly asked the Board to defer action on this item. With regards to the restriction, he feels they have been tweaked quite excessively. In closing Mr. Costa let it be known he would be happy to participate in hearings to fine tune the rules.

Peter Maiopo, a resident of the North Shore spoke in opposition to the proposed rules and feels the Department should leave things as they are. Mr. Maiopo pointed out the people depend on the fish for food and to make ends meet. He indicated moimoi nets are part of their culture and tradition. He feels all of these restrictions placed on the Hawaiians are too much. They should be allowed to fish the way they want. Mr. Maiopo feels slowly by slowly the Hawaiians are being cut out of their cultural practices. He asked the Board what good are gathering rights when Hawaiians can not practice these rights because of our rules. He asked the Board to respect the Hawaiian culture and think of the Hawaiian people when making rules.

Dr. Jim Anthony, Executive Director of Hawaii Laiekawai Association, Inc voiced his opinion in opposition of staff's recommendation as he believes the Department is premature in holding public hearings on the proposed rule changes. Dr. Anthony expressed concern over what kinds of questions were asked on the questionnaire and whether it a random sampling of the public. He also questioned why DAR did not make available the results of the survey to the public. Dr. Anthony pointed out that there is nothing in the Department's rules that precludes members from the community coming before the Board and offering a counter submittal. Therefore, Dr. Anthony asked the Board to not go forward with public hearings to change the rules until the Department has reliable scientific information to support their proposed changes. With respect to gill nets Dr. Anthony pointed out there is no recognition of the cultural sensitiveness of this issue.

Kim Hun, Director of the Marine Program at The Nature Conservancy of Hawaii testified in support of staff's recommendation. She noted her organization's support of the Department's initiative to assess the impacts of lay gill nets by placing a moratorium on their use in specific geographic areas throughout the state. They also support the proposed statewide regulations as a first step toward increasing Hawaii's fishery resources for use and enjoyment by all. Ms. Hun indicated there is an abundance of evidence regarding the negative impacts lay gill nets have on the coral reef habitat and near shore fisheries, which is why they have been banned in all states except Hawaii. The negative impact of lay nets, however is not strictly a fisheries issue, it is also a cultural one. Ms. Hun pointed out the proposed changes would not apply to traditional or subsistence techniques of netting fish, including throw nets, opelu or akule nets. Ms. Hun stated The Nature Conservancy is prepared to work with the State, fishermen, and other stakeholders to assess the impacts of these new regulations on the fishery and the ecosystem to ensure they are having the desired effect.

Jason Philibotte, speaking on behalf of the Community Conservation Network (CCN), which is a small Hawaiian non-profit organization that helps local communities achieve resource management, cultural preservation and conservation goals testified in support of staff's recommendation. Mr. Philibotte communicated that CCN recognizes that our marine resources are being depleted and efforts need to be taken to preserve our fish to allow sustainable harvesting in the future. They feel the proposed rules will help in protecting Hawaii's valuable marine resources. In speaking with members of various communities, Mr. Philibotte announced that some support an outright ban on lay nets but other communities would only support regulations if it allowed lay nets for subsistence fishing.

Fred Madlener, a member of the Makai Society testified in opposition to staff's recommendation. Mr. Madlener announced he was present at the public hearing at Ben Parker School in Kaneohe and felt the group was divided in their opinion as to the proposed rules. He noted people felt the fisheries in Kaneohe were crushed and things are getting worse. Mr. Madlener spoke of his agreement with Dr. Anthony testimony that we need to have scientific testimony to back up staff's recommendation. He conveyed that his heart is torn as he would like to respect Hawaiian culture and tradition while at the same time being able to determine if the fisheries can handle the current level of fishing.

Terry George, Vice President and Executive Director of the Harold K.L. Castle Foundation (Castle Foundation) appeared before the Board. Mr. George spoke in strong support for the proposed amendments to further restrict the use of lay gill nets and to prohibit their use in certain waters of the state. He feels it is long past time that we take this step to help bring the fish population back. Mr. George conveyed that Hawaii contains most of the nation's coral reef environments, which host thousands of species found nowhere else yet our legislature allocates paltry sums of money to near shore conservation and enforcement efforts. Mr. George announced if after a period of public hearings, the board approves the proposed amendments the Castle Foundation stands ready to work with the Department to ensure adequate monitoring of the impact of the amendments on the health of our near shore fisheries.

Carol Wilcox, a resident of Maunalua Bay appeared before the Board. Ms. Wilcox shared her goals for a healthy fish population. She spoke of a dramatic decline of resources in the bay and feels gill nets pose a risk to both the marine life as well as humans. Ms. Wilcox encouraged the Board to use this meeting as an educational opportunity. She feels if there is scientific data to support the proposed rule changes the DAR should make that information available to the public as we all share the same goal which is to make the fisheries a better resource. She hoped through the public hearing DAR would talk to the public about the program to assess the impact of gill nets. In closing, Ms. Wilcox stated that the fisheries in Hawaii are terrible and DAR needs to provide data to back up that claim.

Kurt Flanders, a resident of the Big Island spoke in support of staff's recommendation. He feels the proposed rules are the next logical step for DAR to take. He asked the Board

to add twenty acres adjacent to the Waiopae Marine Life Conservation District (MLCD) to the gill net areas banned. He spoke of an incident at Waiopae which he observed individuals of Hawaiian ancestry using throw nets to gather enough food for their consumption. Mr. Flanders made it a point to say that individual only took what he needed and no more. Later he noticed a group of ten individuals surrounding a large area in the tide pool with nets using a technique called paepae which usually catches all the fish in the tide pool, and is not “fair chase.”

Linda Shay Flanders, who has been managing fishery resources for over thirty years spoke in support of staff’s recommendation. Ms. Shay Flanders requested two recommendations be added to the proposed rules: 1) a site specific banned area which would include 20 acres north of the current Waiopae Tide pools; and 2) she would like the statewide regulations to prohibit nets in areas which the depth of the water over the coral heads is 8 feet or less. With regards to the Waiopae MLCD, Ms. Flanders pointed out for the past two years since the MLCD has been in place the fish population has declined. She believes the primary reason for this decline is due to lay nets as the nets harvest over ninety percent of the fish at Waiopae.

Bruce Anderson, representing a group called SHORE whose mission is to look at what can be done to better our near shore fisheries testified. His group came up with three ways to better our fisheries which included dealing with fish traps, night spearing and gill nets. Mr. Anderson feels the use of gill nets is the single most important factor in impacting our near shore fisheries. Mr. Anderson announced that most states do not allow the use of recreational gill nets. He pointed to a report he has completed which deals with the impacts of lay nets and would make that report, which is in draft form available to the Board should they desire to view it. Finally, with regards to the ban in Kaneohe Bay the rules do not specify an exact area and asked the Department to make a change to indicate the specific area the ban would cover.

The Board asked Mr. Anderson if he has knowledge of areas that have banned gill nets and have seen an increase in the fish population. Mr. Anderson said the best evidence would be in Florida in which they have seen a dramatic increase in the fish population. Also fishermen in Florida have communicated the fishing there is the best they’ve seen in the last fifty years.

Written testimony was received from the Office of Hawaiian Affairs, the Harold K.L. Castle Foundation, Hawaii Laieikawai Association Inc., The Nature Conservancy, Darrell Tanaka, Alyssa Miller and James G. Dittmar.

**The Board asked staff to follow up on Dr. Anthony’s comments and when returning before the Board brings more scientific information on how effective this type of ban is (supply data from similar coral reef areas elsewhere) and to talk to the Board about the cultural, social and economic impact the ban would have. The Board also asked staff to make a special outreach to Native Hawaiians and consider community based monitoring as part of this process.**

**Unanimously approved as submitted (Johns/Martyn).**

**Item I-1: Awarding of Historic Preservation Federal Grant-In-Aid.**

**Motion to withdraw.**

**Unanimously approved to withdraw (Johns/Yamamura).**

**Item F-1: Request for Approval to Amend a DLNR/RCUH Agreement (Contract No. 52850) by Providing \$90,000 for an Increased Scope of Services for the Division of Aquatic Resources' Alien Invasive Species Project.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item J-2: Entry into Joint Use Agreement with Hilton Hawaiian Village LLC, Waikiki, Oahu, Tax Map Key Numbers: (1) 2-6-009:002 and 010, (1) 2-6-010-007 (por), Public Right of Way as shown on Map 4 of Land Court Consolidation 64.**

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) disclosed Hilton is in the process or redeveloping its property, including the construction of the Grand Waikikan. In connection with the redevelopment, Hilton has obtained a Special Management Area (SMA) use permit which requires Hilton to widen and make improvements to the public roadway known as Dewey Lane. Mr. Rice noted that Hilton has completed the design of the proposed improvements to Dewey Lane and is ready to proceed with the construction of the improvements. Hilton is requesting that the State and Hilton enter into a joint use agreement to reflect their mutual understandings, agreements and obligations relative to the integration and joint use of the combined lands for the construction and maintenance of the Dewey Lane improvements. In the joint use agreement, Hilton has agreed to indemnify the State from any claim or demand arising from any accident or incident occurring or relating to construction. Mr. Rice recommended the Board authorize the State to enter into a Joint Use Agreement for the purposes stated in staff's submittal subject to the terms and conditions listed.

**Item J-3 Issuance of Right-of-Entry Permit to Hilton Hawaiian Village LLC, Waikiki, Oahu, Tax Map Key: (1) 2-3-037: 012, 021.**

Mr. Rice communicated that Hilton intends to comply with requirements set forth in the 1955 Deed and SMA by replacing the existing pipes within the lagoon with a new circulation system, construct a new pump house and install a new pipeline to carry outflow from the lagoon into the makai-Diamond Head corner of the inner harbor basin. Additionally Hilton intends to construct, install, maintain and repair seven saltwater exploratory wells located around the perimeter of the lagoon. Mr. Rice recommended the Board authorize the issuance of a right of entry to Hilton Hawaiian Village LLC and its contractors covering the subject area.

**Item J-4. Issuance of Right-of-Entry Permit to Hilton Hawaiian Village LLC, Waikiki Oahu, Public Right of Way as shown on Map 4 of Land Court Consolidation 64 and Tax Map Key: (1) 2-3-037: 012, 021; Grant of Easement to the Hawaiian Telcom, Public Right of Way as shown on Map 4 of Land Court Consolidation 64 and Tax Map Key: (1) 2-3-037: 012, 021; Grant of Easement to Oceanic Time Warner Cable, Waikiki Oahu, Public Right of Way as shown on Map 4 of Land Court Consolidation 64 and Tax Map Key: (1) 2-3-037: 012, 021.**

Mr. Rice pointed out these submittals deal with utility easement. In the first easement, Hilton is requesting that the State issue Hawaiian Telcom a non-exclusive, perpetual easement to maintain, replace and repair the telephone line improvements. For the second easement, Hilton is requesting that the State grant Oceanic Time Warner Cable a non-exclusive perpetual easement to operate, maintain, replace and repair cable improvements. Mr. Rice recommended the Board authorize the issuance of a right of entry to Hilton Hawaiian Village, LLC and its contractors covering the subject area and following the completion of the telephone line improvement, authorize the issuance of a non-exclusive perpetual easement to Hawaiian Telecom covering the subject area and upon the completion of the cable improvements, authorize the issuance of a non-exclusive, perpetual easement to Oceanic covering the subject area.

Board Member Yamamura informed Mr. Rice when the Department grants an applicant access easements over an existing easement the State would normally charge the applicant a fee unless the easement was to the benefit of the public. As far as Hawaiian Telcom, Member Yamamura can see how the phone lines serve a public benefit but with regards to Oceanic's easement he questions if it is in the public benefit or should we follow precedent and charge Oceanic for the easement.

Member Johns asked staff who owned the parcels mentioned in submittal J-2 which is lots 3, 4 and 5. He also asked for clarification on what the intend use of lots 3, 4 and 5 are.

Peter Schall, pointed out lots 2, 3, 4 and 5 are encumbered by the condominium declaration of the Ilikai Apartment Building. Mr. Schall noted Hilton's intention is not to do any work on that area that is under the declaration but if permission is given the Hilton will only landscape the area which they will pay for and take care of in perpetuity. Peter Starn pointed out 2, 3 4 and 5 would be part of the submittal for roadway purposes. The only difference between alternative one and two is whether a planter would go on the property. Mr. Starn confirmed the Ilikai parcels would be affected in both alternatives.

Peter Schall, a consultant to Hilton Hawaiian Village, LLC and the Grand Waikikian development project appeared before the Board to provide testimony in support of staff's recommendations. Mr. Schall made it known they have three items before the Board today. Two of the items (J-3 and J-4) have received no opposition and the Hilton asks that these items be approved today. The third submittal (J-2) asks the State to enter into a

Joint Use Agreement for Dewey Lane which includes among other things the widening of Dewey Lane. Mr. Schall communicated the proposed improvements to Dewey Lane as noted in the Joint Use Agreement has nothing to do with the proposed signalized intersection at Ala Moana Boulevard and he asked the Board to limit today's testimony to the substance of the submittal and not allow testimony on unrelated development topics. Mr. Schall disclosed the Ilikai Owners Association has gone on record as saying that it does not object to the project or to the "widening of Dewey Land per se" it only objects to the traffic-related issues. He pointed out the improvements to Dewey Lane will reduce the safety hazards to drivers and pedestrians. Mr. Schall stated that should the Board allow testimony on traffic related issues, he would like to be able to respond to that testimony. Furthermore, Mr. Schall has brought an enlarged drawing showing the proposed surface improvements to and widening of Dewey Lane which shows that they do not involve the proposed signalized intersection at Ala Moana Boulevard. He pointed out there is a clear line of demarcation separating the proposed work on Dewey Lane and the proposed work on Ala Moana Boulevard. In closing Mr. Schall asked the Board to approval the three items that are before the Board today.

Charlene Unoki, Assistant Administrator of the Land Division informed the Board on cable easements they are charged market rent.

Mr. Schall indicated the cable easement will be used for cable lines which in turn would be used to signal hotel maintenance staff should there be a failure of the pumps for the salt water lagoon.

Dean Alcon of Alcon & Associates the civil engineer on the proposed project pointed out the duct work is primarily for Hawaiian Electric Company's electrical lines but his company is providing conduits for the cable and telephone lines. The majority of the cost would be for the electrical lines and he is unaware of what the cost would be.

Fred Madlener, testifying on behalf of the Makai Society questioned what would happen should there be an emergency evacuation of the area. He noted most people would use Dewey Lane to get inland and away from the ocean. Mr. Madlener pointed out during Hurricane Iniki the heliport was filled with boulders the size of himself. The subject area is low and if there is a tsunami alert everyone would need to be evacuated and that would take some time. Mr. Madlener questioned if Dewey Lane should have lateral access (to/from) the Hilton.

Lavonne West, a resident of the Ilikai testified. She expressed her concern with Mr. Schall's speech as he did not address the issue of increased traffic caused by the development of the Grand Waikikian. Ms. West believes guest leaving the property will be exiting on Dewey Lane.

Art Stonehill, a resident of the Ilikai let it be known his unit is located at the corner which looks down upon the intersection. In his opinion what is presently there is okay. Mr. Stonehill told the Board he is fine with the widening of Dewey Lane but opposes the construction of a third traffic light.

Mr. Schall made it known he obtained a Special Management Area (SMA) permit for the subject construction from the City. Mr. Schall noted prior to receiving the SMA public hearings were held by the City Planning and Permitting and also in front of the full City Council.

Robert Globetrotter, a long time resident of the Ilikai testified. Mr. Globetrotter spoke of his concern of the increased traffic caused by the Hilton's new development. Mr. Globetrotter has spoken to the principal's from the Hilton and the Ilikai and has also read the traffic study conducted and he feels due to the increase in traffic they must obtain an assurance from the Hilton management that except for emergencies all traffic exiting onto Dewey Lane will be from the new timeshare building and not from the Hilton Hotel itself. With this assurance he would feel more comfortable agreeing to the Hilton development plans.

Randy Allen, Director of Consumer Advocacy for the Chamber of Commerce of Hawaii appeared to provide testimony in support of the widening Dewey Lane and granting a right of entry for the Lagoon construction. Ms. Allen announced this initiative allows the conversion of an uninviting road to a striking, well landscaped area. The Hilton is proposing to expand Dewey Lane into a 21 foot wide, two lane roads which it will maintain. Also the Hilton intends to make major renovations to the Lagoon which will include adding a clean water supply, new sand and an expanded beach area. Furthermore, Ms. Allen believes this project will create a tremendous opportunity for the Hilton to enhance the surrounding environment of Waikiki and our quality of life which will definitely be an asset to Waikiki.

Rick Egged, President of the Waikiki Improvement Association testified in support of the Joint Use Agreement and the necessary easement to complete the work on the lagoon. At present Dewey Lane serves as an unsightly service road between two great properties and this agreement allows the transformation of the road into a beautiful and inviting opening to both the Hilton Hawaiian Village and the ocean as well. Mr. Egged conveyed the improvement of walkways in Waikiki is part of the central themes of the new Waikiki and is consistent with the plans outlined in the City and County's Waikiki Livable Community Project.

Charlian Wright, testified in support of staff's recommendation. Ms. Wright indicated the Hilton has for many years been a strong supporter of the enhancements of Waikiki not only physically but culturally as well. Her support of the Hilton's endeavor to widen Dewey Lane will provide safety for both pedestrians and vehicles. Ms. Wright disclosed Hilton's proposed enhancement of the area will make it a viable, safe and attractive passage for two lanes of traffic and needed sidewalk area between the Ala Wai Boat Harbor area and Ala Moana Boulevard.

Jim Mazur, a resident of the Ilikai announced that the Hilton is not as concerned with widening and beautifying the area as much as they are with being able to use the area due to increase traffic from their proposed development. Mr. Mazur believes the increase in

noise and traffic is not in the interest of the residents of the Ilikai. Mr. Mazur asked the Board to deny Hilton egress and ingress onto Dewey Lane unless it is restricted by hours or use.

When questioned by the Board as to where the primary egress and ingress points for the Lagoon Tower and Waikikian are, Mr. Alcon responded that the entrance would be onto Dewey Lane. He went on to say once the guest have checked in they would be directed to the existing parking garage. Upon existing the garage on the mauka side (which is the primary exit) they would proceed onto Kalia Road.

Muriel Anderson, Director of Tourism Programs for the Hawaii Tourism Authority summarized the written testimony from Rex Johnson in support of the joint use agreement and installation of improvements to Dewey Lane. Ms. Anderson stated the proposed project is consistent with the Hawaii Tourism Strategic Plan which calls for a quality tourism product and is also important for the revitalization and enhancement of Waikiki.

Robert Finley, Chairman of the Waikiki Neighborhood Board spoke in support of staff submittals J-2, J-3 and J-4. He went on to say that the Hilton Management has worked with the Waikiki Neighborhood Board and residents to provide detailed plans of the widening of Dewey Lane. On November 13, 2000 the Waikiki Neighborhood Board voted in favor of the concept of the proposed project. Mr. Finley conveyed they received testimony from individuals using the marina and the ocean side in support of Hilton's widening of Dewey Lane.

Alan Cambra, President of the Association of Owners of the Ilikai Building (Ilikai) testified in opposition to the joint use agreement and related grants of easement and permits to allow for certain improvements to be made to Dewey Lane. Mr. Cambra communicated if the Board approves Hilton's request, it will allow Hilton to proceed to expand Dewey Lane from a service road to a two lane street. He disclosed the Ilikai Board of Directors is opposed to the expansion of Dewey Lane because it is premature at this time for the following reasons: 1) The use of Dewey Lane as proposed by Hilton violates the Dewey Lane easement which was granted to the State by the Ilikai to be used only as a public right of way and public roadway purposes to the beach. The Dewey Lane easement was not granted to the State to be converted into a two lane street to primarily service the Hilton complex which is clearly the intent of the proposed joint use agreement; 2) Staff's report stated that "Hilton has attempted without success to obtain the joinder and consent of the Ilikai for the Dewey Lane Improvements" but Mr. Cambra indicated nothing can be further from the truth. He pointed out Hilton has never approached the Ilikai for joinder or consent to what is referred to as Alternative 1 and question what is Alternative 1 entails. With regards to Mr. Alcon's statement saying that traffic would not be exiting from Kalia Road, Mr. Cambra asked if they could get in writing a guarantee from the Hilton that traffic from their development will not exit through Dewey Lane he would feel much better.

Clayton Tsuchiyama, Senior Vice President and Chief Financial Officer of MC&A, Inc., offered testimony in support of Hilton's plans to improve Dewey Lane and its adjacent property. Mr. Tsuchiyama has worked with the Hilton and has found them to be responsible managers and good corporate citizens. He believes the construction of their timeshare tower and the renovations to their lagoon will be beneficial for our community.

Bob Hampton, President of Waikiki Beach Activities, Ltd., stood by his written testimony in support of the joint use agreement between the State and Hilton. As a current user of Dewey Lane, Mr. Hampton hears from their guest everyday of their experience on Dewey Lane. He believes the Hilton's proposal to widen and landscape Dewey Lane will server a community purpose. Mr. Hampton feels the Hilton's effort to maintain the area in perpetuity is fantastic. Mr. Hampton requested the name "Dewey Lane" be changed to "Duke Kahanamoku Lane" as Duke Kahanamoku was the official greeter and ambassador of Aloha for the State of Hawaii.

Paul Wilson, asked the Board to visualize what it would be like if vehicles coming over the Ala Wai Canal tuned right, traveling behind the Hawaii Prince Hotel and the Ilikai thereby bypassing one street light at Hobron Road and bypassing the traffic on the Ala Wai. Mr. Wilson believes this scenario will cause the traffic to back up on Dewey Lane.

Peter Starn, Attorney representing Hilton clarified that the traffic issues were subject to the SMA issued by the City after full hearings. Secondly the only difference between alternative one and two is that alternative one would allow for a planter to be placed on the Ewa side of Dewey Lane. Lastly, Mr. Starn pointed out a court case "City and County of Honolulu vs. Boulevard Properties Inc" in which the case stated that "private property which is subject to a public road way has only nominal value of one dollar."

Lee Sickter, Principle Planner with Belt Collins spoke in support of staff's submittal. He confirmed all permits for the proposed project were obtained.

Mr. Schall stepped forward to clarify that currently the main entrance into the Hilton is off Kalia Road onto Rainbow Drive. The Hilton also has an access lane directly onto Dewey Lane. Mr. Schall pointed out with the construction of the Grand Waikikian Tower and the Lagoon Tower, vehicles would primarily travel through Dewey Lane. Their traffic studies submitted to the County listed their traffic management plans which concluded that Dewey Lane would not be unduly burden by the extra traffic.

Written testimony was received from Hilton Hawaiian Village Beach Resort and Spa, Waikiki Beach Activities, Ltd., Ilikai Apartment Building Association of Apartment Owners, Waikiki Neighborhood Board, No. 9, The Makai Society, Charlian Wright, Waikiki Improvement Association, the Chamber of Commerce of Hawaii, The Nature Conservancy, Hawaii Tourism Authority, the Queen's Health Systems, First Hawaiian Bank, Alzheimer's Association, DFS Hawaii, Diamond Head Theatre and Malama Maunalua

**Unanimously approved Item J-3 and J-4 as submitted (Johns/Yamamura).**

**Unanimously approved Item J-2 as submitted (Johns/Matry).**

Chairperson Young announced to those present that owners with a property interest have a right to ask for a contested case hearing. Should they desire a contested case they must notify the Board prior to the end of today's meeting and follow up with the necessary paperwork within ten days of the meeting at which time standing will be determined.

**Item J-1: Approval of Lease of Private Property with on behalf of the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for storage purposes, Wailuku, Maui, Tax Map Key: 2-3-4-020-070.**

**Unanimously approved as submitted (Johns/Yamamura).**

**Item M-1: Issuance of a Retail Concession, Kahului Airport.**

**Item M-2: Consent to Sublease – Lease No. DOT-A-62-0019 United Air Lines, Inc. to Pleasant Holidays LLC Honolulu International Airport, Oahu, TMK: (1) 1-1-3-42 (Portion).**

**Unanimously approved as submitted (Johns/Martyn).**

**Item D-4: Grant of Term, Non-Exclusive Easement Covering Offshore Waters and Submerged Lands to Kona BB Property, LLC for Moorings, Swim Platform and Ingress/Egress Corridor, Kahuwai Bay, Kaupulehu, North Kona, Hawaii, Seaward of TMK: (3) 7-2-10:10.**

**Unanimously approved as submitted (Johns/Martyn).**

**Item D-1: Permission to Engage a Real Estate Consulting Firm to Act as a Consultant for Land Division.**

**Item D-2: Approval in Principle – Sale of Land License at Public Auction for Removal of Rock Aggregate Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-13:por. of 02.**

**Item D-5: Acceptance of Perpetual Conservation Easement Over Private Lands Owned By Hilo One, Incorporated, Paukaa, South Hilo, Hawaii, TMK: (3) 2-7-03:27.**

Written testimony was received from Nakamoto, Okamoto & Yamamoto.

- Item D-6: Set Aside to Department of Land and Natural Resources, Administrative Services Office, for Storage Purposes, Honolulu, Oahu, TMK (1) 2-2-006:025.**
- Item D-8: Consent to Assign General Lease No. S-4007, Alofa Corp., Assignor, to God's Love Mission, Inc., Assignee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-27:23 & 24.**
- Item D-9: Amend Prior Board Action of March 11, 2005 under Agenda Item D-5, for Sale of Reclaimed (Filled) Land to Daniel and Paulette Stone, at Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-102:24 seaward.**

**Unanimously approved as submitted (Johns/Schuman).**

There being no further business, Chairperson Young adjourned the meeting at 11:50 a.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, FEBRUARY 10, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:13 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Ted Yamamura  
Mr. Ron Agor

Mr. Tim Johns  
Mr. Toby Martyn  
Ms. Taryn Schuman

**STAFF**

Mr. Sam Lemmo, OCCL  
Mr. Dan Quinn, Parks  
Mr. Barry Cheung, Land

Ms. Charlene Unoki, Land  
Mr. Richard Rice, DOBOR

**OTHER**

Ms. Linda Chow, Deputy Attorney General  
Mr. William Wynhoff, Deputy Attorney General  
Mr. Michael Lee, K-1  
Ms. Celeste Laquesta, K-1  
Mr. Glenn O Miller, K-1  
Ms. Shareen Saito Tam, K-1  
Mr. Larry Baird, D-5  
Ms. Angela Starke, D-9  
Ms. Grace Kido, D-2  
Mr. Cam Cavasso, E-2  
Mr. Paul Matsunaga, E-2  
Ms. Marge Dente, E-2  
Mr. Wayne Jacintho, E-2  
Mr. Ed Holland, E-2  
Mr. Scotty Sagum, E-2

Ms. Linnel Nishioka, K-1  
Mr. Kai Markell, K-1  
Mr. Henry Chang, K-1  
Mr. Walton Hong, k-2  
Ms. Moana Keaulana, D-6  
Mr. David Bettencourt, D-9, E-2  
Mr. Karen Sunahara-Teruya, D-8  
Mr. Anthony Locricchio, E-2  
Mr. Scott McCaffrey, E-2  
Mr. Fred Dente, E-2  
Mr. Donn Carswell, E-2  
Ms. Linda Vicones, E-2  
Ms. Sherry Adams, E-2

Ms. Pam Chock, E-2  
Mr. Jim Coon, J-1  
Mr. Bill Mossman, J-1, J-2

Ms. Marsha Erickson, E-2  
Mr. Greg Howeth, J-1, J-2  
Mr. Reg White, J-1, J-2

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

**Item A-1: Minutes of January 12, 2006 briefing**

**Deferred due to lack of quorum.**

**Item A-2: Minutes of January 27, 2006**

The Board made the following changes:

Page 1 “Members”

“~~Mr. Gerald DeMello~~ Mr. Ted Yamamura”

**Unanimously approved as amended (Johns/Schuman).**

**Item K-1: Waive Oral Request for a Contested Case Hearing, and Appointment and Selection of a Hearing Officer to Conduct All Hearings for One (1) Contested Case Hearing for Conservation District Use Application (CDUA) OA-3266 for HASEKO (Ewa) Inc.’s Request to Construct Papipi Road Drainage Project.**

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands informed the Board a public hearing was held for a Conservation District Use Application (CDUA) for the Papipi Drainage out fall at Ewa Beach. During the public hearing staff informed those present they had a right to request a contested case hearing (CCH) on this issue. Upon closure of the hearing, no request was made for a CCH. Subsequently, staff received a request for a CCH. Mr. Lemmo recommended the Board waive the petitioner’s failure to make an oral request for a contested case hearing by the close of the Board meeting, at which the matter was scheduled for disposition, authorize the appointment of a Hearing Officer and delegate the authority for selection of the Hearing Officer to the Chairperson.

The Board questioned Mr. Lemmo as to why the petitioner did not request a CCH by the close of the public hearing. Mr. Lemmo noted he was not sure why the request was not made. He indicated he read verbatim from the law what the public’s right was and reiterated that a request should be made prior to the close of the meeting.

Michael Lee appeared before the Board and asked that they approve staff’s recommendation. Mr. Lee confirmed that his written request was submitted in a timely manner although is verbal request was deficient. Mr. Lee reminded the Board under Article 12, Section 7 of the Hawaii State Constitution they have the right to protect the traditional and customary practices of the Hawaiian people prior to the issuance of this CDUA. He believes the cultural

assessment for the proposed project does not live up to the guidelines of the Environmental Council for conducting such cultural assessments in its spirit or intent. In closing Mr. Lee humbly and respectfully requested that the Board grant an exemption to the requirement for a timely oral request for a contested case hearing as he is trying to save and perpetuate a better understanding of the amazing cultural resources at risk in Ewa and to perpetuate the collective heritage of all who call Hawaii home.

When asked by the Board if he participated in ongoing discussions with Haseko and the community Mr. Lee replied that Haseko never came to them in the guidelines that they should search out people. Mr. Lee stated that Haseko gathered residents from the area and took them on a walk on the beach as part of their assessment but he noted these individuals were not fishermen or divers from the area. Mr. Lee indicated the results of the assessment stated there were no effects on the limu and no cultural significance in the place Haseko was looking at for the proposed work. Mr. Lee stated Haseko was aware of their existence but choose not to include their group in the meetings.

Linnel Nishioka, attorney representing Haseko let it be known under this fact pattern she does not believe it is appropriate to waive the oral request for a contested case hearing. She pointed out Mr. Lemmo did a very good job at the public hearing notifying the public twice that they needed to make an oral request prior to the close of the hearing. With regards to Haseko's efforts in working with the community, Ms. Nishioka noted the mediation process has been very detailed and everyone was invited to participate. She confirmed Uncle Henry was invited to participate as he was head of the limu project but she does not know the extent of Mr. Lee's participation as he is not a resident of the Ewa Beach area. Ms. Nishioka made the Board aware of the fact that Haseko has gone through the public processes, the SMA process and the Environmental Assessment has already run its course. Mr. Nishoika urged the Board not to waive the requirement for the timely request for a contested case but instead deny the petition as untimely.

Celeste Laquesta pointed out they were one of the organizers that planned the mediation meetings for the Papi Road Drainage Project. She stated the community was aware that the drainage system would be placed in the area but they did not know the drainage would go into the ocean. She also communicated that the plans for the drainage project were not made available until June at which time the City has already approved the plans. Ms. Laquest revealed Haseko instructed her not to have Uncle Henry, Uncle Glen or the media present at their mediation meetings. Ms. Laquesta stated that she feels Haseko did not treat them like a good neighbor.

Mr. Lee made it known at the public hearing he asked for clarification on what needed to be done to contest the proposed project. He disclosed he did not understand that he needed to contest the proposed project prior to a decision being made. Mr. Lee pointed out Mr. Lemmo read the rules governing the request for a contested case hearing but could not state it in lay terms.

Kai Markell, representing the Office of Hawaiian Affairs (OHA) acknowledged his presence at the public hearing but he did not give advice to the group present today. He indicated at the close of the hearing they expressed that they would like to request a contested case

hearing and received the necessary forms. At that point they were under the impression that they were following the rules. Mr. Markell felt it was not OHA's place to intervene in this action at the meeting.

Glenn O Miller a resident of Ewa Beach conveyed that he was present at the hearing conducted. He felt the mediation was selective (not fair) as the ocean encompasses a vast area therefore everyone in the community should have been invited to the meetings. Mr. Miller feels Haseko invited individuals who were favorable to their project to be included in the mediation process and excluded those against the project. Mr. Miller pointed out prior to the start of the hearing he asked for a contested case hearing but he did not following up with the necessary paperwork. Mr. Miller told the Board he wants to preserve what is left of the limu in Ewa.

Henry Chang told the Board he started this limu project in 1998. He pointed out the area that Haseko plans to place the drainage is the area that he wants to use for his limu project. He thought the proposed project was to place the drainage by the gulch. Mr. Chang confirmed met with Haseko to look at other alternatives. Mr. Chang believes the run off water from the drainage into the ocean will kill the seaweed and all of the invertebrates. Mr. Chang acknowledged he does not know the rules but all he wants to do is to protect the area.

Shareen Saito Tam, Director of Community Relations for Haseko acknowledged they hired and paid for a mediator to conduct the meetings. With regards to who was invited to attend the meeting, Ms. Tam stated an announcement was made at the neighborhood board meetings as to when the mediation meetings were to be held. Ms Tam acknowledged subsequent notices were sent to those that attend the mediation meetings as well as those living in that direct neighborhood.

Written testimony was received from Linnel Nishioka and Michael Lee.

**Unanimously approved as submitted (Johns/Agor).**

**Item K-2: After the Fact (AFT) Conservation District Use Application (CDUA) KA-3259 for Proposed Landscaping and Gate Installation by the landowner Nellie and Cookie Trust, Haena, Island of Kauai, TMK: (4) 5-9-002:025.**

**Unanimously approved as submitted (Agor/Johns).**

**Item D-5: Approval in Principle of Acquisition of Interest in Privately-Owned Land at Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-08:03.**

Member Johns recused himself.

Charlene Unoki, Assistant Administrator of the Land Division asked the Board for authorization to start discussion and to conduct an appraisal to acquire the subject private property owned by Carlsmith Ball, LLP and Ivan Llui-Kwan et al. Ms. Unoki let it be known the property is approximately 1335 acres and consist of a pristine koa forest of 500 acres. Staff would like to acquire the area and place it under the jurisdiction of the Division of

Forestry and Wildlife. Ms. Unoki recommended the Board provide approval in principle for the acquisition of interest in the Carlsmith Trust Property, approve in principle the above described acquisition of interest under the terms and conditions cited in staff's submittal and authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board and to best served the interest of the State.

Larry Baird, representing the Hawaii Island Land Trust noted his support of staff's recommendation. He asked that his organization be named as an additional user of the appraisal as it impacts their organization.

**Unanimously approved as submitted by the remaining Board members (Yamamura/Schuman).**

**Item D-6: Forfeiture of General Lease No. S-4138, Merlin Keaulana-Dyball and Moana Keaulana-Dyball, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:25.**

Ms. Unoki communicated that staff has spoken with Moana Keaulana-Dyball and she has indicated her husband has sent the Department a check for the rental payments is working on obtaining the required liability insurance policy. Ms. Unoki asked that the lessee be granted thirty (30) days to acquire the liability insurance.

Moana Keaulana-Dyball noted her support of a thirty day extension to cure the default.

**The Board amended the Recommendation Section to allow the Lessee thirty (30) days to cure the deficiency.**

**Unanimously approved as amended (Johns/Yamamura).**

**Item D-9: Issuance of Direct Lease for Private Noncommercial Pier Purposes, Honolulu, Oahu, TMK: (1) 3-6-1:18, 19, 20, 23, 31, 33, 34, 37, 39, 41, 122; 3-7-2:43 seaward.**

Member Johns recused himself.

Ms. Unoki reiterated that Act 261, SLH 2000 was enacted to allow the Board to lease by direct negotiations submerged lands for private residential noncommercial piers. Recently the legislature passed Act 129, SLH 2005 which allowed the extension of the deadline for the Department to negotiate these leases. Act 129 also allowed the Department to look statewide if there are other piers that are illegal. At present staff has received twelve (12) applications. Ms. Unoki recommended the Board declare this project will probably have minimal effect and is therefore exempt from the preparation of an environmental assessment and authorize the issuance of a fifty-five (55) year lease to the Applicants listed in staff's submittal.

Barry Cheung, Land Agent with the Land Division stated that there is language in Act 129 in which the legislature urges the Board to use prevailing rates if the lease is to be signed after June 2007.

David Bettencourt stated that it is his opinion that the State can not consider the piers involved to be non-commercial. Should the Department grant a lease for the pier owner he would like the Department to require a signed certificate from the landowner saying the property will not be rented, used as vacation rentals or used as bed and breakfast locations. He believes if the property is rented the pier should be considered commercial use.

**Unanimously approved as submitted by the remaining Board members (Schuman/Martyn).**

**Item D-2: Consent to Assignment, Mortgage and Estoppel Certificate, General Lease Nos. S-3831, S-3840 & S-4647, Kauai, Beachfront Hotel, LLC, Assignor, to Anekona Aloha Ownership LLC, Assignee and Mortgagor, Wailua, Kauai, TMK: (4) 3-9-06:16 & 20.**

**Unanimously approved as submitted (Agor/Johns).**

**Item D-8: Amend Prior Board Actions of September 22, 2000, D-9, Grant of Perpetual, Non-Exclusive Easement to Verizon Hawaii Inc., for Utility Purposes at Puuanahulu to Keahole, North Kona, Hawaii, TMK: (3) 7-1-02:01; 7-1-03:01; 7-2-04:04; 7-2-05:08; and 7-3-10:33.**

**Unanimously approved as submitted (Yamamura/Johns).**

**Item D-10: Approval in Principle of the Acquisition of Private Lands and Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife, for Addition to the existing Honolulu Watershed Forest Reserve for Watershed Protection and Research, Native Species Habitat Restoration, Endangered Species Recovery, and Forest Recreation, Education and Management, Moanalua, Honolulu, Oahu, TMK: (1) 1-1-12:02, 15 & 35 and (1) 1-1-13:01 & 02.**

Member Johns recused himself.

Ms. Unoki communicated that staff would like to begin the appraisal process in hopes of acquiring the subject 3,712 acres in Moanalua. Staff has been working with the Trust for Public Lands in the acquisition of the subject property. After obtaining the property staff would like to turn the property over to the Division of Forestry and Wildlife for its management.

Josh Stanboro, representing the Trust for Public Lands (TPL) noted his support of staff's recommendation. Mr. Stanboro made it known if the Department moves ahead with the subject acquisition TPL may be able to pay the price of the appraisal.

**Unanimously approved as submitted by the remaining Board members (Martyn/Schuman).**

**Item D-12: After-the-fact Consent to Lease of Lands under Governor's Executive Order No. 3736 to the Hawaii State Federal Credit Union, Kapolei, Ewa, Oahu, TMK: (1) 9-1-88:05 por.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item D-3: Set Aside to Department of Transportation, Highway Division for Road Widening Purposes, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-03:39.**

Darryl Young, representing the Department of Transportation noted his support of staff's recommendation

**The Board amended the Recommendation Section by requiring the Department of Transportation to work with Historic Preservation prior to commencing any construction work. All work should be to the satisfaction of Historic Preservation.**

**Unanimously approved as amended (Martyn/Johns).**

**Item E-2: Request Approval for Disposition of Recreation Residence Leases at Puu Ka Pele, Halemanu, and Kokee Camp Lots through Direct Negotiations, and Drawing, Kokee and Waimea Canyon State Parks, Waimea, Kauai.**

Dan Quinn, Administrator of the Division of State Parks stated that upon review by the Attorney General's Office the recommendations approved by the Board at the September 9, 2005 meeting did not comply with certain laws. Mr. Quinn conveyed that staff look at HRS §171-44 as it applies to and was drafted for this particular area as well as HRS §171-36.2 which gave the area a historic designation (it required the department to adopt certain administrative rules). Mr. Quinn announced that the design standards and the review process established under the rules would apply to all leases. Staff feels that HRS §171-36.2 applies to this area and seems most logical to use this section in determining the disposition method. Mr. Quinn recommended the board; rescind their approval of Item E-1 from the Board meeting of September 9, 2005 and approve entering into direct negotiation for disposition of the recreation residence in accordance with HRS §171-44 following two informal drawings, one for island of Kauai residents, and one for State of Hawaii residents, approve entering into direct negotiations at a nominal rent for the lease of recreation residence to nonprofit organizations holding current leases, approve a third open informal drawing and negotiation process for any leases not disposed during the process outlined above, approve such other terms and conditions as may be prescribed by the Chairperson and that all disposition processes are subject to the review and approval of the Department of the Attorney General.

When asked by the Board why staff chose an informal drawing over an auction, Mr. Quinn responded that the intent was to allow for access to the area by the public at large. Mr. Quinn stated when using an informal drawing the appraised price of the parcel would be the negotiated price. Mr. Quinn noted concern that an auction might drive the rent up to unaffordable prices.

William Wynhoff, Deputy Attorney General let it be known part of the functions of his office is to give advice to the Board in addition his office approves the disposition of State land. Mr. Wynhoff noted the advice his office gave the Board was that the proposed method of disposition was not legal. He clarified to those present he gave the Board advice and not an opinion on the method of disposition. The difference being an opinion is a formal document that is open to the public and is published while advice is confidential. He disclosed the advice received by the Board from the attorney general is confidential and is being treated that way. When questioned by the Board what determines if something is an opinion or an advice, Mr. Wynhoff noted the Deputy Attorney General decides whether it's an opinion or advice and typically if an issue involves a broader spectrum of people it would be an advice. Mr. Wynhoff noted a lot of thought and consideration has gone into their advice letter to the Board and Mark Bennett personally reviewed the letter. The bottom line is at the expiration of the leases the cabins belong to the State if they are left behind. The advice given by the attorney general's office also stated the previous recommendation made by the Board disregarded the fact that the State will own any cabins on the property at the expiration of the lease and the State can not transfer the value of what is the State's property to the lessees. He went on to say, prior to the expiration of the lease the lessee has the right to remove their cabin provided they obtain the necessary permits as the subject areas are within the conservation district. Mr. Wynhoff acknowledged the prior Board approval was sent back because it was not consistent with State law. He noted the proposed recommendation before the Board today has been reviewed and is consistent with State law.

Cam Cavasso, a former legislature appeared before the Board and noted his opposition to the 1985 auction. In his testimony, Mr. Cavasso let it be known the Attorney General's Office can sometimes be wrong in its advice. He believes the Attorney General's advice is right in only two areas, recommendation 4a and 4b which contradict state law. All the other recommendations made at the September meeting should stand. Mr. Cavasso reminded the Board they approved direct negotiations with residence of historical value but staff at State Parks is choosing what method would be used to achieve those means. Mr. Cavasso noted the Attorney General stated there was no way for the former lessee to be compensated for the improvements by the new lessee but he communicated the laws are made by the legislature and if the Department recommends a change the legislature can amend the law to allow for compensation of improvements on their subject property. Mr. Cavasso asked the Board to reaffirm their decision made on September 9, 2005 and strike the part of the recommendation in which the Attorney General has determined to contradict State law.

Linda Chow, Deputy Attorney General let it be known generally the rules state that all leases need to be auction unless there is an exception and in this case she does not see what exception would apply to allow for direct negotiations with current lessees.

Mr. Wynhoff announced HRS §171-44 was passed in 1965 specifically to allow the Board to negotiated with the then existing lessee and he does not see why it can not be applied in the same fashion.

Anthony Locricchio, an attorney representing several lessees appeared before the Board. He believes the previous recommendation by the Board was a brilliant decision. Mr. Locricchio believes the Attorney General is attempting to seriously limit the power of the Board. He

noted there is specific legislation which allows the Board to directly negotiate with the current lessees. He spoke of the dangerous layout of the roads in Kokee that is not conducive to health and safety in the event of a fire. Mr. Locricchio believes based on the issues of health and safety in Kokee it is a means that allows for direct negotiations with current leaseholders and the Board's previous action should stand. He asked the Board to affirm their previous decision and reject the Attorney General's opinion.

Paul Matsunaga, a current leaseholder spoke in opposition to staff's recommendation. He does not see why the Department can not enter into direct negotiations with the current lessees which are in the best interest for Kokee. He asked the Board to reaffirm the decision made in September. Mr. Matsunaga feels fair access should be weighed against what is good for Kokee. He feels those leaseholders who are taking care of Kokee should be allowed to remain there to nurture the new lessees on stewardship of the land.

Scott McCaffrey, a physician and leaseholder since 1990 spoke in opposition to staff's submittal. Mr. McCaffrey let it be known Kokee has become his family's solace and tranquil from his busy life as a doctor. Throughout the years he has developed a deep respect not only for the Aina but for his fellow cabin owners' dedication to the park. Mr. McCaffrey was upset to learn of the Board's reversal in their decision. He feels the present lessees have literally earned the right to remain there by demonstrating their assistance to visitors, their park work projects, trail maintenance and reopening campaigns as well as road repair and maintenance efforts which were all done at their own financial and temporal expense. Mr. McCaffrey asked the Board to let present cabin owners restore their structures to historic standards and renegotiate their lease.

Marge Dente, a resident of Kauai but not a leaseholder testified in opposition to staff's recommendation. In her opinion an informal drawing is an incredible mistake which will cause bitterness. Ms. Dente spoke of several cabin owners who are willing to remove their cabin from Kokee should they not be able to retain their lease. She feels the cabins reflect a special ambience in Kokee which could be lost should cabins be removed. Ms. Dente asked the Board to approve a process for lease awards to be negotiated with current leaseholders. If all parcels are not negotiated they could be auctioned to the general public.

Fred Dente, a resident of Kauai spoke of his love for Kokee. Mr. Dente stated based on a questionable and secret opinion from the Attorney General, State Parks and the State Historic Division has proposed to do in the current leaseholders by holding a drawing. He went on to say the State will not allow direct negotiations which is allowed under State law nor will they have an auction which is also allowed under State law. He noted many of the current leaseholders are preparing to dismantle or remove their cabins should they not be able to obtain a lease, and in allowing this to happen the State is not succeeding in its preservation of the historical and cultural character of Kokee but is instead destroying Kokee. Mr. Dente pointed out new lessees could be faced with an empty lot which may or may not have water or electricity thus they will also be required to build a cabin in the "Kokee Vernacular" style which has yet to be developed by the State and which will cost a lot of money. In closing, Mr. Dente believes to preserve and protect the historical and cultural landscape of Kokee the fairest solution would be to negotiate directly with the current leaseholders, which is allowed under HRS 171-36.2. If the State chooses not to do that, then an auction of all leases should

be held where the current leaseholders will at least have a chance to retain their precious stake in this most sacred place. He thinks it would be a disaster for Kokee if the State pus the leases into a blind drawing. It would be the opposite of Aloha Aina.

Motion made at 11:20 a.m. by Member Johns made and second by Member Yamamura to move into Executive Session to consult with the Attorney General on the advice given to the Board with regards to issues pertaining to the Board's powers, duties, privileges, immunities and liabilities

Mr. Locricchio voiced his objection with the Board going into Executive Session as he believes that the conditions for an Executive Session under state law have not been met and should the Board go into an Executive Session based on the phantom opinion by the Attorney General the problem will only be compounded. He feels any questions the Board may have with regards to the advice given by the Attorney General should be done in public.

Chairperson Young noted under Section 92-5 the Board has the right to consult with their attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Members Johns and Yamamura withdrew their motion.

David Bettencourt let it be known that he is not satisfied with the Attorney General's opinion in two areas: 1) The first being that all citizens in the State of Hawaii are equal therefore the State should not create a privilege class of citizens by restricting the first part of the drawing to residents of Kauai only; 2) The renewal of the leases for four religious organizations constitute the establishment of religion. He believes there are native Hawaiian organizations should have equal access to these properties. Mr. Bettencourt questions why the incumbent non-profits groups should be allowed direct negotiations instead the State should allow all non-profits to negotiate for a lease.

Motion made at 11:35 a.m. by Member Johns and second by Member Martyn to go into Executive Session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

**Unanimously approved to move into Executive Session (Johns/Martyn).**

The meeting resumed at 11:50 a.m. Chairperson Young told the members of the public that one of the questions discussed in Executive Session was if the Board had the power to use direct negotiations for the recreational residences in Kokee.

Wayne Jacintho, a leaseholder spoke in strong opposition to an informal drawing for the recreational leases in Kokee as he feels the process is unfair. Mr. Jacintho reminded the Board in 1919 the Kokee leases were primarily an entity for the residents of Kauai. He disclosed until 1965 the State owned the land and the lessee retained ownership of the cabin but due to a mistake in 1965 a surrender clause was written into three leases which were later compounded in 1985. As staff's recommendation reads today, Mr. Jacintho feels it eliminates any chance at all for him or his family to retain their property. He feels the request

by staff will cause the destruction of the very community the State professes to want to protect. Mr. Jacintho preference would be 1) to negotiate directly with all the current leaseholders under HRS 171-36.2 and set the lease term at 30 or 35 years; 2) Classify the cabins as Contributing or Noncontributing and negotiate with all by allowing 1s, 2s and 3s to upgrade their cabin; 3) mandate membership in the Leaseholders Association; and 4) increase the number of empty lots to satisfy the issue of “public access.

Donn Carswell, a leaseholder let it be known that the cabins in Kokee have a lot of mana and history and the current leaseholders would prefer an auction over an informal drawing because they would at least have a chance to bid on the lease they currently hold. If an informal drawing were to be held they feel they would not have a chance on holding on to their lease. Mr. Carswell said it is human nature to say if they lose their lease they’ll take the cabin off the property or dismantle it. He feels if the State wants to hold a drawing they should use the twenty three lots that are currently available and allow direct negotiations with the current leaseholders.

Member Martyn left the meeting.

Ed Holland, a caretaker of four lots on water tank road believes the fairest solution would be an auction. Mr. Holland also stated that the bidders should be bonded and if an existing lessee was not able to retain his or her lease the new lessee would pay the appraised value of the cabin.

Linda Vicones spoke in agreement with the testimony given by Mr. Cavasso and Mr. Jacintho. Ms. Vicones asked the Board to restore their original motion made in September. She also feels those lessees whose cabins were rated a 1 or 2 should be given the option to upgrade their structure.

Scotty Sagum, Manager of the Lodge at Kokee spoke of his concern with the health and welfare of people visiting Kokee. He spoke of a time when an individual was lost and he relied on the help of the leaseholders to find this missing person. He believes this type of service is invaluable.

Sherry Adams spoke of her concern with regards to the fairness of the system the State is implementing. Ms. Adams spoke of her family’s history on Kauai and in Kokee. Ms. Adams conveyed that she would like to have an opportunity to retain her lease.

Pam Chock spoke in opposition to staff’s recommendation and instead requested that the current leaseholders be allowed to negotiate directly with the state. Should direct negotiations not be allowed her second option would be an auction. Ms. Chock told the Board she has been gracious in sharing their cabin with others and have never been asked by anyone about how they would obtain their own cabin. She believes people would like to go to Kokee and spend a weekend there but not have the responsibilities of maintenance of the lot. Ms. Chock asked the Board when making their decision to make a decision that is in the best interest of the people of Kauai.

Marsha Erickson, Executive Director of Hui O Laka stated that no body should be able to make a decision the benefit individuals on a discriminatory basis. At the same time she feels the Board needs to find a way to preserve the invaluable cultural and historical landscapes of Kokee and Waimea Canyon State Parks. Ms. Erickson conveyed that Hui O Laka has come forwarded at this late date because of the State's intention to hold a public drawing for the recreational lots in Kokee. She spoke of her organizations commitment to preserving the cultural landscape of Kokee. Ms. Erickson made it known the people and their stories are an integral part of the landscape and are also part of the public legacy of Hawaii. Ms. Erickson asked the Board for one month's time in which her organizations would report on the feasibility of a lease with Hui O Laka for a number (not all) of the recreational cabins for the purpose of preserving the cultural landscape and history of Kokee and interpreting it for the broader public. They will consult with State Parks, Historic Preservation as well as statewide preservation organizations and experts to more fully assess the potential for creating a legal and management paradigm to meet these goals.

Member Johns left the meeting but before doing so he noted his support for changing staff's recommendation to dispose of the recreational residence by an auction and eliminating the offending portions similar to what Mr. Cavasso recommended.

Mr. Bettencourt made a suggestion that the State start off by auctioning the empty lots. At the end of that auction anyone wanting an empty lot but was not able to acquire a lot would be allowed to participate in a second round of auction which would be for the developed lots. Mr. Bettencourt also suggested the Board require bidders to have a \$500 bond in place prior to being able to bid for a lot. He communicated his belief that the State could buy out the existing leaseholder's right to remove their structures (which might be the salvaged value of the materials) then the State could have that amount tacked on to the lease.

Motion made at 12:35 p.m. by Member Agor and second by Member Yamamura to go into Executive Session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

**Unanimously approved to move into Executive Session (Agor/Yamamura).**

The meeting resumed at 12:42 p.m.

Written testimony was received from Deborah Jacintho, Scotty Sagum, Roselle Bailey, Sherry & Robert Miller, Peter Baldwin, Frank Hay, Lissa Dunford, Juan Wilson, Wayne Jacintho, Craig Millett & Susan Stayton, Ned Dana, Sam Blair, W. Carmen Wong, Scott McCaffrey, Erik Coopersmith, Elizabeth Freeman, Linda Faye Collins, Donn & Gale Carswell, Fred & Marj Dente, Eleanor Snyder, Annette Cassidy, Pam Chock & Malcom Smith Jr., Julia Sueoka and family, Sybil Frances, Patricia Sheehan, Deborah Luckett, JHR Plews, and Kathy Clark.

The Board amended the following Recommendations:

1) Recommendation 1)

“The Board approves entering into [~~direct negotiation~~] an auction for disposition of the recreation residence.”

2) Recommendation 3)

~~“[The Board approves a third open informal drawing and negotiation process for any leases not disposed during the process outlined in 1, above.]~~ The Department will retain approximately nine (9) cabins for State use.”

Unanimously approved as amended by the remaining Board members (Agor/Yamamura).

Mr. Bettencourt asked the board to hold the auction prior to the expiration of the current leases.

**Item E-1: Permission to Enter into a Revocable Permit with S.M.C.A., Inc. for the Food and Rental of Swimming Equipment at Hapuna Beach State Recreation Area (HB), Island of Hawaii.**

The Board amended the Recommendation Section by waiving Condition 14) of the Revocable Permit.

14. ~~[Prior to termination or revocation of the subject permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the permit. The Board, at its sole option, may refuse termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.]~~

Unanimously approved as amended (Yamamura/Schuman).

**Item J-1: Report to the Board on the Review of Prior Administrative Rules Changes Relating to Fee Increase for the Small Boat Harbor Proposed in 2001 and deferred at that time.**

James Coon, representing The Ocean Tourism Coalition (OTC) asked that the Board defer this item for two more meetings as some of the Board members present when this matter first came before the Board was not present. Mr. Coon feels that every Board recommendation to

the Division of Boating and Ocean Recreation (DOBOR) pertaining to this issue has been circumvented by DOBOR. He spoke of the considerable time spent on compiling the comprehensive rules package which went out to public hearings but due to some typographical error and the need to go back out public hearing DOBOR chose to piece meal the package. Mr. Coon would rather have the entire package go to the Board rather than having it piece meal. He spoke of their frustration in working with staff on issues that they might not agree on.

Chairperson Young told Mr. Coon he would get DOBOR to supply whatever is remaining in the package to OTC so they can see what if there are in issues they are in disagreement. Greg Howeth announced that he participated in the meetings and discussions held beginning in 2002. Mr. Howeth spoke of his agreement with Mr. Coon's testimony. Mr. Howeth stated that agenda items J-1 and J-2 should be treated as one package and asked that both items not be heard until such time the comprehensive plan can be placed together. Mr. Howeth supplied the Board members with his written testimony which outlined specific areas of concern they have with the comprehensive fee package.

Bill Mossman, representing the Hawaii Boaters Political Action Association concurred with the testimony received by Mr. Coon and Mr. Howeth regarding the postponement of Items J-1 and J-2 until at least two board meetings from today in order to allow those involved some time to come up with the comprehensive plan. Mr. Mossman spoke of the conditions of our boating facilities and the need for increased revenue to repair those facilities. Mr. Mossman reminded the Board of their previous action of November 19, 2005, in which the Board required DOBOR to meet with the constituencies involved to review the fee proposal proposed in 2001 for the expressed purpose of going through it and picking out the items that should be included in the comprehensive package which was due July 1, 2005. He went on to speak of the lack of attention paid to the various revenue generating sources DOBOR has. Mr. Mossman felt there were numerous sources of revenue addressed in the 2001 proposal that are worthy of inclusion in today's proposal, one of these issues being the Passenger Vessel Fee. He noted if the minimal fee increases proposed in the 2001 proposal were implemented a very conservative total cruise ship revenue would exceed \$2 million. This cruise ship passenger fee revenue would by itself, exceed the total revenues of the amendments being proposed in J-2. In closing, Mr. Mossman recommended that these Amendments be held to give DOBOR the opportunity to examine the "other revenues" addressed in the 2001 fee increase to create a more complete package that addresses "fairness" and fiscal responsibility, especially addressing the increase of Cruise Line Passenger Fees.

Chairperson Young clarified that the issue of Cruise Line Passenger Fees has already come before the Board. At that point the Board instructed staff to send the matter to the Attorney General's Office to make sure the fees were consistent with the law. He went on to disclose that federal law dictates that the cruise ship passenger fees must only go towards the operation of the cruise ship. It should not be a revenue generating program. There was also a question to the legality of a two tier passenger fee.

Reg White, Vice President of Operations for Paradise Cruise suggested the Board defer action. Referring to Mr. Howeth's testimony, Mr. White pointed out those recommendations

included in his written testimony was the result of a four year effort by staff and interested community members. He reminded the Board of their November 2004 meeting in which they directed staff to meet with the interested constituencies to put everything into one comprehensive package. Mr. White asked the Board to defer action until staff can comply with their previous directive. Lastly, Mr. White noted that DOBOR continues to operate without a plan so if revenue is generated he would like to know how DOBOR intends to spend the money.

Chairperson Young noted he will ask DOBOR to bring the package forward for consideration.

Written testimony was received from Hawaii Boaters Political Action Association, Lahaina Divers, Ocean Tourism Coalition, Ala Wai Marina Community Association and The Makai Society.

### **No Action.**

**Item J-2: Recommendation to Amend Hawaii Administrative Rules Chapter: §13-234-3 Mooring Rates at State Boating Facilities; § 13-234-4 Mooring Rates, offshore & at anchor; § 13-234-5 Mooring without Permission; § 13-234-25 Fees for Commercial Vessels; § 13-234-34 Recreational Ramp Fees.**

Chairperson Young asked Mr. Rice, Administrator for DOBOR if want is recommended in staff's submittal the same recommendation that was in the November 2004 package. Mr. Rice confirmed the submittal was identical to what was submitted in November 2004 except for changes made to form by the Attorney General's Office.

Bill Mossman, representing the Hawaii Boaters Political Action Association emphasized the need to postpone decision making on this item for a couple of months in order for a comprehensive look at the package. He would like staff to address the lack of a comprehensive approach and the manner in which the fees are administered to the different user groups in the harbor. He feels there needs to be fairness in the application of fees.

Greg Howeth again stressed the importance of a comprehensive package and asked the Department to follow the recommendation made by the Board which instructed DOBOR to bring back to the Board a comprehensive package, the fees together with the rule package. Mr. Howeth asked the Board to defer action on this issue until their directive is followed. Mr. Howeth pointed out in staff's summation they contradict the recommendation by the Board to return with a comprehensive package by stating "Given the proper time & resources certain areas within the rules will be re-visited but perhaps not as an omnibus package." He believes DOBOR has no intention of following the Board's directive.

Reg White, Vice President of Operations for Paradise Cruise stated that the fee package is a reasonable package and would like to commend the Division. Mr. White especially agreed with the way DOBOR placed the two increases of ten percent should they get the bonding as it proves to the legislature they can pay the money back. Mr. White feels we need to look at

the cost to run the harbor. He explained when the slips at the Ala Wai went out of service the cost to operate the harbor did not decrease therefore the cost to handle each boat increased and that is how we need to view things at each harbor. Mr. White also asked the Board to look into parking fees as a way to generate income which is not covered in the present package but was covered in the original package.

Chairperson Young conveyed that he understood the concerns of those who testified that the proposed rules were not part of the package but he also understands the significant need for funding that the fee package will provide and encouraged the passage of this submittal.

**The Board amended the Recommendation Section by adding the following**

**“4. The Division of Boating and Ocean Recreation shall work with the applicable boating interest and bring back to the Board the remainder of the rule package by July 2006.”**

Written testimony was received from The Makai Society, Hawaii Boaters Political Action Association, Glenn Shiroma and Ala Wai Marina Community Association.

The Board instructed staff to include the people here at today’s meeting as well as Jim Coon in their meetings.

**Unanimously approved as amended (Yamamura/Agor).**

**Item L-1: Approval for Award of Goods and Service Contract – IFB-06-001-0 Furnishing and Delivering Electronic Bid Documents and Addenda on Compact Disc; Reproduce, Bind and Deliver Plans and Specifications Add Addenda from Plans, Specifications and Related Documents.**

**Item L-2: Approval for Award of Construction Contract – Job No. H10C616B, Sand Island State Recreation Area, Renovate Comfort Stations 1, 4, 5 & 6, Honolulu, Oahu, Hawaii.**

**Unanimously approved as submitted (Yamamura/Schuman).**

**Item I-1: Award of Historic Preservation Federal Grant-in-Aid to County of Kauai for: 1) Hiring of consultant for Poipu Beach Park Mauka Archaeological Preserve; 2) Developing Kauai Historic Preservation Review Commission website; 3) Hiring of consultant to update historic resources inventory for consideration of eligible buildings; and 4) Training of Kauai County Cultural Resources Commission and staff.**

**Unanimously approved as submitted (Agor/Schuman).**

**Item D-4: Grant of Perpetual, Non-Exclusive Easement to Steven C. Anderson for Access and Utility Purposes, Keahialaka, Puna, Hawaii, TMK: (3) 1-3-07:23 and 1-3-08:12.**

**Motion to Defer**

**Unanimously approved to defer (Yamamura/Schuman).**

**Item D-1: Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Puu Ka Pele Forest Reserve at Waimea, Kauai, TMKs: (4) 1-5-01:01 and (4) 1-5-03:09, 13, 16, 20, 22, and 27; and Game Reserve Purposes at Waimea, Kauai, TMK: (4) 1-5-01:02 and (4) 1-5-03:07, 08, 10, 15, 17, 19, 21, 24, and 40.**

**Item D-7: Approval of Sub-Lease of Private Property with Robert K. Cabos, on Behalf of the Department of Labor and Industrial Relations, for File Storage Purposes at Papaikou, Hamakua, Hawaii, TMK: (3) 2-7-33:18.**

**Item D-11: Grant of Term, Non-Exclusive Easement to May S. Ishimoto for Seawall and Filled Land Purposes, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-01:35 seaward.**

**Unanimously approved as submitted (Schuman/Yamamura).**

There being no further business, Chairperson Young adjourned the meeting at 1:45 p.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, FEBRUARY 24, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

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

MEMBERS

Mr. Peter Young  
Mr. Gerald DeMello  
Ms. Taryn Schuman

Mr. Ted Yamamura  
Mr. Ron Agor

STAFF

Mr. Paul Conry, DOFAW  
Mr. Dan Quinn, Parks

Mr. Russell Tsuji, Land

OTHERS

Ms. Pam Matsukawa, Deputy Attorney General  
Ms. Heidi Wild, C-1  
Ms. Haunani Aipolani, D-7  
Ms. Diana King, D-7

Mr. Bonne Coffman, C-1  
Ms. Donna Woo, D-7  
Mr. Phil Hauret, D-5

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

**Item A-1: Minutes of January 12, 2006 briefing**

Member Yamamura recused himself.

**Unanimously approved as submitted by the remaining Board members  
(Agor/Schuman).**

**Item A-2: Minutes of February 10, 2006**

**Unanimously approved as submitted (Agor/Yamamura).**

**Item C-1: Establishment of the Hawaii Experimental Tropical Forest on State lands at Laupahoehoe, Hamakua, Hawaii and Puu Waawaa, Kona, Hawaii, Approval of Recommendations to the Governor of Hawaii and Secretary of Agriculture, and Authorization to Develop a Memorandum of Agreement with the U.S. Forest Service for Administration of the Experimental Forest Sites.**

Paul Conry, Administrator for the Division of Forestry and Wildlife announced that in 1992, President George H.W. Bush signed into law the Hawaii Tropical Forest Recovery Act. Part of the recovery act set up the basis to recognize the importance of the tropical forest here in Hawaii. At present Hawaii is the only state that does not have an experimental tropical forest. The act also establishes the criteria for designating a tropical forest. On April 2005, Governor Lingle formally requested the Secretary of Agriculture to take the necessary steps to establish the Hawaii Experimental Tropical Forest. Over the past year the Department of the U.S. Forest Service have completed the scoping process and identified possible lands for inclusion. As a result of the scoping process Mr. Conry indicated there were nine sites considered for the wet forest location and four sites considered for the dry forest. Meetings with the community and key stake holders were held as part of the scoping process. Based on the meetings two sites were recommended, The Laupahoehoe Forest as the wet forest site and the Puu Waawaa site as the dry forest site. Mr. Conry recommended that the Board approve the Report of Findings attached to staff's submittal for the Establishment of the Hawaii Experimental Tropical Forest, recommend to the Governor the identification of State lands in Laupahoehoe Natural Area Reserve and Puu Waawaa Ahupuaa to be included into the Hawaii Experimental Tropical forest and transmittal of those recommendations to the Secretary of Agriculture and authorize the department to develop a memorandum of agreement with the U.S. Forest Service to establish and administer the proposed sites as the Hawaii Experimental Tropical Forest, subject to Board and Attorney General approval and to assist in the development and implementation of plans.

Heidi Wild testified on behalf of Stephen Smith, President of the Hawaii Forest Industry Association in support of staff's recommendation. Ms. Wild made it known the Hawaii Forest Industry Association has been involved in this process and has consistently supported the designation of an Experimental Tropical Forest in Hawaii. Mr. Wild noted her organizations support to assist the department in whatever way they can.

Boone Coffman, Director for the Institute of Pacific Islands Forestry which is the U.S. Forest Service Branch here in Hawaii and the Pacific testified in support of staff's recommendation. Mr. Coffman announced since becoming director of the Institute he realized the need for an experimental forest and has worked diligently in seeing that this mission comes true. His view for the project is for it to become an experimental demonstration in forest education that will focus on the cultural, ecological and economic values that are important to all Hawaiians. He feels the real beneficiaries to this project will be the school children.

**Unanimously approved as submitted (DeMello/Schuman).**

**Item D-7: (1) Authorization to Expend an Emergency Appropriation from the Legislature in connection with the Settlement of the City's Condemnation Action Involving Waimea Valley, Waimea, Wailua, Oahu; (2) Authorization to Allow the Chair to Negotiate a memorandum of Agreement concerning Waimea Valley, Waimea, Wailua, Oahu and (3) Authorization to Allow the Chair to Negotiate Conservation and/or Public Access Easements.**

Russell Tsuji, Administrator of the Land Division let it be known the Chairperson as well as staff from the City, other State agencies as well as non-profit agencies participated in mediation of the City's condemnation action. As a result of that meeting an agreement was reached in which a consortium of government and non-profit agencies would contribute approximately \$14.1 million towards the settlement of the City's condemnation lawsuit. At that meeting Chairperson Young agreed to seek funding and contribute \$1.6 million out of the total \$14.1 million. At present there are bills at the legislature requesting the appropriation of \$1.6 million. Mr. Tsuji recommended the Board authorize the expenditure of a \$1,600,000 emergency appropriation (upon passage into law) under the terms and conditions cited in the submittals, authorize the Chairperson to negotiate a Memorandum of Agreement with appropriate parties and authorize the Chairperson to negotiate and approve the terms and conditions of a conservation and/or public access easements pursuant to Hawaii Revised Statutes Chapter 198 subject to the review and approval by the Department of the Attorney General.

Chairperson Young made it known the title would be under the Office of Hawaiian Affairs and there is also the issue of a lease to the Hawaii Audubon Society. There has also been preliminary discussion with OHA about an agreement with DLNR.

Haunani Aipolani, Chairperson of the Office of Hawaiian Affairs (OHA) noted their support of staff's submittal and announced that all pieces are necessary to occur for this project to become a reality.

Donna Woo, First Deputy Cooperation Counsel for the City and County of Honolulu came forward to answer any questions regarding the settlement. Ms. Wu communicated that it is the City's hope that the Board would approve this item.

Diana King, representing the National Audubon Society extended her encouragement to the Board to support this measure.

Written testimony was received from Toni Sickler, the Hawaii Forest Industry Association and Save Waimea Valley Coalition.

**Unanimously approved as submitted (Schuman/DeMello).**

**Item M-1: Consent to Assignment of Lease No. DOT-A-79-0010 Makena Hawaii, Inc. to Resort Air, LLC, Honolulu International Airport.**

Terrance Lee, counsel for Makena Hawaii, Inc. stated that this is a routine matter in which they are assigning the hanger lease to Resort Air, LLC.

**Unanimously approved as submitted (Yamamura/Schuman).**

**Item D-5: Amend Land Office Deed No. 28,529, Direct Issuance of a Perpetual, Non-Exclusive Easement to Hawaiian Electric Co. for Utility Purposes at Kapolei, Oahu, TMK: 9-1-16:25 por. & 9-1-17:4 (now 9-1-16:108 & 109).**

Phil Hauret of Hawaiian Electric Company was present and noted his support of staff's recommendation.

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item D-3: Forfeiture of General Lease No. S-5707, All Tree Services, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-010:048.**

Written testimony was received from Hawaii Farm Bureau Federation, Web One, Inc. dba The Plant Place, Waimanalo, Agricultural Association and MCA Tropicals.

**Motion to defer**

**Unanimously approved to defer (Agor/Yamamura).**

**Item D-1: Consent to Assign Perpetual Non-Exclusive Easement LOD No. 28,194, Larry R. Oler and Midge J.L. Older, Assignor, to Parker K. Mossman and Bina K. Saafi, Assignee, and Amendment to the Easement; Waiohinu, Kau, Hawaii, TMK: (3) 9-5-02:40.**

**Item D-4: Amend Prior Board Action of June 18, 2004, Item D-10, Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Mount Kaala Natural Area Reserve System, Mokuleia, Waialua, Oahu, TMK: (1) 6-7-003:021.**

**Item D-6: Request to Extend Navy License No. N6274201RP00064 with the United States of America, Department of the Navy on behalf of the Department of Education at Pearl City Peninsula, Ewa, Oahu, TMK: (1) 9-7-016:01 (portion).**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item E-1: Request Approval to Establish Kaumahina State Wayside Open Hours and Request Delegation of Park Hours Decisions to the Chairperson in the Future.**

**The Board amended the fourth sentence of paragraph one on the submittal to read:**

**“On March 15, 2006, construction of a new [~~\$1 million~~] \$ 855,240.00 ADA compliant comfort station and newly paved parking lot will be completed and the wayside facilities open to the public.”**

**Unanimously approved as amended (Yamamura/DeMello).**

**Item D-2: Request of Department of the Attorney General for Concurrence with Proposed Settlement of the Rezents v. Kuaea Quiet Title Action, Civil No. 03-1-0160 (1), Haiku and Pauwela, Maui, TMK: (2) 2-7-010:051.**

**The Board may 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 Yamamura recused himself.

The Board went into Executive Session at 9:35 a.m. and the meeting was resumed at 9:42 a.m.

**Unanimously approved to confirm the proposed settlement to the Quiet Title Action (DeMello/Schuman).**

There being no further business, Chairperson Young adjourned the meeting at 9:43 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review.

Respectfully submitted,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, MARCH 10, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

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

MEMBERS

Mr. Peter Young  
Mr. Ted Yamamura (arrived at 9:30 a.m.)  
Mr. Ron Agor

Mr. Tim Johns  
Mr. Gerald DeMello  
Ms. Taryn Schuman

STAFF

Mr. Sam Lemmo, OCCL  
Mr. Steve Molman, Land  
Mr. Paul Conry, DOFAW

Mr. Russell Tsuji, Land  
Mr. Dan Quinn, Parks

OTHER

Ms. Julie China, Deputy Attorney General  
Mr. Bill Bow, K-3  
Mr. Tom Staton, D-6  
Mr. Fred Humphrey, D-6  
Mr. Steve Nimz, D-6  
Mr. David Fell, D-6  
Ms. Annette Yee, D-6  
Mr. Mike Sakamoto, K-4  
Mr. Dan Brookins, K-4  
Mr. Greg Longnecker, K-1  
Ms. Toni Magnaula, J-1

Mr. Patrick Oka, D-6  
Mr. Lester Toyama, D-6  
Mr. Alan Takemoto, D-6  
Mr. Lloyd Ching, D-6  
Mr. David Thompson, D-6  
Mr. Curtis Hong, E-1  
Mr. Charlie Wilson, K-4  
Mr. Brian Ho, K-1  
Mr. Peter Starn, J-1  
Ms. Barbara Lorrichio, E-2

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

**Item A-1: Minutes of February 24, 2006 briefing.**

**Deferred due to lack of quorum**

**Item A-2: Minutes of February 24, 2006**

Member Johns recused himself.

**Unanimously approved as submitted by the remaining Board members (Agor/DeMello).**

**Item K-3: Conservation District Use Application (CDUA) LA-3257 for Manele Small Boat Harbor Ferry System Improvements, located at Manele Bay, Lanai, TMK:(2) 4-9-017:006.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) indicated the proposed project is located at the Manele Bay Small Boat Harbor and the surrounding land uses include Hulopoe Beach Park and the Manele Bay Hotel and golf course. The proposed 6.5 million dollar project is being funded 20% by the State and 80% by the Federal Government. The purpose of the project is to replace existing facilities located within the area of the Small Boat Harbor. Mr. Lemmo went on to disclose that the project will also include an additional comfort station, an administrative office, pave access roads and parking areas, comply with American Disabilities Act (ADA), repair or install water mains and fire hydrants, install a sewage pump station, install a vessel sewage pump out facility, telephone and electrical utilities as well as street lights, install a fuel line, conduct boardwalk improvements, include multi-use parking, landscaping and a mini park. The proposed project was sent out for public comments and one of the issues that arose was that the Office of Hawaiian Affairs (OHA) and the State Historic Preservation Division (SHPD) wanted to see a monitoring plan in place before construction begins. Mr. Lemmo recommended the Board approve Conservation District Use Application LA-3257 for Manele Small Boat Harbor Ferry System Improvements subject to the nineteen conditions listed in staff's submittal.

**Unanimously approved as submitted (Johns/DeMello).**

**Item D-6: Resubmittal for Forfeiture of General Lease No. S-5707, All Tree Services, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, TMK; (1) 4-1-010:048.**

Russell Tsuji, Administrator of the Land Division summarized staff's submittal by stating that the lease is restricted to intensive agriculture and it appears that the tenant has been using a part of the premises as a baseyard. Mr. Tsuji recommended the Board authorize the cancellation of General Lease No. S-5707, authorize the retention of all sums heretofore paid or pledged under General Lease No S-4298, terminated the lease and all rights of Lessee and all obligations of the Lessor effective March 10, 2006 and authorize the Department of the Attorney General, the Department of Land and Natural Resources

or their agents to collect all monies due the State of Hawaii under General Lease No. S-5707 and to pursue all other rights and remedies as appropriate.

Kaui Watson, attorney for All Tree Service, Inc., appeared before the Board and together with Dave Kendrick and Terry Rodriguez conducted a power pointed presentation showing the subject site and their operation. Through this presentation, Mr. Watson addressed what he believed to be the main issue which is the use of the property. Mr. Kendrick the individual responsible for putting together the master plan for the subject site started off the presentation by giving some background into his work. Mr. Kendrick made it known he started out by doing tree propagation which is a tree recycling effort. He began by air layering trees at schools, churches and yards and taking those branches and selling it to nurseries. As far as he knows, Mr. Kendrick is the only commercial landscape plant nursery that works organically. He noted through his operation he uses mulch to control the weeds which in turn uses less water. He went on to show the various plants grown on the property as well as how he rotates the areas for planting on the subject parcel. Mr. Kendrick acknowledged that there has been a problem with trucks on the subject property and let it be known he was working with Mr. Rodriguez to use the mulch from his tree trimming business on site and this mulch was being brought in by those trucks. To elevate staff's concerns with the number of trucks on the property, Mr. Kendrick is proposing to construct a greenhouse on a portion of the existing parking lot.

Terry Rodriguez, owner of All Tree Services, Inc., announced when he first started work on the subject property he was under the impression that All Tree Services, Inc., would be dealing in agriculture intensive work but at the same time he would be using trucks from his tree trimming business on the subject property. He did not know use of those trucks would become an issue and raise the concern that he was using the parcel as a baseyard. Mr. Rodriguez has corrected that problem by leasing another property in which he would store his vehicles at. Mr. Rodriguez disclosed when he submitted his application to bid on the subject property he indicated his intention to operate the tree trimming business and the nursery on the parcel. He also indicated he met with staff from DLNR to let them know of his plans at which time staff told him as long as he was conducting agriculture work on the property he would be okay. Later on, upon hearing concerns from the department, Mr. Rodriguez modified his plans by deleting two parking lots and a warehouse as well as constructing a warehouse on a portion of one of the parking lots. He also disclosed to the Board the reason he constructed a parking lot at the nursery was to provide safe access for his customers visiting the nursery (instead of walking in the mud). Also due to the complaints about using the subject parcel as a baseyard, Mr. Rodriguez has sold his roll off company about a month ago. Mr. Rodriguez confirmed upon acquiring the lease for the property he brought in containers to haul out large trees being removed that could not be chipped. Further slides went to show the amount of money Mr. Rodriguez has already spent on the property. In closing Mr. Watson noted in his application to the department, Mr. Rodriguez indicated that his plan was to integrate his business, All Tree Service, Inc. (which is a tree trimming business) with the nursery business.

Steve Molman, Land Agent with the Land Division let it be known that after conferring with Mr. Watson he was told they need five vehicles for the nursery business. At the time the lease was being executed Mr. Steven Lau of the Land Division warned Mr. Rodriguez not to relocate his vehicles from All Roll Offs to the leased state site. Mr. Rodriguez made it clear that trucks might come onto the property to dump mulch but the trucks will not be stored on the subject property.

Patrick Oka, owner of a nursery business in Waimanalo for over fifty years testified before the Board. Being a landscaper, Mr. Oka has done a lot of tree trimming and considers that part of the nursery business. He spoke of a tree being planted in the nursery then being placed somewhere else as part of landscaping. After a while the tree will have grown and trimming will be needed and thus is the cycle of the nursery business. He spoke of projects he has taken on from design to installation to trimming of trees. He feels tree trimming should not be separate from the nursery business.

Tom Staton, who holds a degree in botany and owner of Quality Turfgrass provided the Board with photos taken between November 2004 through February 2005 which shows various vehicles at the subject property. He pointed out his business and home is located directly across the street from the subject property. Mr. Staton feels that what is going on at All Tree Services, Inc., is harmful to his business and his well being as well as threatens public safety, the environment and the future of agriculture in Waimanalo. Addressing the photo's given to the Board, Mr. Staton notes that it shows a pattern of continuous disregard of zoning and lease regulations prohibiting baseyards use on the subject property. He also included citations issued to All Tree Service on the property. In closing, Mr. Staton asked the Board to follow staff's recommendation by canceling the lease and giving the lessee a deadline to vacate the premises.

Lester Toyama, a consultant hired by Mr. Rodriguez to act as his general manager came forward to provide testimony. Mr. Toyama made it known it is their intention to grow trees and other types of plants on the property. He pointed out the size of the parking lot is due to the fact that they need to bring in equipment as they plan to replant sixty year old trees they've removed from other properties. He also noted All Tree Services does not use pesticides and about ninety eight percent of the material they use comes back to the nursery. Mr. Toyama asked the Board to reconsider the cancellation of All Tree Services lease as have they have addressed the baseyard issue by obtaining another property to park their equipment.

Fred Humphrey, a resident of Waimanalo and owner of Island Growers Supplies appeared before the Board to provide testimony. He communicated that his business has allowed him to visit every landscape and tree nursery in the state as well as several in California and Oregon. He disclosed what he sees at All Tree is not like any tree farm he has ever visited as All Tree has a place to park trucks and has an office on site. Also the equipment at the site is not consistent with any tree farm he has visited and there seems to be no intent to be profitable by growing trees. Mr. Humphrey asked the Board to take this property and others like it and return it to real farmers.

Alan Takemoto, Executive Director of the Hawaii Farm Bureau Federation which is a non-profit organization that represents approximately 1,600 farm families testified. Mr. Takemoto communicated in early February of 2006 a group of farmers along with DOA toured Waimanalo and went through the illegal activities occurring there and found that the subject parcel had seven trucks and tree trimming equipment stored on the parcel, storage of construction material as well as seen hauling of debris from various construction sites to the subject parcel. Mr. Takemoto acknowledges that All Tree Services has submitted a business plan to engage in agricultural activity yet they continue to use the land for other activities that circumvent the true intent of keeping the lands in agricultural production.

Steve Nimz, a resident of Waimanalo spoke of his concern with what the general use of the property is versus the initial plan submitted by All Tree Service, Inc. and how they have gone about. Mr. Nimz feels that more commercial activities are taking lands out of agriculture use.

Lloyd Ching, a nursery operator, landscaper and general contractor spoke of his concern with the action proposed by staff. He was concerned that someone who has a tree trimming business as well as a landscaping business would not be allowed to do tree trimming on their parcel. He feels DLNR should go after people not doing any agriculture work on the land and those individuals buying ag lands in Waimanalo for 800,000 thereby bring up the tax rate. He is concerned if All Tree Service loses its lease it might prevent him from accepting tree trimming jobs.

David Fell, who has a nursery operation on the Big Island and a DLNR lessee in Waimanalo provided testimony before the Board. He asked the Board to go by the intent of the lease which is diversified agriculture/intensive agriculture. Mr. Fell disclosed he was a bidder for the subject property and believes that he was out bid because he believes Mr. Rodriguez had a different agenda from the beginning. He pointed out the return from the tree operation versus the capital input could not return enough profit from the existing operation. Mr. Fell told the Board we should keep the land accessible to people who are truly going to farm the land.

David Thompson, a resident of Waimanalo testified before the Board. Mr. Thompson conveyed to the Board that he belongs to a group called Malama Waimanalo who works to clean up the abandoned vehicles and junk left along side the road. Mr. Thompson spoke of a vehicle All Tree abandoned on the side of the road which came from their former site. He spoke of other things he has seen dumped on the side of the road awaiting the City to pick up.

Annette Yee a Waimanalo lessee for forty years told the Board they should get back to the intent and definition of the lease. She pointed out Mr. Rodriguez has done a lot to correct the wrong doings on the property and feels this was done due to the threat of his lease being cancelled.

Chairperson Young, asked Mr. Rodriguez what kind of assurance he could provide that the subject property will be used for agriculture and not a baseyard. Mr. Watson told the Board the “proof is in the pudding” and invited them to visit the subject site to take a tour and see what has been done at the property. Mr. Watson asked the Board to give Mr. Rodriguez the opportunity to prove himself as he has spent a significant amount of money and has not seen a return on his investment. He pointed out his client is proposing to construct a greenhouse over a part of the parking lot.

**The Board deferred action on this item for one month and instructed the lessee to return with concrete evidence that his baseyard is operating out of the Kapolei location and to transfer the lease premises into a place that is conducive to intensive agriculture.**

**Motion to defer**

**Unanimously approved to defer (Schuman/DeMello).**

**Item E-1: Request Approval for Mutual Cancellation of the Mobile Food Concession Agreement SP-0048 at Nuuanu Pali State Wayside (Pali), Oahu, with Curtis Hong, dba Paradise Shrimp & Burger (Hong).**

Dan Quinn, Administrator of State Parks indicated the fixed rent for the Mobile Food Concession Agreement is \$7,200.00 per month. He went on to state that the concessionaire was able to pay the rent during the summer months but due to inclement weather he has not been able to make the rent. Mr. Quinn communicated that the community has raised concerns regarding commercial vendors at the Pali Lookout. Mr. Quinn recommended the Board authorize the mutual cancellation of SP-00048 concession Agreement and delegate the authority to the Chairperson to execute all relevant documents on behalf of the Board, approve using the Concession Agreement security deposit of \$14,550.00 toward the amount due and allow a 90 day period to repay the balance and approve such other terms and conditions as may be prescribed by the Chairperson.

Curtis Hong, the concessionaire was present.

**Unanimously approved as submitted (Johns/Schuman).**

**Item K-4: Conservation District Use Application (CDUA) OA-3261 for the Installation of a Prefabricated Comfort Station, located at Kawai Nui Model Airplane Park, Kailua, island of Oahu, TMK: (1) 4-2-016: portion of 001.**

Mr. Lemmo noted the project site is located at the existing Model Airplane Park on reclaimed wetlands on the northwestern border of Kawai Nui Marsh over a former county landfill. Staff has reviewed the project and Mr. Lemmo is recommending the Board approve the City and County of Honolulu, Department of Design and Construction’s

request to construct and install a prefabricated comfort station at the Kauai Nui Model Airplane Park subject to the terms and conditions listed in staff's submittal.

**Unanimously approved as submitted (Johns/Yamamura).**

**Item K-2: Enforcement File No. HA-06-40 Regarding Alleged Unauthorized Land Uses found at the Mauna Loa Observatory, located at Mauna Loa, Hamakua District, Hawaii, TMK: (3) 4-4-016:009 and (3) 4-4-016:011.**

**Motion to Withdraw**

**Unanimously approved to withdraw (Johns/Yamamura).**

**Item D-4: After-the-Fact Grant of Perpetual, Non-Exclusive Easement and Issuance of a Management Right-of-Entry to Hawaiian Electric Company, Inc. for Access and Utility Purposes, Former Fort Shafter Military Reservation, Kahauiki, Honolulu, Oahu, TMK: (1) 1-1-08:13 portion.**

Member Johns recused himself

**Unanimously approved as submitted by the remaining Board members (Yamamura/Demello).**

**Item K-1: Conservation District Enforcement File No. OA-05-50 Regarding Unauthorized Structure and Unauthorized Construction of Improvements located at Palolo Hillside, Oahu, (1) 3-3-034:001.**

Mr. Lemmo indicated the subject parcel is located on the east hillside of Palolo Valley and that residential use surrounds the parcel. In February 2005, OCCL received a complaint regarding on going construction on the Palolo hillside. A site visit was conducted which revealed that improvements had been made to the unauthorized existing structures. Mr. Lemmo confirmed through aerial photographs that the structure existed prior to the landowner purchasing the property. Mr. Lemmo conveyed that a Conservation District Use Permit was issued for the subject site but it was for twelve picnic shelters and storage shed. Mr. Lemmo believes the previous owner built the structure without department approval and the current landowner is performing major improvements on this structure. Mr. Lemmo recommended the Board find the landowner in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules and is subject to the conditions listed in staff's submittal.

Brian Ho, attorney for the applicant appeared before the Board. Mr. Ho disclosed that Mr. Longnecker purchased the property in 2003 at which time the twelve picnic shelters and storage shed were built per the Conservation District Use Permit (CDUP) obtained by the previous owner. He noted the structure in question and shown in staff's submittal is the storage shed. Mr. Ho took offense at staff's claim that the structure is unauthorized

as the CDUP allowed for the storage shed. Mr. Ho acknowledged his client's brother made changes to the structure and assumed he obtained all necessary approvals. Mr. Ho would like the administrative penalties to be mitigated down to \$500 as the violation was not willful on the landowner's part. As far as the geo-technical survey, Mr. Ho feels it is unnecessary at this point as the work involved on this structure did not impact the foundation or any of the structural components of the building. Mr. Ho stated the improvements were to the interior (changing interior configuration), not structural improvements. Mr. Ho indicated if appropriate when Mr. Longnecker applies for the After The Fact Conservation District Use Application (CDUA) that would be the time if necessary to incorporate the geo-technical evaluation study as one of the requirements. Lastly, Mr. Ho does not feel it is appropriate for the landowner to indemnify the State.

Greg Longnecer, the landowner acknowledged ignorance is no excuse but he inherited the problem when he bought the property. He let it be known when he acquired the property the structure was filled with the prior owner's belongings and his insurance company made him remove those contents. He feels things have become a mess which was not his intention. He always meant to do what is right. Mr. Longnecker let it be known his intention was to make the structure more sound without changing the footings.

#### **The Board amended the following Recommendations**

##### **1. Recommendation 1)**

**“1. The landowner violated the provisions of Chapter 183c, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in one instance by failing to obtain the appropriate approval for unauthorized improvements within the Conservation District. The alleged is fined a total of [~~\$2,000.00~~] \$500.00 for one Conservation District violation;”**

##### **2. Recommendation 3)**

**“3. The landowner shall pay all fines (total [~~\$2500.00~~] \$1000.00) within ninety (90) days of the date of the Board's action;”**

##### **3. Recommendation 4)**

**“4. [~~The landowner shall at his own expense submit a geo-technical evaluation study by a licensed geo-technical engineer to evaluate the structural integrity of the unauthorized structure and the potential for rockfall on the subject parcel to the Department within six months of the Board's action;~~] The landowner shall submit an After-The-Fact Conservation District Use Application including a geo-technical evaluation within six (6) months of the Department's determination. If it is not filed within that time period the structure shall be removed within sixty (60) days thereafter;**

4. Delete Recommendation 6)

~~“[6. — Upon review of the geo-technical evaluation by the Department, the Department shall determine if the structure should be removed, reinforced and/or whether an After the Fact (ATF) conservation District Use Application (CDUA) may be filed for the unauthorized structure;]~~

5. Delete Recommendation 7)

~~“[7. — The landowner shall adhere to the Department’s recommendation to either remove, reinforce or file an ATF CDUA within six months of the Department’s determination;]~~

6. Renumber Recommendation 8), 9) and 10).

Unanimously approved as amended (Johns/Yamamura).

**Item J-1: Request for a Contested Case Hearing, Waiver of Requirement of Oral Request for Contested Case Hearing, and Delegation of Authority to Appoint and Select a Hearings Officer to Conduct Contested Case Hearing. Docket No. BORCCH-06-02.**

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) recommended the Board waive the Petitioners’ failure to make an oral request for a Contested Case Hearing by the close of the Board meeting at which the matter was scheduled for disposition, authorize the appointment of a Hearings Officer for BORCCH-06-02 and let the Hearing Officer conduct all hearings relevant to the subject petition and delegate the authority for selection of the Hearing Officer to the Chairperson.

Chairperson Young notified those present that Alan Cambra, President of the Association of Apartment Owners of the Ilikai Apartment Building sent a letter requesting a deferral. Chairperson Young went on to say that Mr. Cambra misunderstood today’s Board action as the start of the hearing and he is okay with the item moving forward as is, should there be any changes, Mr. Cambra would like a deferral.

Peter Starn, Legal Counsel for Hilton testified that he believes that it is inappropriate for the Board to waive the oral request for a contested case as the Ilikai has been represented by legal counsel throughout the entire permitting process and had the opportunity to be fully advised. Mr. Starn announced that the Hilton has been in the permitting process for the Waikikian project for five years and has been before the City Council after public hearings and all of the issues raised by Mr. Cambra in his letter were raised at those meetings and after hearing from Mr. Cambra the City Council authorized the SMA and PD-R permits with a number of conditions including the widening of Dewey Lane. Mr. Starn believes the permitting process has happened and the Ilikai has been heard. Should the Board waive the oral request for a contested case hearing by the Ilikai, Mr. Starn

indicated it would allow for the delay of the project which could exceed a year. Mr. Starn noted that in Mr. Cambra's written request for a CCH he brings up issues relating to traffic and the signalized intersection which are issues that are not before the Board but instead the Department of Transportation and the Department of Permit and Planning, Traffic Review Branch. If those issues are taken out what remains is nothing for the hearings officer to review. Should the Board allow a CCH to proceed, Mr. Starn asked that the scope of the CCH be clearly limited to what was before the Board on January 27, 2005 as item J-2 and make it clear it does not involve the signalized intersection and the traffic management plan.

Toni Magnaula, the Association Manager for the Ilikai confirmed that Chairperson Young spoke with Mr. Cambra. Ms. Magnula stated that the Ilikai would like to have the CCH and should that not be the Board's decision then they would like this item deferred.

**The Board made it clear that if there is a Contested Case Hearing the scope of the hearing is strictly limited to the Joint Use Agreement, Item J-2 and also that the hearings officer will expedite this matter as quickly as possible.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item D-5: Resubmittal – Forfeiture of General Lease No. S-4899, Ronald Lopes, Lessee, Maunalaha Homesites, Opu, Makiki, Oahu, TMK: (1) 2-5-24:32.**

Mr. Tsuji reminded the Board this item was previously before them due to the lessee's failure to post the required liability insurance. At that meeting the lessee stated he was working with an insurance company to get some insurance and at this point this is still the case.

Mr. Molman communicated he has been in contact with the insurance company and they've indicated the liability insurance will be approximately \$800.00 per year. Mr. Lopez acknowledged he is okay with the premium amount.

**The Board allowed the lessee sixty (60) days to acquire liability insurance.**

**Unanimously approved as amended (Johns/DeMello).**

**Item E-2: Request to Waive the Untimeliness of Requests for a Contested Case Hearing and to Consider Appointment and Selection of Hearing Officer to Conduct all Hearings for One (1) Contested Case Hearing Regarding Board Action of February 10, 2006 – Auctioning of Leases Waimea Canyon/Kokee.**

Dan Quinn notified the Board the department received ten request for a contested case hearing (CCH) regarding the disposition of leases in Waimea Canyon/Kokee. Mr. Quinn noted they were not contesting the Board's decision to auction the leases but the perceived property rights for the ownership of the cabins as the meeting agenda did not

list the fact that the revised recommendation did not provide for compensation to the lessees ownership of the structures. Mr. Quinn recommended the Board waive the timeline and accept the requests for a Contested Case Hearing which were submitted after the deadline and that the Board deny all requests for a Contested Case Hearing.

Barbara Lorrichio interpreted what she understood to be staff's decision and wanted affirmation that this was correct. Ms. Lorrichio believes what Mr. Quinn is saying is that there will be no contested case hearing and there will be no compensation for improvements to the property if you don't succeed at the action. Ms. Lorrichio asked the Board how soon the auction would be to which Chairperson Young noted that the department is moving forward to get an appraisal to start the auction process.

Mr. Quinn noted that staff is targeting early September as the date for the auction process.

**Unanimously approved as submitted (Agor/Johns).**

**Item M-1: Issuance of Revocable Permit for Ian's Auto Body and Paint, Inc. for Inconsistent Use, Honolulu International Airport.**

**Item M-2: Issuance of Lease for Office Space U.S. Department of Agriculture Honolulu International Airport.**

**Unanimously approved as submitted (Johns/DeMello).**

**Item C-1: Acceptance of Hearing Officer's Report on Public Hearing for two additions and one removal of Forest Reserve lands on Oahu; and Approval and Recommendation to Governor for the issuance of Executive Order: 1) Addition of 910 acres to Ewa Forest Reserve, Manana, Ewa District, Oahu; 2) Addition of 2.457 acres to the Waimanalo Forest Reserve and for the Mount Olomana State Monument, Kailua, Koolaupoko District, Oahu; and 3) Removal of approximately 3,000 square feet from Honolulu Watershed Forest Reserve, Honolulu, Honolulu District, Oahu.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item L-1: Approval for Award of Construction Contract: Job No. J00C305A – Poli Poli Check Station ADA Barrier Removal, Job No. J00C306A – Kanaha Pond Kiosk Parking ADA Barrier Removal, Job No. J00CG00A – DLNR Annex – Maui ADA Barrier Removal Maui, Hawaii.**

**Item L-2: Approval for Award of Construction Contract – Job No. J00C302A Maui Baseyard Office ADA Barrier Removal Kahului, Maui, Hawaii.**

**Item L-3: Approval for Award of Construction Contract – Job No. F00CF46B, Individual Wastewater System Improvements Kokee State Park, Waimea, Kauai, Hawaii.**

**Item L-4: Approval for Award of Construction Contract – Job No. F00CF59A Individual Wastewater System Improvements at Puaa Kaa State Wayside Hana, Maui, Hawaii.**

**Item L-5: Approval for Award of Construction Contract – Job No. F00CF32A Individual Wastewater System Improvements at Iao Valley State Monument Wailuku, Maui, Hawaii.**

**Item L-6: Approval for Award of Construction Contract – Job No. F00CF60A Individual Wastewater System Improvements at Palaau State Park, Molokai, Hawaii.**

**Unanimously approved as submitted (Johns/Schuman).**

**Item D-3: Consent to Assign General Lease No. S-5670, Tropical Ponds Hawaii, LLC, Assignor, to Big Island Farmers Market, LLC, Assignee, Hualua, North Kohala, Hawaii, TMK: (3) 5-5-07:05.**

**Item D-7: Consent to Renewal of Revocable Permit No. 12 for Lands under Governor’s Executive Order No. 1598 to Kenneth and Esther Ohta; Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-25:36 (Portion).**

**Unanimously approved as submitted (Johns/DeMello).**

**Item D-1: Rescind Prior Board Action of March 25, 1986, Agenda Item F-4, Direct Sale of Easement to Hawaii Electric Light Company, Inc. (HELCO) for Utility Purposes; Kalapana, Puna, Hawaii, TMK: (3) 1-2-03:portion of 12.**

**Item D-2: Rescind Prior Board Action of April 12, 1985, Agenda Item F-5, Direct Sale of Easements to Hawaii Electric Light Company, inc. (HELCO) and Hawaiian Telephone Company (now known as Hawaiian Telecom, Inc.) for Utility Purposes; Kalapana, Puna, Hawaii, TMKs: (3) 1-2-03:05, 06, 12 & (3) 1-2-04:38.**

Member Johns recused himself.

**Unanimously approved as submitted by the remaining Board members (DeMello/Agor).**

There being no further business, Chairperson Young adjourned the meeting at 12:24 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review.

Respectfully submitted,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: THURSDAY, MARCH 16, 2006  
TIME: 11:00 A.M.  
PLACE: KALANIMOKU BUILDING  
ICSD VIDEO CONFERENCING CENTER  
1151 PUNCHBOWL STREET - BASEMENT  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the emergency meeting of the Board of Land and Natural Resources to order at 11:08 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Toby Martyn  
Ms. Taryn Schuman

Mr. Gerald DeMello  
Mr. Ron Agor

**STAFF**

Mr. Eric Hirano, Engineering  
Mr. Tarey Low, DOCARE  
Mr. Alvin Kyono, DOFAW  
Ms. Lori Takabayashi, Land  
Ms. Faith Ching, CWRM

Ms. Gerry Kahili, DAR  
Mr. Wayne Souza, Parks  
Mr. Wade Ishikawa, DAR  
Mr. Daniel Ornellas, Land  
Mr. Alton Miyasaka, DAR

**OTHERS**

William Wynhoff, Deputy Attorney General  
Mr. Colin Wong, Attorney General's Office  
Ms. Melody Heidel

Chairperson Young and Board Members DeMello, Martyn, Agor and Schuman each verbally noted that they've seen, read and approved the Findings regarding the Emergency meeting.

**Item L-1: Authorize the Department of the Attorney General and its agents, employees, consultants, and investigators, to enter upon private property for the purposes of investigating and inspecting dams and**

**reservoirs located within the County of Kauai pursuant to Hawaii  
Revised Statutes Chapter 179D.**

Deputy Attorney General William Wynhoff disclosed that the Board may hold an emergency meeting if the Board finds that there is an imminent peril to the public welfare which requires a meeting or if an unanticipated event requires the Board to take action. If the determination is made that it is an unanticipated event the Attorney General is required to concur, which Attorney General Mark Bennett has done.

Mr. Wynhoff made it known this submittal deals with the emergency situation occurring on the island of Kauai. He went on to say the state is mobilizing as many government resources available to respond to the situation as well as to ensure there won't be any further disasters at that area or in other areas. Mr. Wynhoff disclosed the Board of Land and Natural Resources (BLNR) has authority over dams including dams on private property and one of its powers with respect to dams and reservoirs is the power to authorize entry onto private land which is the subject of today's submittal. He pointed out the government has other means of entering onto private property but it is their intention to make sure all authority is being invoked. Mr. Wynhoff communicated that at present there are no issues with landowners stopping government officials or representatives from going onto their land but in this case it might not be possible for the state to track down the owner of the property to obtain permission to access their land. Mr. Wynhoff disclosed that the Attorney General has already contacted a dam expert and this action would authorize that individual to enter onto private property. As events are moving so quickly, Mr. Wynhoff asked the Board if needed to be able to amend the submittal as it may be possible that the Attorney General has already retained this expert.

Board Member Agor asked the Attorney General if a situation occurs in which an agent of the state inspects a private dam and a decision is made that immediate mediation needs to happen will the state take responsibility for that dam or do we instruct the private owners to do something about that situation. Mr. Wynhoff acknowledged that it is a very important question but that issue is not an issue before the Board today. If a situation occurs and immediate action must be taken to prevent a disaster, Mr. Wynhoff believes that action will be taken. Mr. Wynhoff assured Board Member Agor that there is no doubt in his mind that everything would be done to try to prevent a repeat of what has happened.

Melody Heidel, Conservation Organizer with the Sierra Club testified in support of staff's recommendation. Given the circumstances she feels it is critical to approve staff's recommendation to ensure public safety and the environmental health of the community. Mr. Heidel stated that they are available through a public partnership to assist in any way through their Blue Water Hotline and Response Team.

**The Board amended the Recommendation as follows:**

**“3. The Board’s action shall be retroactive to the extent necessary and proactive in the event that there are any other consultants or investigators retained.”**

**Unanimously approved as submitted (Agor/Martyn).**

There being no further business, Chairperson Young adjourned the meeting at 11:15 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review.

Respectfully submitted,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: THURSDAY, MARCH 23, 2006  
TIME: 4:00 P.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 4:45 p.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Ted Yamamura  
Mr. Ron Agor

Mr. Tim Johns  
Mr. Gerald DeMello  
Ms. Taryn Schuman

**STAFF**

Mr. Russell Tsuji, Land

Juliet Kazanjian, Fiscal

**OTHERS**

Mr. Colin Lau, Deputy Attorney General  
Mr. William Wynhoff, Deputy Attorney General  
Ms. Haunani Apoliona  
Mr. Ernie Kimoto

Mr. Clyde Namuo

**Briefing on ceded land issues conducted by Haunani Apoliona and Clyde Naumuo of the Office of Hawaiian Affairs.**

Clyde Namuo representing the Office of Hawaiian Affairs (OHA) started off the briefing by showing a video presentation that talked about the western and Hawaiians view of land ownership. The Hawaiian system was viewed that the alii held the lands in trust for the gods and for the benefit of the people. The western system in contrast was oriented to specific people owned specific parcels of land. The western concept was that land was meant to be bought and sold and possessed. This difference in opinion provided turmoil for the people. In 1848 process called the Mahele took place – a sharing/division of land

that would lead to fee simple ownership. These lands today are known as the ceded lands. Later the Organic Act was adopted which recognizes that Hawaiian ceded lands were special. I stated the territorial government had the authority to manage the land but they also had a special duty – the income and proceeds generated by the lands will be used for the benefit of the inhabitants of Hawaii, primarily for education. Under the newly created state of Hawaii the Admission Act (5f) was signed which defines how the ceded lands were to be governed.

Mr. Namuo continued the presentation by discussing Section 5(f) of the Admission Act. Under section 5(f) of the Admission Act it states that these lands which were ceded from the government to the provisional to the territory to the State would become a public trust. Mr. Namuo noted the Admission's Act does not establish the trust itself it just states that a trust must be established if Hawaii becomes a state. In 1978 the State held a constitutional convention and created article twelve which provided constitutional rights to Native Hawaiians to create a public trust. In Section Six, Article Twelve it stated "the board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in §4 of this article for native Hawaiians." A representative from OHA made it known their office is currently being sued for providing benefits to people with less than fifty percent (50%) Hawaiian. These individuals suing OHA believe the law does not allow OHA to provide for individuals with less than 50 % Hawaiian. OHA on the other hand believes that Article 12, Section 6 of the Constitution clearly states that the benefits they provide are to Hawaiians and native Hawaiians. Their position is the Admission's Act simply said you will have a public land trust and the State constitution defines it further by saying the proceeds from the lands will be used for Hawaiians and native Hawaiians. Mr. Namuo believes there is some misunderstanding in the community with regards to the interpretation on this section. Mr. Namuo discussed the purpose of OHA which is the betterment of conditions of native Hawaiians. He went on to discuss HRS §171-18 and spoke of the difference between the Public Land Trust and the Department of Land and Natural Resources (DLNR) Land Trust. At present the size of the Public Land Trust is estimated to be approaching two million acres but according to a consultant hired by the State Auditor that total amount may be between 1.2 and 1.4 million acres.

Haunani Apoliona, a Trustee with OHA continued the presentation by communicating on September 7, 1983 OHA filed a Complaint for Declaratory and Injunctive Relief against The Chairman of the Board of Land and Natural Resources (BLNR). On March 8, 1984 the trustees at OHA filed a second complaint for Declaratory and Injunctive Relief. Once again nothing happened. In 1987, the court consolidated 1983 and 1984 cases and the Hawaii Supreme Court ruled there are no "judicially discoverable and manageable standards" and that what OHA is entitled to must be clarified by the Legislature. In 1990 the governor's office and OHA began negotiations of clarify OHA's revenue entitlement. In January 1990 Act 304 appeared to resolve three main issues: 1) What lands were subject to the trust; 2) The type of revenue from which OHA should receive a share; and

3) The formula for deriving past and future income to OHA. The Act also mandated that the State negotiate with OHA to determine the amounts due to OHA for use of ceded lands from 1980 through 1991. In 1993 Act 35 enabled a partial settlement agreement in the amount of approximately 135 million and stated how the State would come up with the money. In 1994 OHA sued the State on the unresolved issues and in 1996 Judge Heely rules in favor of OHA's motion. In April 1998 the Supreme Court heard the dispute and urged both sides to negotiate and reach an out of court settlement.

Mr. Namuo took over the presentation and continued with the events that have transpired. In 1997, the Legislature enacted Act 329 which suspended the revenue stream and instead substituted \$15.1 million for two fiscal years 1997-1998 and 1998-1999. It also established an eight member committee to study and make recommendation on "all outstanding and anticipated issues . . . currently or potentially relating to the public land trust." Also in 1997 Congress enacted the Forgiveness Act which excused \$28.2 million in payments the state made from the airport to fund OHA as public land trust revenue. Along with the mandate clear instruction were given from Congress that airport related money should not be used to pay ceded lands claim. The Forgiveness Act also stated that nothing in its terms should be construed to affect trust obligations or state statutes defining their obligations to native Hawaiians. Two years later in April 1999 negotiations between OHA and the State were held at which time the State offered a settlement which included cash and lands but required an amendment to Article 12, Section 6 as well as portions of Chapter 10 which governs the entitlements of OHA, and also a repeal of OHA's constitutional and statutory entitlements to further Public Land Trust revenues. Following attempts to arrive at a settlement in 2000 there were two landmark cases Rice vs. Cayetano which struck down the state's Hawaiians only requirement to vote in the OHA election and OHA v. State of Hawaii which challenged the existence of OHA. On September 12, 2001 the Hawaii Supreme Court decided that Judge Heely's decision was in essence correct but the Court found conflict between the Federal Forgiveness Act and Act 304. As a result of the Supreme Court's decision, the State stopped all Public Land Trust revenue payments to OHA. On February 11, 2003 soon after taking office, Governor Linda Lingle issued an Executive Order restoring public land trust revenue payments to OHA as well as back pay to July 2001. Moving forward to present day, Mr. Namuo acknowledged there are currently two lawsuits filed by OHA relating to ceded lands that are pending in the Hawaii Supreme Court.

Ms. Apoliona came forward to speak of how we can improve our working relationship between DLNR and OHA. Ms. Apoliona made six recommendations: 1) An ex officio seat on the BLNR designated and named by OHA would expedite communication between the Boards; 2) Make consultation with OHA with respect to management and disposition of Public Land Trust assets a matter of routine; 3) Ensure that lands traded for Public Lands Trust lands retain trust land character as required by law; 4) Ensure that Public Lands Trust lands set aside by Executive Order retain trust land character as required by law; 5) Assist OHA in its mission to preserve the history, cultural significance and traditional Hawaiian practices on the lands in the Public Land Trust; 6) Ensure that administrators and staff directly involved in managing, maintaining and leasing Public Land Trust Lands, receive orientation and training in Hawaiian traditional

practices, culture and language, as appropriate. On going consultation with Hawaiian experts should be made readily accessible to the DLNR administrators and staff.

There being no further business, Chairperson Young adjourned the meeting at 6:00 p.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, MARCH 24, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young (left at 9:02 am)  
Mr. Ted Yamamura  
Mr. Ron Agor (arrived at 9:20 am)

Mr. Tim Johns  
Mr. Gerald DeMello  
Ms. Taryn Schuman

**STAFF**

Mr. Sam Lemmo, OCCL  
Mr. Dan Quinn, Parks  
Ms. Christen Mitchell, DOFAW  
Mr. Ross Smith, DOT

Ms. Charlene Unoki, Land  
Mr. Glen Abe, DOT  
Mr. Richard Rice, DOBOR  
Ms. Athline Clark, DAR

**OTHERS**

Mr. Randy Ishikawa, Deputy Attorney General  
Mr. Douglas Chin, D-3  
Ms. Diana Bertsch, E-1  
Mr. Gary Lambert, J-1  
Mr. Mike Tousad, F-3  
Mr. .Don Palawski, F-3  
Mr. Robert Braun, F-3

Mr. William Moore, D-2  
Mr. John Sakaguchi, K-1  
Mr. Phil Hauret, D-7  
Dr. Bud Antonelis, F-3  
Ms. Cha Smith, F-3

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

**Motion made to amended the title of item F-2 to read**

**“The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).”**

**Unanimously approved to amend the title of Item F-2 (Johns/Schuman).**

**Item A-2: Minutes of February 24, 2006 briefing.**

**Deferred due to lack of quorum.**

**Item A-4: Minutes of March 10, 2006**

The Board made the following changes:

**1) Page 3, first sentence**

**“~~[Kauai]~~ Kali Watson, attorney for All Tree Service, Inc., appeared before the Board and together with Dave Kendrick and Terry Rodriguez conducted a power point presentation showing the subject site and their operation.”**

**Unanimously approved as amended (Yamamura/DeMello).**

**Item D-3: Consent to Assign Grant of Easement Identified as General Lease No. S-4227, SWVP Keauhou L.L.C., Assignor, to KBH, Inc., Assignee, Kahaluu, North Kona, Hawaii, TMK: (3) 7-8-13:42.**

Charlene Unoki, Acting Assistant Administrator of the Land Division let it be known that the current tenant SWVP Keauhou LLC is in the process of selling their hotel and would like to transfer the subject easement to the new owner. Ms. Unoki recommended the Board consent to the assignment of the existing Grant of Easement identified as General Lease No. S-4227, from Keauhou L.L.C., as Assignor to KBH Inc., as Assignee subject to the terms and conditions listed in staff’s submittal.

Douglas Chin of Carlsmith Ball LLP was present and noted his agreement with staff’s recommendation.

**Unanimously approved as submitted (DeMello/Schuman).**

**Item D-2: Conveyance By Land Patent Grant of Addition to Hilo Medical Center, Hawaii Health Systems Corporation, Piihonua, South Hilo, Hawaii, TMK; (3) 2-3-032:portion of 001.**

Ms. Unoki is seeking the Board's permission to convey a piece of property (10 acres) that is currently being used as a parking lot. She reminded the Board Act 262, SLH 1996 created the Hawaii Health Systems Corporation (HHSC) for the purpose of operating the community hospitals statewide. Ms. Unoki also noted that HHSC is asking that the rent be waived although staff is not in agreement. Ms. Unoki recommended the Board authorize the fee simple conveyance by land patent grant of an approximate 10-acre portion of TMK: 2-3-032: 001 to HHSC and grant an immediate right of entry to HHSC to allow planning and construction of the parking lot and related improvements.

William Moore, a Planning Consultant representing Hilo Medical Center and Ron Terry, the chief author of the Environmental Assessment project were present to answer any questions. The Board asked Mr. Terry if an agreement was made on a rent amount to be paid starting in 1997, why has his organization failed to make payments. Mr. Moore noted that the State is subsidizing the hospital and they are willing to pay the back rent as well as the agreed upon rent.

**Unanimously approved as submitted (DeMello/Schuman).**

**Item E-1: Request from the World Triathlon Corporation to use the Hapuna Beach State Recreation Area in South Kohala, Hawaii for the 2006 Ford Ironman 70.3 Honu Half Triathlon (70.3).**

Dan Quinn, Administrator of State Parks mentioned that the World Triathlon Corporation is seeking permission to use the Hapuna Beach State Park to stage the 2006 Ford Ironman 70.3 Honu Half Triathlon. Mr. Quinn conveyed the swim portion of the Triathlon will be based out of the park. Race organizers are asking to begin set up on Thursday, June 1, 2006. Mr. Quinn recommended the Board approve the issuance of a Special Use Permit to the World Triathlon Corporation to utilize the Hapuna Beach State Recreation Area for the 2006 Ford Ironman Honu Half Triathlon subject to the four conditions listed in staff's submittal.

Diana Bertsch representing the World Triathlon Corporation was present.

**Unanimously approved as submitted (DeMello/Yamamura).**

**Item K-1: State Civil Defense Warning and Communications Device Installation at Haena Beach Park, Haena, Halele'a, Kauai, TMK: (4) 5-9-005:019.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands noted that the County of Kauai is requesting placement of a warning and communication device at Haena Beach Park. Mr. Lemmo recommended the Board approve this application to install a State Civil Defense Disaster Warning and Communication Device subject to the terms and conditions listed in staff's submittal.

John Sakaguchi representing the agent Wilson Okamoto announced that he has read staff's submittal and is in agreement with the terms and conditions.

**Unanimously approved as submitted (Agor/DeMello).**

**Item K-2: Amendment to Condition 7 & 9 of Conservation District Enforcement File No. HA-05-19 located at Hokukano, Ka'u, Island of Hawaii, TMK: (3) 9-5-016:036.**

**Motion to Withdraw.**

**Unanimously approved to withdraw (DeMello/Agor).**

**Item J-1: Consent to Mortgage and Amendment for Extension of Lease Term, General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona, Hawaii, Tax Map Key: 7-4-008-042.**

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) communicated that GKM, Inc. dba Gentry's Kona Marina would like to acquire a mortgage from First Hawaiian Bank for \$1,000,000 to make improvements at the subject site. As a requirement of the mortgage Gentry is seeking to extend the term of the lease for an additional twenty years. Mr. Rice recommended the Board consent to the mortgage between GKM, Inc., Mortgagor and First Hawaiian Bank Mortgagee subject to the terms and conditions listed in staff's submittal.

Gary Lambert, General Manager of Gentry's Kona Marina and Vice President of GKM, Inc., appeared before the Board seeking their approval of staff's recommendation. Mr. Lambert let it be known the proceeds from the mortgage will be used to renovate the haul out slip, travel lift and an existing steel building on the property. They estimate these improvements to cost \$1,000,000.

**Unanimously approved as submitted (DeMello/Yamamura).**

**Item M-3: Amendment to Issuance of a Direct Lease Together with a Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1) 9-1-14:24 (Por) and (1) 9-1-74:37 & 38 (Pors).**

**Item M-4: Issuance of an Inconsistent Revocable Permit A Tom Moffatt Production, Inc. Pier 19 Ferry Terminal Building, Honolulu Harbor.**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item M-1: Issuance of Revocable Permit Ground Transport, Inc. for Inconsistent Use Honolulu International Airport.**

**Item M-2: Consent to Sublease Retail Concession DFS Group L.P. to Maui Divers of Hawaii, Ltd Honolulu International Airport.**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item D-7: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access and Utility Purposes, Sunset Beach Elementary School, Pupukea, Oahu, TMK: 5-9-05:18 portion.3**

Member Johns recused himself.

Ms. Unoki announced that the state acquired the property from the James Campbell Estate in 1975 and with the property came an encumbrance by Hawaiian Electric Company for a term easement. Ms. Unoki recommended the Board authorize the issuance of a perpetual non-exclusive easement to Hawaiian Electric Company, Inc. covering the subject area for access and utility purposes.

Phil Hauret representing Hawaiian Electric was present.

**Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).**

**Item F-3: The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).**

Athline Clark, a Planner with the Division of Aquatic Resources (DAR) noted this is the first access permit to the Northwestern Hawaiian Islands (NWHI) being issued. This permit would allow access for the National Marine Fisheries Service to conduct three different types of activities – setting up a monk seal recovering camp and recovering work, conducting green sea turtle research and conducting a research project on sharks and shark incidents involving monk seal pups at the French Frigate Shoals. The second permit which is a supplemental permit would allow access for the research vessel. Due to the timing of the project, Ms. Clark noted that the review process has to be cut short but noted that it is their intention to go through the entire review process on future permits. With regards to the permit review process, Ms. Clark noted that three staff members were asked to review the permit and went through each of their recommendations. Ms. Clark recommended the Board authorize and approve with stated conditions, a Research, Monitoring and Education Permit and Special Activity Permit to the National Marine Fisheries Service and the Oscar Elton Sette, for activities and access within the NWHI.

The Board asked Ms. Clark to update them on the formulization of the permit review committee. Ms. Clark communicated they are in the process of putting together a permit

review committee that will be made up of someone from the Kahoolawe Island Reserve Commission (KIRC), a staff member from the Division of Forestry and Wildlife (DOFAW) that works at Kure Atoll, staff from DAR, individuals from the Office of Hawaiian Affairs (OHA), staff from Fish and Wildlife Service, the National Fisheries Service and NWHI Ecosystems Reserve. Ms. Clark informed the Board the next set of permits will be reviewed by the committee.

Mike Tousad, Deputy Regional Administrator for the Pacific Islands regional office of the NOAA Fisheries Service came forward to provide testimony. Mr. Tousad let it be known that they hope to address some of staff's recommendation but agrees with the need to work with the State and the Fish and Wildlife Service to regulate these activities. He feels there is a need to slow the decline in the population of monk seals.

Dr. Bud Antonelis conducted a power point presentation that dealt with a shark removal Experiment at French Frigate Shoals. Mr. Antonelis believes the Hawaiian monk seal is a national and international treasure and is one of only two endemic mammals in Hawaii. He went on to say the Hawaiian monk seal population is at its lowest level in recorded history and is in a crisis situation. At present through mitigation efforts the decline in the populations has slowed to about 4% per year. Mr. Antonelis believes the number of seals will probably fall below 1000 within the next five years. A large factor contributing to this decline is the juvenile mortality rate of the monk seals due to attacks by sharks. He went on to say a discrete number of Galapagos sharks have learned to predate on young pup seals and this shark behavior likely stems from such factors as loss of habitat, access to pups and easy access into the atoll via previously dredged channels. Dr. Antonelis went over the results of the shark removal experiment at French Frigate Shoals. The results showed that the removal of sharks preying on young pups before or near the time of weaning is one of the most successful and measurable actions taken to enhance juvenile survival. Predation on pre-weaned pups has dropped significantly from 37 in 1997 to an average of about 10 per year since the study began in 2000.

Don Palawski, who works for the US Fish and Wildlife Service and manages eight (8) national wildlife refuges in the central Pacific, testified. He spoke of the Hawaiian Islands refuge that was established in 1909 by Teddy Roosevelt which extends from Nihoa to the Pearl and Hermes. He spoke of their work at the French Frigate Shoals and working with the National Marine Fisheries Service to monitor and inventory monk seals and green sea turtles. With regards to staff recommendation, Mr. Palawski agrees with and supports monitoring and inventorying of the monk seal and sea turtle population. Mr. Palawski noted they started this project five years ago in which they researched if sharks were getting pups before being weaned from their mothers and what techniques through research would be used in the future to protect these young seals. In closing, Mr. Palawski agrees with staff's recommendation to monitor the monk seal and turtle population but would like other actions to hold until various organizations will be able to meet and discuss if this is the best way to proceed.

Cha Smith, Director of Kahea read comments supplied by Stephanie Fried. Ms. Fried had four impressions upon reading staff's submittal 1) The first permit application for the

new NWHI State Refuge is notable for what it does say as well as what it doesn't say; 2) the permit request is for the killing of apex predators in this apex-predator dominated ecosystem; 3) there have been only very limited consultation with the Native Hawaiian community and 4) the realization that it is the Department's first attempt and although somewhat bumpy will be worked out once protocols are established. Ms. Fried's letter expressed significant concern that there is no recognized panel of ecosystem scientists to evaluate the impact to the ecosystem. She also noted that there is no mention made by NMFS of the fact that juvenile seals are also found emaciated and starving and that lack of prey may play an important role. Ms. Fried believes it would be important to learn what measures could be taken to reduce competition for monk seal prey.

Bob Braun, a veterinarian in Hawaii for twenty years and a contractor to NOAA Fishers provided testimony. Mr. Braun spoke of their efforts in 2001 to haze the aggressive sharks then deter the sharks prior to attacking the pups. At that time the take requirement for the sharks was that the shark would need to attack a pup while staff maintained visual contact of the shark only after the second attack could they take down the shark. Mr. Braun feels the opportunity for public input is more than adequate. Lastly, Mr. Braun communicated that there is a mixing of two types of issues – the overall decline in the population of juvenile monk seals being attributed solely to sharks and secondly the taking of sharks to prove this theory.

**The Board amended the Recommendation Section by deferring the recommendation dealing with sharks and instructed staff and the permit applicant to work with US Fish and Wildlife Service and the Native Hawaiian community to come up with some protocols.**

**Unanimously approved as amended (Yamamura/Schuman).**

**Item F-1: Request for Approval to Amend/Extend a DLNR/UH Contract (No 47471 – Hawaii Fish Aggregating Device System) to Provide Additional Funds (\$320,000) for the Period of July 1, 2006 Through June 30, 2007.**

**Item F-2: Request for Approval to Amend/Extend Eight (8) Project Agreements with the Research Corporation of the University of Hawaii for FY07 for the Following Projects: Coral Reef Initiative (Contract No. 49090), Coastal Stock Enhancement (Contract No. 49820), Public Fishing Areas (Contract No. 50027), Stream/Estuarine Studies (Contract No. 51059), Marine Population Survey (Contract No. 51058), Uluu Tagging (Contract No. 52851), and Finfish Broodstock and Larvae Culture (Contract No. 52994), and Hawaii Marine Recreational Fishing Survey (Contract No. 48518).**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item C-1: Request approval of Contract with Ms. Denise Laitinen to Coordinate the Federally Funded Assistance Function of the Hawaii Firewise Program for the Division of Forestry and Wildlife.**

**Item C-2: Authority to Conduct a Public Hearing to Add the Land of Wao Kele O Puna (Tax Map Keys: (3) 1-2-010:002 and (3) 1-2-010:003) to the Forest Reserve System.**

**Unanimously approved as submitted (DeMello/Yamamura).**

**Item D-5: Forfeiture of Duke Kahanamoku Beach Concession Contract Filed as General Lease No. S-5801, C & K Beach Service, Inc., Concessionaire, Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, TMK: 2-3-037:021.**

**Motion to defer.**

**Unanimously approved to defer (Yamamura/Agor).**

**Item D-1: Grant of Term, Non-Exclusive Easement to Brendan McNamara for Access and Utility Purposes, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-06:within 53 & 54.**

**Item D-4: Grant of Perpetual, Non-Exclusive Easement to John Ellis and Claudia Johnson-Ellis for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-05:portion 20.**

**Item D-6: Withdrawal from Governor's Executive Order No. 1786 to the Board of Harbor Commissioners for Beach Control Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-3-37:21, 2-6-8:29.**

**Item D-8: Rescind Prior Board Action of January 28, 2000 (Item D-22), Department of Agriculture Requests for Designation, Set Aside for Addition to the Kalaeloa Agricultural Park and a Management Right-of-Entry at Honouliuli, Oahu, TMK: (1) 9-1-31:portion of 1.**

**Item D-9: Set Aside to the City and County of Honolulu Department of Parks and Recreation for Park Purposes, Waiawa, Oahu, TMK: (1) 9-7-68:4.**

**Item D-10: Amend Prior Board Action of January 13, 2006 (Agenda Item D-16), After-the-fact Approval of Lease of Federal Property with the Secretary of the Air Force on behalf of the Department of Education, for Public School Purposes, Hickam Air Force Base, Oahu, TMK: (1) 9-9-01:13 (Portion).**

**Unanimously approved as submitted (DeMello/Agor).**

**Item L-1: Approval for Award of Construction Contract – Job No. J00CF11A, Iolani Palace State Monument ADA Barrier Removal, Honolulu, Oahu, Hawaii.**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item E-2: Briefing to the Board on the Status of the Diamond Head Crater Celebration at Diamond Head State Monument, Oahu.**

Mr. Quinn went over the set up on the grounds of Diamond Head as well as the line up of entertainers. He indicated the organizers of the event will be setting up throughout the week leading up to the event. Mr. Quinn informed the Board staff would be present beginning on Friday and through the end of the event.

**The Board instructed staff to report to the Board at the completion of the event.**

**No Action.**

**Item E-3: Update to the Board of Land and Natural Resources on action taken at the September 23, 2005 BLNR meeting relating to Kealakekua Bay.**

Member Johns made it known that he is still receiving calls and emails from members of the community stating that there has been insufficient time for input prior to this report coming before the Board.

**The Board instructed staff to re-double their efforts in working with the community.**

**No Action.**

**Item A-1: Supplement to January 13, 2006.**

Member Yamamura recused himself.

**Unanimously approved by the remaining Board members (Schuman/Agor).**

**Item A-3: March 9, 2006**

Member DeMello recused himself.

**Unanimously approved as submitted by the remaining Board members (Yamamura/Schuman).**

**Item A-5: Minutes of March 16, 2006.**

Member Johns and Yamamura recused themselves.

**Deferred due to lack of quorum.**

There being no further business, Chairperson Young adjourned the meeting at 10:55 a.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: THURSDAY, APRIL 13, 2006  
TIME: 8:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the briefing of the Board of Land and Natural Resources to order at 8:14 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Gerald DeMello

Mr. Tim Johns  
Mr. Ron Agor

**STAFF**

Ms. Melanie Chinen, Historic Preservation

**OTHERS**

Mr. Vince Kanemoto, Deputy Attorney General

**Presentation by the State Historic Preservation Division on upcoming activities during 2006 for division theme year “Celebrating Hawaii’s Heritage – Sustaining Our Islands Legacy.”**

Melanie Chinen, Administrator of the State Historic Preservation Division (SHPD) announced that they have designated 2006 as the Year of Historic Preservation and the slogan they’ve come up with is “Celebrating Hawaii’s Heritage – Sustaining Our Island Legacy.” In celebration of Hawaii’s heritage their message is to get the public to understand that Historic Preservation is not limited to the burial programs but they are responsible for preserving all cultures and heritages of Hawaii. Ms. Chinen hopes to help people understand that we need to remain connected to our past and where we come from if we are to be successful in the future. She believes people who become disconnected often find themselves involving in negative activities.

Ms. Chinen pointed out the word “Sustaining” in the title “Sustaining Our Island Legacy” promotes keeping our culture alive and that’s what makes people want to visit Hawaii. Also “sustaining” is a word that makes good economic sense and one of the messages they’re promoting is that Historic Preservation makes good economic sense.

SHPD has also supported a Heritage Caucus at the State House of Representatives but many of the bills the caucus promoted and the division supported died this particular legislation session. One bill that passed established administrative penalties to those who knowingly violated mitigation and historic preservation plans.

Another big event happened in February 2006 at which time SHPD kicked off a round table discussion group comprised of both archeologist from the government, private archeological firms and individuals from the University of Hawaii. Ms. Chinen let it be known, part of the round table discussion group is a subgroup which is made up of architects from the government, private firms and the University. These groups would meet once a month to discuss specific topics in the review process and to streamline that process. Approximately on October 15, 2006 the groups will draft a report of the committee’s recommendations which will be reviewed and a comment period will also be made available. They committee will again reconvene on October 30, 2006 at Washington Place at which time staff would be able to thank these individuals for their time and effort.

Ms. Chinen went over the various events planned from May through December in connection with “Celebrating Hawaii’s Heritage – Sustaining Our Island Legacy”

- |            |  |
|------------|--|
| May 1      | Governor Proclaims Historic Preservation Week at the State Capitol                   |
| May 3      | Preservation Display and Speaker Forum at State Capitol (11 am – 3 pm)               |
| May 11-13  | International Cultural Summit at Hawaii Convention Center                            |
| June 27-29 | U.S. Fish and Wildlife Services Conference: Considering Cultural Resources           |
| August 2   | State Historic Preservation Division Symposium                                       |
| September  | Doors Open Poster Contest Announced at Schools & Distribution of Curriculum Resource |
| October    | Selection & Award of Poster Contest Winner   |
| November   | Poster Distribution, Public Service Announcement and Doors Open Hawaiian Style       |
| December   | Possible Holiday Heritage Concert  |

There being no further business, Chairperson Young adjourned the meeting at 8:30 a.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: THURSDAY, APRIL 13, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Gerald DeMello

Mr. Tim Johns  
Mr. Ron Agor

**OTHERS**

Mr. Russell Tsuji, Land  
Mr. Steve Molman, Land  
Mr. Keith Chun, Land

Mr. Sam Lemmo, OCCL  
Mr. Barry Cheung, Land  
Mr. Paul Conry, DOFAW

**STAFF**

Mr. Vince Kanemoto, Deputy Attorney General  
Mr. Linda Chow, Deputy Attorney General  
Mr. Gregory Sue, D-1  
Mr. Dale Bonar, C-1  
Mr. Terry Rodrigues, D-6  
Mr. Tom Stanton, D-6  
Mr. Steve Nimz, D-6  
Ms. Ellen Yee, D-6  
Mr. Dave Thompson, D-6  
Ms. Annette Lee, D-6  
Mr. Dean Okamoto, D-6  
Mr. Patrick Oka, D-6  
Mr. Michael Teterling, D-6  
Ms. Rose Marifaso, D-4

Ms. Yvonne Izu, K-2  
Mr. Kali Watson, D-6  
Mr. William Tam, D-6  
Mr. David Fell, D-6  
Mr. Fred Humphrey, D-6  
Mr. Matthew Chun, D-6  
Mr. Clifford Migita, D-6  
Mr. Ed Miyashita, D-6  
Mr. Timothy Ross, D-6  
Mr. Don Clegg, D-4  
Ms. Julie Walters, D-4  
Mr. Jeff Ashmore, D-4

Mr. Walt Resneski, D-4  
Mr. Richard Clifton, D-4  
Mr. Richard McCarty, K-6  
Mr. Terry Brooks, D-11  
Mr. Ronald Sato, K-4  
Mr. Michael Gibson, K-6  
Mrs. Vicky McCarty, K-6

Mr. Phil Keniceck, D-4  
Mr. Michael Gibson, K-6  
Ms. Vicky McCarty, K-6  
Mr. Dickson Lee, D-11  
Mr. John Cross, D-3  
Mr. Richard McCarty, K-6

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

**Item K-1: Amendment to Condition 7 & 9 of Conservation Use Permit HA-3002 to resolve Enforcement File No. HA 05-19 Located at Hokukano, Ka'u, Island of Hawaii, TMK: (3) 9-5-016:036.**

Member Johns recused himself.

**Deferred due to lack of quorum.**

**Item A-1: Minutes of February 24, 2006**

**Deferred due to lack of quorum.**

**Item A-2: Minutes of March 16, 2006**

**Deferred due to lack of quorum.**

**Item A-3: Minutes of March 23, 2006**

**Unanimously approved as submitted (Johns/Agor).**

**Item A-4: Minutes of March 24, 2006**

**1. The Board made the following changes on Page 10**

~~“[Member Johns and Yamamura recused themselves.~~

~~The Board made a change on page 2, third paragraph to read~~

~~“Board Member Agor asked the Attorney General if a situation occurs in which an agent of the state inspects a private dam and a decision is made that immediate [mediation] action needs to happen will the state take responsibility for that dam or do we instruct the private owners to do something about that situation.”~~

~~Unanimously approved as amended by the remaining Board members (DeMello/Schuman).]~~

**“Deferred due to lack of quorum.”**

**Unanimously approved as amended (Johns/Agor).**

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

**Item D-1: Sale of Lease of Public Auction for Commercial Purposes, Kawaihae 1<sup>st</sup>, South Kohala, Island of Hawaii, TMK: (3) 6-1-03:15.**

Russell Tsuji, Administrator of the Land Division let it be known that Keith Chun has worked tirelessly to get the subject land rezoned for commercial purposes as there has been a lot of interest in this property. Mr. Tsuji recommended the Board Find the area to be an economic unit in terms of the intended use, find that the area is not suitable for hunting, nor will it become so during the term of the lease and authorize the sale of a lease at public auction covering the subject area for commercial purposes under the County of Hawaii zoning ordinance under the terms and conditions stated in staff's submittal.

Gregory Sue was present.

**Unanimously approved as submitted (DeMello/Johns).**

**Item K-2: Request for 180-Day Time Extension to the 180-day Processing Period Conservation District Use Application for the Conservation District Use Application (CDUA) OA-3266 to process Haseko request to utilize State-owned land for proposed drainage system improvements, Located Ewa District, Island of Oahu, TMK: (1) 9-1-11:002 and 003.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) reminded the Board the application is currently in a contested case mode and staff is in the process of hiring a hearings officer. Mr. Lemmo recommended the Board approve this request to extend the processing period for CDUA OA-3266 an additional 180 days (to November 9, 2006) to allow sufficient time to complete the contested case hearing process.

Yvonne Izu, attorney representing the applicant was present to answer any questions.

**Unanimously approved as submitted (Johns/Agor).**

**Item C-1: Request for Approval of a Land Conservation Fund Grant to Maui Coastal Land Trust for Partial Match for the Purchase of an Agricultural Conservation Easement on Kainalu Ranch, Molokai.**

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) announced that this is the start of the new Land Conservation Fund Program that the legislature passed last year. The program establishes an annual acquisition program in which the State could purchase important conservation lands. Mr. Conry communicated when the act establishing this program was passed the legislature specifically identified \$1.1 million dollars to be used for purchasing agricultural conservation easements in association with the Federal Farm and Ranch Program. Today's Board action would give the Department authority to go ahead and proceed with this program. Mr. Conry disclosed the subject parcel's estimated appraisal value is \$2.8 million. The way things are set up the Department will provide a grant to the Maui Coastal Land Trust and they will hold the conservation easement on the property. Maui Coast Land Trust will then work with the federal government to obtain the remainder of the funds. Mr. Conry recommended the Board authorize the Chairperson to execute a Memorandum of Agreement with the Maui Coastal Land Trust, to provide a grant of up to \$1,000,000 from the Hawaii State land Conservation Fund for Maui Coastal Land Trust to acquire and hold a perpetual agricultural conservation easement on Kainalu Ranch subject to the terms and conditions listed in staff's submittal.

The Board asked staff to include a condition in the Memorandum of Agreement stating if the federal funds are not available or we do not reach an agreement with the landowner for the Bargain component that the Departments funds would not be released.

Dale Bonar of the Maui Coastal Land Trust let it be known that the other monies are available and they are ready to go into escrow.

**Unanimously approved as submitted (Johns/DeMello).**

**Item D-6: Second Time Extension Request for Conservation District Use Application (CDUA) MA-3035B for James R. McCarty and Victoria L. McCarty Single Family Residence (SFR) Located at Honokohau, Island of Maui, TMK: (2) 4-1-002:008.**

Mr. Tsuji acknowledged this is a resubmittal from a previous Board meeting. He noted at the March 10, 2006 meeting there was extensive testimony from the tenant as well as witnesses in the area. Mr. Tsuji reminded the Board its previous decision was to defer action for thirty days at which time the tenant would need to establish to the satisfaction of the Board that the subject area is no longer used for his other operation which is not intensive. Since the last Board meeting the issue of back rent has surfaced. Upon consulting with the tenant staff was told that they are reluctant to pay the rent if they're going to lose their lease. Since that conversation, the tenant has paid the rent which is now current but there is still the issue of an outstanding performance bond which expired on March 4, 2006. Mr. Tsuji recommended the Board authorize the cancellation of General Lease No. S-5707, authorize the retention of all sums heretofore paid or pleaded under General Lease No. S-5707 as liquidated damages, terminated the lease and all rights of the Lessee and all obligations of the Lessor effective as of April 13, 2006 and

authorizes the Department of the Attorney General, the Department of Land & Natural Resources or their agents to collect all monies due the State of Hawaii under General Lease No. S-5707.

Steve Molman, Land Agent with the Land Division announced that up until Tuesday night staff was not clear as to if the baseyard on the subject property was relocated. Mr. Molman went on to say on Tuesday night the lessee sent staff copies of agreements for three different locations where they would relocate All Tree Service. Mr. Molman noted his concern with the Kailua site as it is zoned R-5 which does not allow a baseyard. Mr. Molman stated he does not believe there has been a change in activity at the subject location in terms of using it as a baseyard. He stated that the workers have been taking the trucks home and they've also arranged to meet at another location to receive their work orders in hopes of appeasing the community.

Kali Watson, Attorney representing All Tree Service, Inc., prefaced his comments by reminding the Board that at the last meeting an invitation was extended to staff to come to the subject site to check it out and see what has been done. This offer was never taken up and no action was followed through by staff. At today's meeting, Mr. Watson plans to establish their continued nursery expansion. Mr. Watson went on to conduct a slide presentation dictating what has been done at the subject site since the last Board meeting. To summarize their position Mr. Watson stated that the property is being used as required under the lease and is limited to a nursery. With regards to a performance bond by this week, Mr. Watson's client will be submitting a \$15,000 certificate of deposit and by the end of the week the balance (\$15,000) will be deposited (way in advance of the cure period).

The Board asked Mr. Watson if his power point presentation was made available to staff prior to today's meeting to which Mr. Watson replied no. The Board reminded Mr. Watson that it was his obligation to provide the Board with evidence of his client's compliance. Mr. Watson noted the letter he received from staff stated that his client has the burden of establishing full compliance which is what he feels he's done today.

Mr. Molman confirmed that Mr. Watson has continually invited staff to come to the subject property for a site visit but the issue at hand is the use of the property as the location of a baseyard which is an inappropriate use for the current zoning. When asked by the Board after hearing the testimony by Mr. Watson if he'd change his recommendation, Mr. Molman replied that he would defer action for sixty days at which time the lessee can use the property solely for intensive agriculture. In response to the Board's question Mr. Tsuji recommended hearing Mr. Rodrigues honestly tell the Board he is using the property for intensive agriculture and listen to the testimony of the community as he is not sure how the community feels.

The Board questioned if this item is eligible for a contested case. Mr. Tsuji made it know the lessee has an avenue through the judicial system. Mr. Tsuji stated that he has never seen a contested case hearing on a default issue. Deputy Attorney General Vince Kanemoto told the Board if there is a breach people can choose to challenge it

administratively or in court but the only issue before the Board is if there has been a breach. Mr. Kanemoto believes if you have a lease with the State you have a property interest.

The Board asked Mr. Watson who uses the office on the subject site. Mr. Watson replied that Mr. Rodrigues, his secretary and Leslie occupies that space. Leslie also added that the accountant for the nursery and someone to answer the phones are also in the office trailer. When asked by the Board if the office was the headquarters for All Tree Service, Mr. Rodrigues replied it is where he receives his calls for All Tree Service. Mr. Rodrigues noted if need be he can change where the calls for All Tree Service is received.

Bill Tam, attorney representing the Waimanalo Agriculture Association noted they have eleven farmers ready to testify on this item. He let it be known this issue before the Board is not a matter of where trucks are being parked but it is a much broader issue of how agriculture lands are used. Mr. Tam noted these farmers will testify on the effect of having this tenant at the subject site.

Tom Stanton, a farmer in Waimanalo for eighteen years and whose office is located directly across the street from the subject site testified before the Board. He noted since the last Board meeting he would like to make the Board aware of what has and has not been changed at the subject site. He communicated that All Tree Service still has their office in the trailer on the subject site. As far as things remaining the same, Mr. Stanton spoke of people coming in and out of the office all day long but he does not see anyone working in the fields on the nursery except for someone weedwacking the site within the last few days. He let it be known truck loads and truck loads of tree trimming waste from All Tree Service is being dumped at the property and being disguised as mulch thus saving money but not having to take the waste to the composing facility and paying the required fees. Mr. Stanton testified the only thing that has changed since the last Board meeting was that trucks no longer park in front of the office to get their daily work assignments. Instead they meet at Jack in the Box which is located a mile away. Mr. Stanton feels the future of diversified agriculture in Waimanalo is under serious threat and available land is becoming less and less.

David Fell, owner and operator of Hawaiian Sunshine Nursery and a 1979 graduate of the University of Hawaii, Horticulture Department testified. Mr. Fell told the Board his greatest challenge has been to find space to run a nursery. He disclosed he was a bidder on the subject property but was not successful. He feels he was out bid because the owners were operating with a different game plan and believes the proof is what the lessee has spent on infrastructure and what it was geared towards. Mr. Fell asked the Board to send a message to future bidders that if the lease terms specify intensive agriculture use the lot needs to be used for that purpose. Mr. Fell pointed out if All Tree Service was not using the subject site as a baseyard why is there tree trimming trucks in the neighborhood.

Steve Nimz, a resident of Waimanalo who is a graduate of the University of Hawaii with a degree in Tropical Agriculture and Horticulture appeared before the Board. Mr. Nimz let it be known for the past thirty-five years he's owned and ran a tree care business which he recently sold two years ago. He feels the subject property is an ideal location and has the set up to run a commercial operation. Mr. Nimz communicated that he recently sold his composting business and has knowledge in this area. He went over the process of getting the compost ready to be used and noted at the subject site all he sees his compost being dumped and nothing being done to get the compost ready for use.

Fred Humphrey, a resident of Waimanalo who lives about a quarter mile from All Tree Service and who is also a commercial grower and nursery owner provided testimony. Mr. Humphrey disclosed he owns a company that sells wholesale equipment and supplies to tree nurseries, plant nursery's and farms around the state. Through his work, Mr. Humphrey has visited a lot of tree farms and has never seen one that looks like All Tree Service. Within the last thirty days, Mr. Humphrey has seen All Tree Service purchase trees from one of his customers to plant on the subject site to give the appearance that this is a tree farm.

Ellen Yee, a farmer and who currently possess two DLNR leases and have been a farmer in Waimanalo for forty-five years testified. Ms. Yee pointed out the lease states what can and can not be done on the property. She told the Board they need to execute control on the land as agriculture lands are for agriculture use.

Matthew Chun a resident of Waimanalo agriculture lots spoke of his concern with the future of agriculture lands in Waimanalo and the State of Hawaii. He made it known that his father purchased nine acres of fee simple land fifty years ago and raised bananas and tropical flowers. In 1991, Mr. Chun graduated from the University of Hawaii with a degree in Horticultural Technology and went on to work with the United States Department of Agriculture (USDA) working at the inspection stations. Mr. Chun also took over his family's business MCA Tropical's in 1995. He spoke of the importance of keeping agriculture lands in agriculture as these lands are important in the viability of tourism. In his opinion, Mr. Chun feels that All Tree Service is not in the business of intensive agriculture and does not perpetuate the rural lifestyle of the Waimanalo farming community. Mr. Chun asked the Board to cancel All Tree Service's lease and apply the bond to cleaning up the property. Mr. Chun disclosed that through his employment with the USDA at the inspection station he came in contact with products from All Tree Service. Through the inspection process there were a lot of insects in the plant and personal from All Tree Service was told to take the plant and bring it back later for another inspection. A couple of days later they returned with the plants and Mr. Chun feels what they did was to balm the plant with an insecticide.

Dave Thompson, a resident of Waimanalo farm lots for eighteen years and lives approximately 500 yards from All Tree Service's location testified. Mr. Thompson provided the Board with photo's of the subject location as well as their former location. Within the last thirty days, Mr. Thompson feels they haven't done anything on the site except to make the site dirtier. He asked the Board to cancel All Tree Service's lease.

Clifford Migita, President of the Waimanalo Agricultural Association and who also has a degree in agriculture appeared before the Board to provide testimony. For the past fifteen years, Mr. Migita has managed a plant nursery for his boss who has a lessee with the department. He spoke of an incident on their site a few years ago in which a land agent told him they were in violation of the lease and had forty five days to correct the violation. The violation was corrected. In conversation with a friend, Mr. Migita's was told that he feels the department was stepping up their level of inspection and going after violators and these violators would in turn lose their lease. Mr. Migita believes the land agents have done their job and asked the Board that their work not be dismissed.

Annette Lee, a farmer in Waimanalo for twenty-five years spoke of her concern with All Tree Service having a baseyard on the subject site. She told the Board as stewards of state lands it is their duty and responsibility to ensure that agricultural lands are utilized for agriculture and operate according to the lease agreement. Should the lessee violate terms of the agreement they should be evicted. If the Board chooses to do nothing and take a wait and see attitude others will view it is an approval to conduct unpermitted activities on agricultural zoned lands.

Ed Miyashita a Department lessee testified. He announced that good agriculture land is in great demand now and for future farmers and nursery people. He communicated that we must take care of the land to ensure it will be available for others down the road. He told the Board he does not want the subject site to look like All Tree Service's previous site. He also stated it is unfair for the future lessee to be handed the responsibility to clean up the property.

Dean Okamoto, a second generation farmer in Waimanalo and President of Nalo Farms and the Farm Bureau Federation testified. Mr. Okamoto testified on the negative effect All Tree Service has on the long-term viability of agriculture. He feels companies like All Tree Service look at DLNR agriculture leases as cheaper land to run inappropriate and often illegal operations. Mr. Okamoto noted that the operation of a baseyard on the subject land is illegal.

Mr. Tam concluded his presentation by leaving the Board with two thoughts: 1) the issue is whether intensive agriculture is being done as required by the lease and 2) the design plans for All Tree Service has changed in the last two meetings. Mr. Tam asked the Board to adopt staff recommendations and cancel the subject lease.

Timothy Ross, a farmer manager at All Tree Service testified. Regarding the mulch situation, Mr. Ross noted that the chips from the trees takes about three to four months before it can be used as compost. He told the Board the mulch is used on the property to control weeds.

Patrick Oka who has been in the nursery business for forty-five years appeared before the Board to provide testimony. He indicated since retiring as a landscaper he is operating a small nursery in Waimanalo. Mr. Oka indicated the trees planted at the subject site are

planted primarily on the ground because they are operating a tree nursery. He noted there is a difference between a potted plant nursery and a tree nursery as a tree nursery satisfies the need of landscaping companies. As a consultant to All Tree Service, Mr. Oka's job is to ensure they have an ample supply of a specific type of palm. Mr. Oka noted All Tree Service is a tree nursery that preserves the erosion control factor and does not clog the streams when there is heavy rain. He stated during the last heavy rains nothing was washed off from the subject property. Mr. Oka told the Board to go to the site and see if All Tree Service is in violation of the agricultural code.

Mr. Watson let it be known that Mr. Rodrigues tried to do what was right. When he turned in his plans to DLNR it showed a warehouse, office and a large parking area which is what is at the subject site. Mr. Watson does not believe having an office is in violation of the terms of his lease and if need be he'd relocate the phone line for the other business. He told the Board and members of the audience that the subject site is available should they desire to conduct a site visit. He went on to let the Board know that his client has spent over \$700,000 on the subject property and to cancel his lease would be a cruel and unusual punishment.

Terry Rodrigues, owner of All Tree Service stated that he has complied with the terms of his lease and invited the Board to conduct a site visit. He told the Board when he acquired the lease for the subject property he was led to believe that he could run his other business from the subject site and not being able to do this is tying his hands. Mr. Rodrigues told the people of Waimanalo he is willing to work with them.

The Board asked Mr. Tusji if the lease was forfeited is there in any way in which the lessee can recoup the cost of improvements and/or investments. Mr. Tusji noted the terms of the lease does not allow for the lessee to recoup those costs.

Mr. Molman told the Board one of the requests of the farmers is to send a message to individuals thinking of bidding on farm land that you will need to farm the land and if you acquire the land under false pretences and invest money into the property for industrial type uses you may lose that investment. Another issue the farmers have is the economic impact of non-farmers bidding up the land as it impacts the farmers indirectly – when there is a reopening that property would become a comparable thereby pricing the property out of the farmers reach.

Mr. Tsuji stated that his objective is to make sure the land is used for its intended purpose. Mr. Tsuji went on to say if the lessee is compliant with the intensive agriculture use restriction as administrator he would have no objection to the lease not being forfeited. He told the Board if the lessee was to provide assurance that he would cease all operations relating to the tree trimming business and solely use it for the tree growing operation it would be satisfactory to him.

Mr. Johns noted that he was troubled by what he heard and would like staff to explore if there is any way for the lessee to recoup some improvement costs. Mr. Johns also noted

that he believes that there is a violation of the use restriction and Mr. Rodrigues has had ample opportunity to cure the violation.

**Motion to approve staff's recommendation as submitted (Johns/Agor).**

The Board received an assurance from Mr. Rodrigues that they will no longer use the subject site to operate the tree trimming business.

Mr. Tam read from the lease term which stated, "in the event of termination the option of the lessor all buildings and improvements shall remain and becomes the property of the lessor, the State or shall be removed by the lessee."

**Motion made at 11:08 am by Member Johns and second by Member Agor to move into session to consult with the Board's**

**Unanimously approved to move into Executive Session (Johns/Agor).**

The meeting resumed at 11:19 a.m.

**Aye- John, Agor, Young**  
**No- DeMello**

**Motion fails**

**Motion to defer for thirty (30) days**

**Unanimously approved to defer for thirty (30) days (Johns/Agor).**

The Board noted its concern with whether or not the property is being used for intensive agriculture. Member Agor committed to visit the site in three weeks.

Mr. Tsuji noted that it would be helpful to get a sworn declaration from Mr. Rodrigues that the property is being used solely for intensive agriculture.

Written testimony received from Senator Fred Hemmings and Representative Tommy Waters.

**Item D-4: Withdrawal from the Honolulu Watershed, Governor's Proclamation Dated October 13, 1913, and Issuance of Direct Lease to Hawaii Public Radio for Non-Commercial Radio Transmission Site, together with a Road Access and Utility Easement, Honolulu, Oahu, TMK: (1) 2-5-19:05 (por.)**

Mr. Tsuji noted staff's submittal was circulated for comments and OCCL deferred response on this issue to DOFAW who is on record as opposing this issue. Mr. Tsuji conveyed that the Board issued a Conservation District Use Permit (CDUP) for the Radio

Transmission Site. Linda Chow, Deputy Attorney General noted that DOFAW opposed the CDUP as they believed this was an inappropriate use in the forest reserve. Mr. Tsuji recommended the Board Approve of and recommend to the Governor issuance of an executive order withdrawing 3,000 square feet, more or less, from the Honolulu Watershed set aside by Governor's Proclamation of October 13, 1913, authorize the issuance of a direct lease to Hawaii Public Radio covering the subject area.

Don Clegg, agent for Hawaii Public Radio let it be known they've been working on this process for over two years and this is the final step in that process.

Michael Teterling spoke of the limited coverage of Hawaii Public Radio (HPR) due to technical problems. Over the years they've been working to find a site that would allow HPR to transmit island wide. The objective of this exercise has been to bring this valuable information island wide and to provide a site that is easily accessible. Mr. Teterling respectfully asked the Board to take whatever steps necessary to have the subject land withdrawn from the forest reserve and a lease issued to HPR.

Julie Walters a landscape architect and resident of Tantalus spoke in favor of staff's recommendation. Ms. Walters reminded the Board approval was already received for the relocation of the antenna to the Tantalus site. With a new transmitter facility in place, all of Windward side, Hawaii Kai and many of the valleys would be able to received HPR. Ms. Walters believes there will be minimal impact to the forest reserve should the subject area be removed.

Rose Marifascio, former chairperson of HPR and a current board member respectfully asked the Board to vote in favor of staff's submittal. She noted HPR is a public radio station that has tremendous impact on the public.

Jeff Ashmore, a resident of Makakilo and long time board member and listener testified in support of staff's recommendation. Mr. Ashmore communicated the sole source of HPR's content is to local affairs and emergency matters. Mr. Ashmore noted there is a substantial amount of the public that can not receive HPR's transmission and this new site would make that opportunity available to them.

Walt Reznieski, a resident of Kahaluu made it known he can not receive HPR's reception from his home and in his car until he goes through the tunnel. Mr. Reznieski informed the Board of some of the information he learned from listening to KIPO. Lastly, Mr. Reznieski spoke of one of the Department's mission statement which is the need for working with other agencies and his belief by granting this lease the public will be able to get information on the environment and other things by listening to KIPO.

Phil Kennineck, a resident of Kailua and avid fan of HPR testified in support of staff's recommendation. He feels news and information is vital to our society especially in times of crises. Mr. Kennineck believes it is in the public's interest to allow HPR to relocate its antennae so a larger population would be able to received its signal.

Richard Clifton, current chairman of HPR's board came forward to answer any questions the Board might have. Mr. Clifton told the Board he would have no doubt that the public interest would be best served by issuing a permit to HPR.

**Unanimously approved as submitted (Johns/DeMello).**

**Item K-6: Second Time Extension Request for Conservation District Use Application (CDUA) MA-3035B for James R. McCarty and Victoria L. McCarty Single Family Residence (SFR) Located at Honokohau, Island of Maui, TMK: (2) 4-1-002:008.**

Mr. Lemmo reminded the Board on November 16, 2001 the Board denied the McCarty's request for a Conservation District Use Application (CDUA) to build a single family residence(SFR) at Honokohau, Maui. Subsequently a petition for a Contested Case was filed. Between 2001 and 2004 the Department processed the contested case. On August 31, 2004 the Board released the order granting the petitioner's request to build a SFR. On March 21, 2005 the McCarty's requested a one (1) year time extension to initiate construction. On April 21, 2005 OCCL processed a time extension. On February 17, 2006 the department received a letter from Ronald Kotoshirodo, a Chapter 7 trustee for Vicki McCarty's. He noted Mrs. McCarty's bankruptcy schedules a list of \$226,048.17 as owed to unsecured creditors, and the subject parcel is the only asset available in the estate that may be liquidated to pay all or part of Mrs. McCarty's unsecured creditors. Mr. Kotoshirodo in his capacity of trustee is requesting that the department grant a one year time extension of the deadline to initiate and complete construction to demonstrate the value of the subject parcel will not decline as a result of the expiration of the deadline for imitating construction of the SFR. Mr. Lemmo went on to say it has been a long-standing practice of the Board to authorize single family residence where appropriate, for landowners who wish to construct a residence for themselves and their family. In the present case, the property will be sold to pay a debt, and the extension is necessary to maximize the fair market value of the property, rather than to provide the current permittee with an opportunity to construct the approved SFR. Mr. Lemmo believes the extension has a speculative nature and that this action would create a poor precedent in the Conservation District. Mr. Lemmo recommended the Board deny this request for a time extension and is subject to the following condition: "That the Board deny the request, and further stipulate that the Chairperson shall revoke the permit if construction on the SFR is not initiated by August 13, 2006, pursuant to Section 13-5-44, REVOCATION OF PERMITS, " in any case where a permit has filed to comply with any of the conditions contained in a permit, the Board may direct the Chairperson to revoke the permit."

Michael Gibson, attorney with the law firm Ashford and Wriston came forward to represent Ronald Kotoshirodo, the bankruptcy trustee. Mr. Gibson made the Board award of the bankruptcy trustee's job which is to preserve the assets for creditors and not the debtor. He feels that staff's recommendation accurately analyzes the situation but there is a lot more to it. Mr. Gibson conveyed his belief that the McCarty's want to build

a home on the property and is not asking for a time extension for speculative purposes. Mr. Gibson believes the request for a time extension is to allow the McCarty's time to build their home and not for the asset to be liquidated. Mr. Gibson noted that it was his understanding that the McCarty's are in the process of refinancing their debt so they can pay off their creditors then proceed with building their home.

Richard McCarthy let it be known the application for a time extension was made by the bankruptcy trustee and he is not part of that request. Mr. McCarthy asked that the time extension application include the fact that he is having problems with building the home. He went on to note the problems he's encountered (i.e. finding a contractor and complete financing). Mr. McCarthy asked the Board not to be side tracked by bankruptcy matter as it is not his intention and his request. He acknowledges that he signed the request but did so because Mr. Kotoshirodo is handling the bankruptcy filing and doesn't want to get in his way. Mr. McCarthy provided the Board with other time extension applications granted by the department and paid specially attention to the Brennan Residence which was granted four time extension and is also located in the same area as their proposed residence.

Board Member Johns disclosed to Mr. McCarthy that he previously voted against his CDUA request.

Vicky McCarthy appeared before the Board and spoke of their difficulty in finding a builder for their home. Mrs. McCarthy went on to explained what they've gone through in trying to obtain a building contractor. She let it be known that they're requesting a one-year time extension because they are doing the best they can with this difficult situation. Mrs. McCarthy communicated that she wanted to request a time extension for her home but when she told this to Mr. Kotoshirodo his response was that she could not do so as she was not a party to this issue. Ms. McCarthy conveyed to the Board that the subject SFR is intended to be their family home. She let it be known if the Board is willing to approve an extension of more than a year she would be in favor of that request.

Mr. Gibson addressed the Board and communicated that the Board can not discriminate against the McCarty's just because they filed for bankruptcy. He went on to say if it is common for the Board to approve a time extension request to someone else then they should approve the request before them today.

**The Board denied staff's recommendation and approved a six (6) month time extension.**

**Unanimously approved as amended (Johns/DeMello).**

**Item K-3: Conservation District Use Application (CDUA) for OA-3278 to Construct Kawai Nui Gateway Park, Located Abutting Kawai Nui Marsh, Kailua Town, Koolaupoko District, Island of Oahu, TMK: (1) 4-2-017:020 and (1) 4-2-016:001.**

**Item K-4:** Conservation District Use Application (CDUA) OA-3284 for Four-Inch Sewer Force Main under Kalihi Channel part of the Keehi Small Boat Harbor Boating Pump-out Facility, Located Kalihi-Kai, Honolulu, Oahu, TMK: (1) 1-2-025:024, 025 & 027 and 1-5-041:006.

**Item K-5:** Conservation District Use Application (CDUA) OA-3289 for Small Boat Pier Construction, Located at Mikiola, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-4-018:080.

Unanimously approved as submitted (Johns/DeMello).

**Item D-11:** Consent to Lease of Lands under Governor's Executive Order No. 4122 to Housing Solutions, Incorporated, Waianae, Oahu, TMK: (1) 8-5-28:por. of 44.

Unanimously approved as submitted (Johns/Agor).

**Item D-7:** Re-Submittal: Forfeiture of Grant of Non-Exclusive Easement S-5195, George W. Playdon, Jr., Kaluanui, Oahu, TMK: (1) 5-3-08:28 (seaward).

**Motion to withdraw**

Unanimously approved to withdraw (Johns/Agor).

**Item D-8:** Cancellation of Easement 12 and Grant of Perpetual, Non-Exclusive Easement to 300 Corporation, Housing and Community Development Corporation of Hawaii and State of Hawaii on behalf of the Department of Accounting and General Services for Access and Utility Purposes, Honolulu, Oahu, TMK: (1) 1-5-7: portion 1 and 2.

Written testimony was received from Pacific Housing Assistance Corporation.

**Motion to defer**

Unanimously approved to defer (Johns/Agor).

**Item D-2:** Amend Grant of Easement No. S-5613; Consent to Assign Portion of Grant of Easement No. S-5613, Keauhou 1<sup>st</sup>, North Kona, Hawaii, TMK: (3) 7-8-12:seaward of 40, 41, 51 & 75.

**Item D-3:** Cancellation of Revocable Permit No. S-7085 to Kau Agribusiness Company, Inc.; Issuance of Revocable Permit to Edmund C. Olson, Trustee of the Edmund C. Olson Trust II for Use of Water from Noguchi Tunnel; Wood Valley and Kau Forest Reserve, Kau, Hawaii, TMKs: (3) 9-6-06:15, 16, 17, 18; (3) 9-6-07:02; (3) 9-6-08:39, 45, 46 and (3) 9-7-01:01, 18.

**Item D-5:** Amend Prior Board Action of March 11, 2005, Item D-1, Quitclaim of State's Interests in a Drainage Easement, Grant of Perpetual, Non-Exclusive Easement, and Construction Right-of-Entry to the City and County of Honolulu, Palolo, Honolulu, Oahu, TMK: (1) 3-4-03:pors. of 10 and 37.

**Item D-9:** Amendment of Prior Land Board Action of August 26, 2005, Agenda Item D-16, Perpetual Non-Exclusive Easement to the United States of America, for Road Right-of-Way Purposes, Pupukea-Paumalu, Koolauloa, Oahu, TMK; (1) 5-9-06:26.

**Item D-10:** Rescind Prior Board Action of December 10, 2004 (Item D-22), Conveyance of State Lands for Proposed Kuakini Street Extension Road to the City and County of Honolulu and Issuance of a Construction and Management Right-of-Entry, Kapalama, Oahu, TMK: (1) 1-6-9:1 and Portion of Proposed Kuakini Street Extension Road.

**Item D-12:** Sale of Lease(s) at Public Auction for Industrial Purposes, Waikele, Ewa, Oahu, TMK: (1) 9-4-166:1, 2, 3, 24, 25, and 26.

Unanimously approved as submitted (Johns/DeMello).

**Item L-1:** Approval for Award of Construction Contract: Job No. J00C103A – Peacock Flats Campground ADA Barrier Removal Job No. J00C104A – Mokuleia Forest Reserve Parking ADA Barrier Removal Oahu, Hawaii.

**Item L-2:** Request for Authorization for the United States Department of the Army (including the Army corps of Engineers) and its agents, employees, consultants, and investigators, to enter upon private property for the purposes of investigating and inspecting dams and reservoirs located within the State of Hawaii pursuant to Hawaii Revised Statutes Chapter 179D and Authorize the Chairperson to negotiate agreements with the United States Department of the Army.

Unanimously approved as submitted (John/DeMello).

**Item M-1:** Issuance of Two Replacement Leases U.S. Federal Aviation Administration Kahului Airport.

**Item M-2:** Amendment No. 4 to Lease No. DOT-A-92-0018 Restaurant and Lounge Concession Lease Host International Inc., Honolulu International Airport.

**Unanimously approved as submitted (Johns/DeMello).**

There being no further business, Chairperson Young adjourned the meeting at 12:08 p.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, APRIL 28, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Gerald DeMello  
Mr. Ron Agor

Mr. Ted Yamamura  
Mr. Toby Martyn  
Ms. Taryn Schuman

**STAFF**

Mr. Sam Lemmo, OCCL  
Mr. Randy Kennedy, DOFAW  
Ms. Athline Clark, DAR  
Mr. Glen Abe, DOT

Mr. Russell Tsuji, Land  
Mr. Francis Oishi, DAR  
Ms. Jill Zamzow, DAR

**OTHERS**

Mr. William Wynhoff, Deputy Attorney General  
Ms. Sandy Fund, D-14  
Ms. Sandra Song, D-3  
Ms. Karen Polani, C-1, 2, 3  
Ms. Gail Byrne, K-3  
Mr. Mike Isaac, K-3  
MS. Toni Withington, K-3  
Ms. Ruth Mano, F-2  
Mr. Mark Fox, F-2  
Mr. Sareen P.K. Asuncion, K-2  
Ms. Stephanie Fried, F-3, 4, 5, 6, 7, 8, 9, 10  
Dr. Carl Meyer, F-5  
Mr. Don Polaski, F-6

Ms. Patricia Otoole, D-3  
Ms. Collette Machado, C1,2, 3, F-2  
Mr. Randy Vitousek, K-3  
Mr. David Frankel, K-3  
Mr. Fred Cachola, K-3  
Mr. Mac Poepoe, F-2  
Mr. Terry George, F-2  
Ms. Charlotte Needham, K-2  
Mr. Randy Kosaki, F-4  
Dr. Rob Toonen, F-5, 7  
Mr. Brian Bowen, F-6  
Ms. Cha Smith, F-7

Dr. Steven Karl, F-8, 9

Ms. Greta Aeby, F-8, 9

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

**Item A-1: Minutes of February 24, 2006**

Members Agor and Martyn recused themselves.

**Unanimously approved as submitted by the remaining Board members (Yamamura/Schuman).**

**Item A-2: Minutes of March 16, 2006**

Member Yamamura recused himself.

**Unanimously approved as submitted by the remaining Board members (Schuman/Agor).**

**Item A-3: Minutes of April 13, 2006 briefing**

**Deferred due to lack of quorum.**

**Item A-4: Minutes of April 13, 2006**

**Deferred due to lack of quorum.**

**Item D-12: Request to Approve Resolution to Lease Violation, General Lease No. S-4372, U.S. Department of Agriculture, Natural Resource Conservation Service, Hawaii Plant Material Center and Field Office, Hoolehua, Molokai, TMK: (2) 5-2-01:07.**

Russell Tsuji, Administrator of the Land Division indicated today's Board action is a result of a resolution of a violation by the United States Department of Agriculture (USDA). Apparently the USDA entered into a contract with contractor Dedric Manaba to remove some trees on the subjected leased premises. Subsequently the trees were buried and Mr. Manaba took the dirt off the site onto his private property which he mixed with other dirt and gravel to create a landing. Mr. Tsuji pointed out the lease terms prohibits the removal or sale of dirt or other materials from the premises. Staff met with USDA and they were not aware of the lease prohibition and staff feels their actions were inadvertent. Mr. Tsuji recommended the Board authorize staff to resolve the aforementioned lease violation by having the USDA-NRCS pay to DLNR the sum of \$1,292.50 for the soil removed from State lands and the USDA-NRCS shall submit to DLNR an updated and complete copy of a Conservation Plant for the Hawaii Plant Material Center.

Written testimony received from George Peabody and Donovan Keliipuleole.

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item D-14: Consent to Sublease General Lease No. S-4488, University of Hawaii, Sublessor, to the Department of Transportation, Harbors Division, Sublessee; Kalihi-Kai, Honolulu, Oahu; TMK: (1) 1-2-25:por. of 17.**

Mr. Tsuji made it known the current lessee on the property is the University of Hawaii (UH) and they are requesting the Board's permission to sublease a portion of the property (3,900 square) to the Department of Transportation (DOT), Harbor's Division. If the request is granted DOT Harbors Division will use the area as an access way for people in the sand island area.

Sandy Fund, representing the Department of Transportation, Harbors Division noted her concurrence with staff's recommendation.

Written testimony received from the Department of Transportation.

**Unanimously approved as submitted (Schuman/DeMello).**

**Item D-3: Set Aside to the County of Hawaii for Adult Day Care and Other Related Community Purposes, Piihonua, South Hilo, Hawaii, TMK: (3) 2-3-31:por. 01.**

Mr. Tsuji briefed the Board and recommended subject to the Applicant fulfilling the Applicant Requirements above, approve of and recommended to the Governor the issuance of an executive order setting aside the subject lands to the County of Hawaii under the terms and conditions cited in staff's submittal.

Patricia O Toole, Deputy Cooperation Council noted their agreement with staff's recommendation.

Sandra Song, Vice Chair of the Board of Hawaii Adult Day Care urged the Board to support this item. Ms. Song let it be known their current building is very old. The provide day care services to many seniors who are low income and she feels this something that everyone needs.

**Unanimously approved as submitted (DeMello/Schuman).**

**Item C-1: Mo'omomi Preserve Continued Enrollment in the Natural Area Partnership Program and Authorization of Funding for FY07-12.**

**Item C-2: Kamakou Preserve Continued Enrollment in the Natural Area Partnership Program and Authorization of Funding for FY07-12.**

**Item C-3: Waikamoi Preserve Continued Enrollment in the Natural Area Partnership Program and Authorization of Funding for FY07-12.**

Randy Kennedy, Natural Area Reserve System (NARS) Program Manager for the Division of Forestry and Wildlife (DOFAW) let it be known that Items C-1 and 2 deal with lands located in Molokai while C-3 is located in Maui. The request before the Board is a continuation of the

management responsibilities undertaken by the Nature Conservancy which started in 1993. Mr. Kennedy requested the Board continue approval of the activities identified in the Moomomi, Kamakou and Waikamoi Preserve, authorize the continued funding for the above areas and authorize the Chairperson to enter into a contract to encumber funds for the aforementioned areas with The Nature Conservancy for Fiscal Years 2007-2012 subject to the conditions listed in staff's submittal.

Colette Machado, trustee for the Office of Hawaiian Affairs (OHA) stepped forward to acknowledge the wonderful work done by The Nature Conservancy in maintaining these areas.

Karen Polani of The Nature Conservancy (TNC) came forward to thank the department for their support, specifically staff from NARS. She also informed those present the monies received from NAT program allows TNC to do a lot more in terms of conservation management.

**Unanimously approved as submitted Items C-1, C-2 and C-3 (Yamamura/DeMello).**

**Item C-4: Request for Approval to Enter into a Contract with JBH to Furnish, Deliver, and Install Ungulate-Proof Fencing in Kuia Natural Area Reserve and Na Pali-Kona Forest Reserve, Kauai.**

**Unanimously approved as submitted (Agor/Schuman).**

**Item K-3: Conservation District Use Application (CDUA) HA-3269 for a Single Family Residence located at Paoo, North Kohala, Island of Hawaii, TMK: (3) 5-7-001:005.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) acknowledged the office has received a request from the council of the applicant requesting a contested case hearing.

Chairperson Young acknowledged that the applicant's council request for a contested case hearing is also a request for a time extension for the Conservation District Use Permit (CDUP).

Randy Vitousek, attorney for the applicant conveyed that they requested a contested case hearing because his client felt that staff's submittal did not reflect the application process. He pointed out that Mr. Cohen went through the application process very slowly and thoughtfully. He met with various organizations as well as the burial council in the development of his plans. Mr. Cohen also worked with the descendants as to how the site was to be developed as opposed to working with Mr. Cachola. Mr. Vitousek pointed out staff's submittal makes no reference to the public hearings at which time several lineal descendants came to testify in favor of this project. He noted staff accepted written comments after the comment period ended.

Gail Byrne, a resident of Kohala let it be known that staff did not solicit comments from her regarding the proposed CDUP. In any event she told the Board she has seven thousand (7000) signatures asking for no development on the Kohala coast. Subsequently, Ms. Byrne noted they've collected 1600 signatures asking for the legislature to preserve the Kohala coastline. Ms. Byrne pointed out the subject area is part of a contiguous region that has the most intact

pre-contact archeological sites in the state. She let it be known they now have a funding source which will allow them to purchase the subject land. Ms. Byrne acknowledged a previous permit was granted for the construction of a SFR at this location but it was done so without much community input. She went on to say that the permit was let to expire when the Board heard the outcry of the community against development on the subject site. She confirmed OHA has rescinded their approval of the permit. In closing Mr. Byrne asked the Board to deny the applicant's request for a CDUP.

David Frankel, an attorney with the Native Hawaiian Legal Corporation and who represents Makai Kamakani O Kohala requested a contested case hearing. Mr. Frankel stated he did not object to the hearings being consolidated and confirmed he would submit a written request within ten days. Mr. Frankel wanted to make it clear that the contested case hearing is not about DLNR staff nor the process but is about whether this applicant has met his burden to prove that his proposal has met the criteria in the conservation district regulations.

Mike Isaac, representing Kohala Historic and Cultural Preservation Group asked the Board to deny this CDUA as it infringes upon burial rites and it has a negative impact on ancient spiritual beliefs. Mr. Isaac's believes the proposed residence is a massive private vacation retreat of connecting structures which when combined demonstrates a blatant and deliberate intrusion on Hawaiian burial sites. He feels the placement of the subject dwelling as an arrogant affront on his spiritual and cultural beliefs. This dwelling will have a significant negative effect on his desire to feel and experience the manao of his ancestors. Mr. Isaac's disclosed that "special places" (wahi pana) are sorely needed to nurture the spiritual needs of Hawaiians as they are dwindling drastically and the few remaining places must be preserved in perpetuity for the people. He believes the subject land should not become a private playground for very wealthy non-residents who do not understand our culture or our spiritual needs. This area must be preserved and protected for Hawaiians. Mr. Isaac's stated that the Board should deny the application before them as it deliberately omits a very significant burial and sacred site and he also questions the research conducted. He made reference to Site 2382 which was previously disturbed but is hardly mentioned at all as a Probable Shrine. Mr. Isaac's disclosed that for many years he and other Hawaiians have known this site to be a burial enclosure for a very prominent Native Hawaiian, Mr. Kauwe. He went on to communicate that Mr. Kauwe's iwi were placed at this site and therefore greatly magnifies and accentuates the Hawaiian cultural, spiritual and religious value that is now a more integral and confirmed part of this unique wahi pana. Mr. Isaac noted this walled, burial enclosure at Paoo has great mana. He conveyed that he went on a site visit of this area and found that the burial enclosure is not just a simple rock wall, but rather a unique document of the Hawaiian spiritual world that has been altered. In closing, Mr. Isaac stated that the major omission of Site 2383 as a significant burial and spiritual site in all of the plans that were submitted, coupled with questionable historical research and conclusions are sufficient rationale for the Board to deny this CDUA.

Fred Cachola, who was born and raised in Kohala came forward to provide testimony. Mr. Cachola asked the Board to deny this application. He stated that Mr. Vitousek implied they had a contract and that is not true. Instead he went on to say Ike Aina proposed a memorandum of agreement to explore opportunities in which the community and the landowner could benefit by collaborative works. Mr. Cachola informed the Board he could provide meeting minutes to support his claim. With regards to a contract, Mr. Cachola let be known a memorandum of

agreement between Ike Aina and the applicant was submitted to the applicant whom they drastically altered to take out all the historical significance of the area. He does not believe there was sincerity by the applicant to maintain the cultural, historical and spiritual integrity of the sites on the subject parcel. Mr. Cachola implored the Board not to issue a permit to the applicant.

Toni Withington, a resident of Kohala representing Kakoo testified. She noted her personal contact with the land since 1969 and spoke of the high resource value of the land through pictures shown to the Board. She communicated that the community has had continued unimpeded access to the subject parcel since settlement and uses the area for camping and fishing. Ms. Withington let it be known that there are so few portals (two) to access the ocean from North Kohala. Ms. Withington submitted a written request for a contested case hearing on behalf of Kamakani O Kohala Ohana, Inc. dba Kakoo. When asked by the Board if she had any objections to consolidating the three requests for a contested case hearing into one hearing, Ms. Withington responded no.

Written testimony was received from Gail Byrne, Sheila June Winters, Silus Standard, Ruth Ann Naksone, Ben Fisher, Joe Ayer, Lynda Wallach, Gary Keller, Achahn Schulze, Kanoa Withington, John E. Goble, Kyla Jacobs, Crystal West, Leia Lawrence, David Kahanu, Michael Moriarty, Lani Bowman, Micah Ching, Tahjra Alcoran, Erik Estabilio, Lani Bowman, Fred Cachola, Matt Laber, Kehaunani Abad, Valerie and Anthony Anjo, Luhiau Ohana, Papa Arthur Mahi, Toni Withington and Marian Carvalho Johnson.

Motion to defer.

**Unanimously approved to defer (DeMello/Agor).**

**Item F-2: Request for Approval to Hold Public Hearings to Amend Hawaii Administrative Rules (HAR), Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, To Further Restrict the Use of Lay Gill Nets, for Prohibiting their Use in Certain Waters of the State, Including Redescription of Restricted Areas, Define Affected Species, Clarify Penalties, and Other Housekeeping Measures.**

Francis Oishi, Project Manager at the Division of Aquatic Resources (DAR) announced that he is requesting approval to hold public hearings to amend Administrative Rules Chapter 13-75 which regulates the possession and use of certain fishing gear and to further restricts the use of lay gill nets and prohibits their use in certain waters of the state including a redescription of the restricted areas, closed areas and defining affected species, clarifying the penalty provision and other housekeeping measures. Mr. Oishi noted that this item was previously brought to the Board but upon review by the Attorney General's Office changes were made and it was recommended the item be brought back to the Board for its reconsideration. Mr. Oishi communicated that the changes proposed were non substantive, grammatical and housekeeping measures. He noted the penalty reference has been expanded to include all applicable penalties to make the rules more enforceable and the definition of fishes will include their scientific name for clarity. Also maps and descriptions denoting the proposed closed areas to lay gill net fishing have been changed to make it more enforceable.

Chairperson Young noted a summary sheet was distributed which indicated some of the other changes (clarification of fishing with only one net at a time, clarification on the hours of fishing, penalties) as well as a complete set of the rules.

Mac Poepoe, representing Hui Malama O Moomomi indicated he does not want a four hour time limit on the use of nets. He pointed out they held several public meetings on Molokai and the community has said they would like to be able to leave their nets in the water overnight. Mr. Poepoe let it be known the residents of Molokai would like to make their own rules. He suggested that lobster nets be placed into the same category as gill nets and these nets catch both lobsters and fishes.

Ruth Mano communicated that the residents of Molokai would like to be exempt from the gill net rules as the residents catch fish for subsistence purposes. She let it be known that they would like to make sure the rules proposed by the department are rules which the community can live by as well as prepare their own rules for the community to live by.

Chairperson Young asked the two previous speakers to come up with specific recommended changes to the proposed rules they would like to see with regards to Molokai.

Collette Machado, a third term trustee (Lanai and Molokai) for the Office of Hawaiian Affairs (OHA) spoke of the efforts put forth by the previous speakers. Ms. Machado announced that the goal of those individuals who spoke before her was to preserve the resources to that it would be available for future generations and to do so we must start today to take care of what is there and apply the appropriate techniques. Ms. Machado made certain to involve OHA in documenting the comments received from the community at public meetings. Ms. Machado asked the Board to be open to possible rule changes that the residents of Molokai might propose.

Terry George, Vice President and Executive Director of the Harold K. L. Castle Foundation testified in support of the clarification of the rules and proceeding with the public hearing process so more public input can be received. Mr. George noted that there are not as many fishes in the ocean as in the past.

Mark Fox, representing The Nature Conservancy acknowledged the work done by the community and Hui Malama O Moomomi as an example of doing things properly in their community. Mr. Fox pointed out there are a lot of people wishing to follow the model of subsistence fishing set up in Molokai.

**The Board amended the submittal as follows**

1. **§13-75-12.4 (a) (5) Fish with more then one lay net at a time.**
2. **§13-75-12.4 (b) (10) Use a lay net during the period from one-half hour after sunset to one-half hour before sunrise.**
3. **§13-75-2 Penalty. A person violating any provision of this chapter shall be subject to administrative penalties as provided under chapter 187A, HRS, as**

**amended, in addition to any other penalty [be punished]** as provided by law. [Eff: Dec 03 1998; am and comp §§HRS 187A-5, 187A-12.5, 187A-13, 188-70, 189-4) (Imp: §§HRS 187A-5, 187A-12.5, 187A-13, 188-70, 189-4)

**Unanimously approved as amended (Yamamura/Martyn).**

**Item D-16: Resubmittal: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Access and Utility Purposes and Issuance of Construction Right-of-Entry, Waimanalo, Oahu, TMK: (1) 4-1-08:05 & 80 pors.**

**Unanimously approved as submitted (Martyn/Schuman).**

**Item D-19: Mutual Cancellation of General Lease No. S-5663, and Issuance Direct Lease to Honolulu Community Action Program, Inc., Waianae, Oahu, TMK: (1) 8-5-02:12.**

**Unanimously approved as submitted (Martyn/Schuman).**

**Item D-18: Re-submittal Cancellation of Easement 12 and Grant of Perpetual, Non-Exclusive Easement to 300 Corporation, Housing and Community Development Corporation of Hawaii and State of Hawaii on behalf of the Department of Accounting and General Services for Access and Utility Purposes and Issuance of a Construction Right-of-Entry, Honolulu, Oahu, TMK: (1) 1-5-07:por. 01 and 02.**

Written testimony received from the Pacific Housing Assistance Corp.

**Unanimously approved as submitted (Schuman/Martyn).**

**Item M-6: Issuance of Lese from Department of Accounting and General Services, Lessor, to Washington Place Foundation, Lessee, for a portion of Washington Place, Honolulu, Oahu, TMK: (1) 2-1-18:1.**

**Motion to defer.**

**Unanimously approved to defer (Yamamura/DeMello).**

**Item M-1: Consent to Sublease of Lease No. DOT-A-95-0025 Nunui & Associates, LLC to Royal Hawaiian Movers, Inc. Honolulu International Airport.**

**Item M-2: Rescission of Land Board Action of March 24, 2006, Item M-4 Issuance of an Inconsistent Revocable Permit A Tom Moffatt Production, Inc. Pier 19 Ferry Terminal Building, Honolulu Harbor**

**Unanimously approved as submitted (Schuman/DeMello).**

- Item M-3: Issuance of Lease by Direct Negotiation to Izuo Brothers, Limited, Parcel 4, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu.**
- Item M-4: Issuance of Lease by Direct Negotiation to DCL, Inc., Units FV7E, FV7F and FV7H, Multi-User Building, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu.**
- Item M-5: Issuance of Lease by Direct Negotiation to Honolulu Fish & Seafood Corp. DBA Honolulu Fish Company, Units FV7A, FV7B, FV7C and FV7D, Multi-User Building, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu.**

**The Board made amended the following recommendations**

- 1. “STATUS” – Change Reference to GEO 1396 to GEO 1346.**
- 2. Amend the Recommendation Section**

**~~“That the Board authorize the issuance of a lease by direct negotiation to the applicant, subject to the terms and conditions outlined above and incorporated herein by reference and such terms and conditions as may be prescribed by the Director of Transportation~~ That the Board authorize the issuance of a Right-of-Entry to the Applicants, together with its consultants, contractors and subcontractors, to the proposed leasehold lot for the purpose of performing a site environmental assessment, related environmental work and remediation work, if necessary together with all preliminary work needed to obtain all required permits for the lease hold improvements on the subject site and further subject to expiration within six (6) months of is issuance or upon execution of the subject lease, whichever occurs sooner.”**

**Unanimously approved as amended Items M-3, M-4 and M-5 (Yamamura/DeMello).**

- Item K-1: Conservation District Use Application (CDUA) MA-3290 for After-the-Fact Permit for 20,000-Gallon Water Storage Tank and Proposed Cement Wellhead Platform located at Kahua, Kaupo, Hana, Island of Maui, TMK: (2) 1-7-002:001.**

**Unanimously approved as submitted (Yamamura/Martyn).**

- Item K-4: Conservation District Use Application (CDUA) OA-3271 for a Single Family Residence & Related Improvements Variance to Lot’s Setback (Joint Lot Development) located at Tantalus, Honolulu, island of Oahu, TMK: (1) 2-5-017:006 & 018.**

**Unanimously approved as submitted (Schuman/Yamamura).**

**Item K-2: Enforcement File No. OA-06-34 Regarding Alleged Unauthorized Placement of Structures on State Leased Lands General Lease S-4900 located at Maunalaha Homesites, Island of Oahu, TMK: (1) 2-5-024:005.**

Charlotte Needham, Vice President of the Maunalaha Valley Community Association asked the Board to either defer action on this issue or grant her clients an extension so they make work out some issues (descendancy) with the various families. Ms. Needham would like the parties to take this matter to the probate court so the issue of decendancy can be addressed. Ms. Needham also asked for a waiver of fines due to the hardships placed upon these individuals.

Mr. Tsuji informed the Board that they and the department do not have the right to decide who the rightful heir to the lease is. He stated that question must be decided in probate court.

An identified speaker let it be known he is in favor of remedying the situation today. He noted there are several families involved and wonders if a deferral will help to resolve the situation.

Written testimony was received from Maunalaha Valley Community Association.

**Motion to defer.**

**Unanimously approved to defer (Martyn/DeMello).**

**Item D-15: Issuance of a 2<sup>nd</sup> Right-of-Entry Permit to Natural Systems, Inc., for Insitu Phytoremediation of the Ala Wai Canal Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-7-36:02-B (Ala Wai Canal).**

**Unanimously approved as submitted (Yamamura/DeMello).**

**Item F-3: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Special Activity Permit to CDR. TY W. Rinoski, U.S. Coast Guard Cutter (USCGC) Kukui, for Entry of State Waters and marine Debris Removal at Maro Reef.**

Athline Clark, Planner with the Division of Aquatic Resources (DAR) communicated that the US Coast Guard Cutter Kukui would be going to Maro Reef and working with the National Marine Fisheries Service marine divers to remove a series of nets and fishing gear from Maro Reef. In the process of removing marine debris the divers will need to cut the nets from the reef and sometimes coral can be caught in the process. Ms. Clark noted the coral caught in the net will be returned to the ocean but at times there will be some take of coral. Ms. Clark recommended the Board authorize and approve with stated conditions, a Special Access Permit to Ty W. Rinoski, USCGC Kukui, for activities and access within the State waters of NWHI.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui noted their support of marine debris removal but would like to see some changes made to the permit requirements. Ms. Fried asked the Board to require best management practices for

decontamination/disinfecting of tender vessels so there are no alien species on the tender vessel (before departure vessels are washed, fumigated and inspected for alien terrestrial and aquatic species. All gears are soaked in 100% fresh water for 24 hours. Care is taken to open all pockets and zippered compartments before soaking in fresh water. Life vests, cushions are washed and frozen for 48 hours). Ms. Fried questioned how much raw sewage and grey water will be dumped during this procedure and how will it be treated as no data has been made available.

Written testimony received from Stephanie Fried and Isabella Abbott.

**The Board amended staff recommendation by inserting a permit condition to “use best management practices” for tender vessels and equipment.**

**Unanimously approved as amended (Yamamura/DeMello).**

**Item F-10: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Cynthia Vanderlip of the State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife, for the Removal of Marine Debris at Kure Atoll.**

Ms. Clark noted that a staff member from the department, Cynthia Vanderlip is requesting permission to eliminate marine debris in and around Kure Atoll as well as take photos and conduct a population count of spinner dolphins. Ms. Clark recommended the Board authorize and approve, with stated conditions, a Research, Monitoring and Education Permit to Cynthia Vanderlip of the State of Hawaii Division of Forestry and Wildlife, for activities and access within the State waters of the NWHI.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui applauded the applicant’s efforts in paying attention to detail and alien species protocol. Ms. Fried brought attention to the fact that the department has received but has not reviewed Ms. Vanderlip’s permit application regarding spinner dolphins. She asked that the department release the spinner dolphin permit application and all other applications to the public to enable analysis and public comment. Ms. Fried asked for clarification if raw sewage is dumped in NWHI as it is being done. She asked that if raw sewage is dumped that the applicant provide a map of where this occurred.

Ms. Clark noted that no sewage is dumped with regards to this permit.  
Written testimony received from Stephanie Fried and Isabella Abbott.

**Unanimously approved as submitted (Schuman/Martyn).**

**Item F-4: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue Two (2) Northwestern Hawaiian Islands (NWHI) Permits: 1) A Special Activity Permit to C.O. Scott E. Kuester, National Oceanic and Atmospheric Administration**

**(NOAA) Ship Hiialakai, for Access to State Waters to Support Marine Research Activities, and 2) A Research, Monitoring and Education Permit to Dr. Randall Kosaki of NOAA to Observe, Monitor, and Facilitate Marine Research Covered under Separate Permit Applications.**

Ms. Clark went through the permit review process. She conveyed that the permits were sent out to three staff members from DAR, DOFAW, KIRC executive director and staff, OHA, U.S. Fish and Wildlife Service and the Northwest Hawaiian Island Reserve. After comments were received a meeting was held with the Hawaiian Institute of Marine Biology staff to discuss concerns raised (going through point by point). Based on the meetings applicants in F5-9 revised their request and resubmitted their application based on what was discussed at this meeting. Ms. Clark pointed out ninety percent of the samples taken are non lethal (size of a grain of rice), all samples will be shared among the researchers, knowledge gained from research will benefit management and decision making and the permit guidelines will ensure the samples are used for non-bioprospecting types of activities.

Randy Kosaki, Research Coordinator with NOAA, Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve came forward to answer any questions. He communicated the long term goals is to enable the long term conservation and protection of the NWHI reefs and it is their belief to accomplish this we need management action that are supported by the best available science. To achieve this goal they have entered into a relationship with the Hawaii Institute of Biology so they may bring their expertise to the table. Mr. Kosaki noted that his responsibilities include facilitating research and supporting the scientific mission. They'll also be conducting education and outreach activities while complying with all state and federal regulations within the area.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui started off by giving an overview of the application process and their involvement in this process. Mr. Fried stated their concern is with the protection of the area . She noted her concern with the non-lethal sampling of the various species she feels there is no proof that what they are doing will not have detrimental impact on the species. She asked for scientific information to back up their claim that taking samples from the various species will cause no harm. Ms. Fried pointed to the NWHI rules which listed prohibited activities as “to engage in any activity that can or does result in damage or destroying coral.” Ms. Fried questioned that a number of these proposed activities can be conducted in the main Hawaiian Islands instead of the NWHI. She noted another concern with this permit is the storage and dumping of raw sewage. She asked the Board to include a condition in the permit in which NOAA must provide a detailed map of waste dumping sites during this research period. As for next season, Ms. Fried recommended the department refuse to issue permits to NOAA or NOAA contracted vessels without waste storage and treatment facilities on board sufficient to prevent the dumping of raw sewage or wastes containing harmful chemicals into the Reserve or proposed sanctuary waters. Lastly, Ms. Fried asked the Board to include a permit condition which call for the use of “best practices” as described by Cynthia Vanderlip for tender vessels and equipment.

In the future Ms. Fried requested that the department make all permit applications available to the public for a forty-five (45) day review and comment period.

Written testimony received from Stephanie Fried and Isabella Abbott.

**The Board amended the permit requirements to add the Vanderlip protocol.**

**Unanimously approved as amended (Yamamura/Schuman).**

**Item F-5: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Carl Meyer of the Hawaii Institute of Marine Biology for 1) The Capture, Tagging and Release of Apex Predators, and 2) Deployment and Downloading of Acoustic Receivers.**

Rob Toonen of the Hawaii Institute of Marine Biology (HIMB) provided the Board with an overview of the next five permit applications. He started off by disclosing that their group is made up of conservation biologist with a diversity of expertise motivated by a shared desire to conserve and protect the NWHI for all of Hawaii. Their research goals are to inform management of conservation efforts by the State and other government agencies. Through their research HIMB hopes to understand how regions within the NWHI connected to one another and how the NWHI is connected to the main Hawaiian Islands. Mr. Toonen went over their sampling procedures and confirmed their sampling will be non-lethal. He went on to say that the subject samples would be archived as part of a tissue data bank which will be maintained by the University of Hawaii, while ownership would remain with the State.

Ms. Clark noted this permit is to allow Dr. Carl Meyer to capture, tag and release apex predators, download information from receivers at the NWHI as well as installing additional receivers. Ms. Clark recommended the Board authorize and approve, with stated conditions, a Research, Monitoring and Education Permit to Dr. Carl Meyer of the Hawaii Institute of marine Biology, for activities and access within the State waters of the NWHI.

Dr. Carl Meyer, a Biologist at HIMB testified. He let it be known this research is in direct support of management. He feels in order to provide proper science base management of the fish resources of the Hawaiian Archipelago we need to know something about the movement patterns of these animals. The methods proposed have been developed over the course of fifteen years and are well supported by peer review publications. Dr. Meyers let it be known the methods that have been tried and tested. Dr. Meyer clarified that he would be attaching under water receivers to these animals to track their movement. When questioned by the Board for the need to include the grey snapper in this experiment, Dr. Meyer noted that the grey snapper is a top level predator that is at the top of the food chain as well as a species that is being exploited. Through the tracking of the grey snapper he hopes to answer some questions one being that species exploited in the main Hawaiian Islands are being replenished in the NWHI. Dr. Meyer assured the Board that the frequency of the transmitters used will have no negative effect on other species.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui pointed out during the comment and review period a comment was received from a Native Hawaiian who had concerns regarding the take of grey snapper in that tracking this

commercially important species might reveal habitat data that could be exploited by commercial interest. Ms. Fried asked that the grey snapper be removed from the permit application. She also pointed out a potential conflict of interest in this permit application as the researcher is a recent PhD whose dissertation committee chair Kim Holland is the owner of one of eight commercial bottom fish vessels permitted for commercial extraction in the NWHI. Also Mr. Holland was the only UH scientist to testify against the establishment of the state's non-take refuge during the public hearing in Honolulu. His business associate and agent continues to lobby for the opening up of closed areas, including protected areas at Nihoa and Gardner – two of the three proposed research areas to commercial extraction. Ms. Fried believes the tagging of the grey snapper may lead to increased exploitation by commercial operators and urged the Board to not allow tagging of this specie.

Written testimony received from Stephanie Fried and Isabella Abbott.

**Unanimously approved as submitted (Yamamura/DeMello).**

Member Yamamura left the meeting.

**Item F-6: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Brian Bowen of the Hawaii Institute of Marine Biology, for the Take of Fishes for Genetic Sampling in Order to Study Coral Reef Connectivity.**

Ms. Clark communicated that this permit is for the sampling of fish species in the NWHI. She pointed out they spent a lot of time addressing questions and negotiating terms such as the number of each species that can be taken and the number of species found in each area. Ms. Clark recommended the Board authorize and approve, with stated conditions, a Research, Monitoring and Education Permit to Dr. Brian Bowen of the Hawaii Institute of Marine Biology, for activities and access within the State waters of the NWHI.

Brian Bowen stated that the issue of fish connectivity is straight forward – if one island is depleted by human or natural factors we need to know if the population is replenished through larva coming in from elsewhere or if it needs to recover on its own. Mr. Bowen confirmed that he has eliminated the moray eel from this permit until he can be assured that the sample taken will be non-lethal.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui spoke of her concern with peer review science as the samples provided are from completely different ecosystems (warm water).

Don Polaski, Refuge Manager with the U.S. Fish and Wildlife Service spoke of his responsibilities in the NWHI. For the Board's information, Mr. Polaski disclosed that they've received a permit application from the same individuals that are before the Board today to conduct research at the NWHI and Johnston Atoll. At present they've looked at the proposal and is in support of most of the permit requests. He informed the Board they are also concerned with over sampling and have looked into that issue. Mr. Polaski noted their support

of the works of Dr. Meyers, Dr. Bowen, Dr. Toonen, Dr. Rappe and Dr. Gates. He notes the application by Dr. Carl as being a new application and they are still in the discussion stage on what his plans are.

Written testimony received from Stephanie Fried and Isabella Abbott.

**Unanimously approved as submitted (Martyn/Schuman).**

**Item F-7: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Robert Toonen of the Hawaii Institute of Marine Biology, for the Take of Invertebrates for Genetic Sampling in Order to Study Coral Reef Connectivity.**

Ms. Clark indicated this permit will allow the sampling of vertebrates throughout the NWHI. She pointed out most of the samples will be non-lethal. Ms. Clark recommended the Board authorize and approve, with stated conditions, a Research, Monitoring and Education Permit to Dr. Robert Toonen of the Hawaii Institute of Marine Biology, for activities and access within the State waters of the NWHI.

Member Martyn left the meeting.

Dr. Robert Toonen testified that the samples taken are those that have been requested by the Bishop Museum collection. He confirmed that 93% of the samples he's taken has been returned to the same location. Dr. Toonen expressed his desire to identify new species in Hawaii that have not been previously described.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui pointed out all state waters of the NWHI are a no take zone, where harm to coral is illegal and where permits are to be issued under a "do no harm" mandate under the precautionary principle in the absence of data. Ms. Fried pointed out the samples are to be "non-lethal" but the applicant fails to provide peer review data on the 100 % survival of the proposed species. In closing, Mr. Fried asked the Board to deny this permit application but should they issue the permit she would like the alien species protocol and a longitudinal study added to the permit requirements.

Cha Smith, representing Kahea requested that the timing of the permits be slowed down so the public can understand the process and the impacts of the research. She believes a clear and objective review of what science is needed and what managers need to do to prevent any impacts on the NWHI and state waters needs to be conducted. She questions who is setting the 'research agenda' and the pressure of putting these permits through a fast pace review without scientific review by the Board. She noted the process is extremely problematic.

Ms. Clark informed the Board that the longitudinal studies of places that were previously sampled is part of the research protocol that have been proposed. Ms. Clark offered to add it to the permit guidelines to reiterate that fact.

Written testimony received from Stephanie Fried and Isabella Abbott.

**The Board amended the permit conditions to include the longitudinal studies as part of the permit requirements.**

**Unanimously approved as amended (Agor/Schuman).**

**Item F-8: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue Two (2) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to: 1) Dr. Michael Rappe, and 2) Dr. Ruth Gates, both of the Hawaii Institute of Marine Biology, for the Non-Lethal Sampling of Corals to Identify Biological Indicators of Coral Disease and/or Bleaching Susceptibility.**

**Item F-9: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue Two (2) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to: 1) Dr. Greta Abby, and 2) Dr. Stephen Karl, Both of the Hawaii Institute of Marine Biology, for the Non-Lethal Sampling of Corals for Investigations of Coral Disease and Bleaching Susceptibility.**

Ms. Clark indicated the four above permits deal with coral work. She pointed out the sample list provided in staff's submittal is the sample list for the four permits. Ms. Clark indicated there are a lot of questions pertaining to the permits being issued to Dr. Gates, Dr. Rappe, and Dr. Abby specifically looking at disease and bleaching effects on corals. The four permittees propose to share their samples and use a non-lethal sampling.

Jill Zamzow informed the Board coral growth rates in the French Frigate Shoals, Nihoa and Gardner are between five and twelve millimeters per year which is similar to coral in the main Hawaiian Islands.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui pointed out the ultimate goal of these studies are to determine if assessments of microbial community structure can be used as bioindicators for coral health and to predict a coral's susceptibility to disease. Ms. Fried indicated that this question can be answered by studying coral in the main Hawaiian Islands and if the results prove 1) that this sort of research can be used to predict disease; 2) that coral disease prevention will be a core management activity carried out by the State of Hawaii in the NWHI Refuge; 3) there is no threat of inadvertently transferring disease through any lab or research protocol involved in this research, and 4) that the sampling methodology does not have any trophic-level ecosystem impact then and only then should this research be considered for a NWHI Refuge permit. With regards to the 1000 samples of corals to be taken at the French Frigate Shoals, Ms. Fried noted the applicants are focusing their coral testing on a small area of vital importance to endangered species thus their results will be specific to that small site and not all areas so she questions why this testing can not be done in a less fragile area.

Steven Karl, one of the applicants came forward to address the question why the research needs to be done in the French Frigate Shoals. Mr. Karl explained that there is a high variance in the French Frigate Shoals and it is where there is disease and where management issue are most critical.

Greta Aeby, one of the applicants let it be known she started this disease investigation back in 2002. To alleviate some of the fears of the public, Ms. Aeby informed those present the protocols they have instituted voluntary are those obtained from the OIE manual for disinfection protocol. She noted these protocols will become part of the national protocols that are being established by the Coral Disease and Health Consortium. Ms. Abby showed the Board two coral disease she has identified at the French Frigate Shoals in 2003.

Written testimony received from Stephanie Fried and Isabella Abbott.

**Unanimously approved as submitted Item F-8 (Schuman/DeMello).**

**The Board amended the Recommendation Section of Item F-9 as follows**

- “1. That the Board authorize and approve, with stated conditions, 1) a Research, Monitoring and Education Permit to Dr. Greta Aeby of the Hawaii Institute of Marine Biology, and**
- 2. That the Board grant conditional approval for a Research, Monitoring and Education Permit to Dr. Stephen Karl of the Hawaii Institute of Marine Biology, for activities and access within the State waters of NWHI subject to the approval of the U.S. Fish and Wildlife Service.”**

**Unanimously approved as amended (Schuman/DeMello).**

**Item D-17: Amend Prior Board Action of November 19, 2004 under Agenda Item D-44, for Sale of Reclaimed (Filled) Land to Alvin and Anne Maeda Revocable Trust and Confirmation, at Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-58:seaward of 17.**

**Motion to defer.**

**Unanimously approved to defer (Schuman/Agor).**

**Item D-1: Issuance of Right-of-Entry Permit to County of Kauai on Lands Encumbered by General Lease S-3832 to Pixar Development LLC, Kapaa Town Lots, Kapaa, Kauai, TMK: (4) 4-5-11:46.**

**Item D-2: Amend Prior Board Actions of February 25, 2005, Item D-1, Grant of Perpetual, Non-Exclusive Easement to Philip K. Binney and Peter A. Binney for Access and Utility Purposes, Keahialaka, Puna, Hawaii, TMK: (3) 1-3-08:por. of 04 and 12.**

- Item D-5:** Set Aside to Division of State Parks; Issuance of Management and Construction Right-of-Entry, for Park and Related Purposes at Lalamilo, South Kohala, Hawaii, TMK: (3) 6-2-02:01; 6-6-02:02, 06, 07, 31, 40, 41 & 42; and 6-9-01:por. 01.
- Item D-6:** Consent to Assign Perpetual, Non-Exclusive Easement (LOD No. S-27613), Puuwaawaa Waterworks, Inc., Assignor, to Napuu Water, Inc., Assignee, Puuwaawaa and Puuanahulu, North Kona, Hawaii; TMKs: (3) 7-1-01:por. of 06 and 7-1-04:por. of 18.
- Item D-7:** Amend Prior Board Action – Approval of a Set Aside to the Division of Forestry and Wildlife; Approval of Set Aside to the Division of State Parks; Approval of Natural Resource Management Guidelines and Priorities for State Lands at Puuwaawaa and Puuanahulu, North Kona, Hawaii, TMK: (3) 7-1-03:07.
- Item D-8:** Withdrawal from Governor’s Executive Order No. 2312 to the Department of Education for Kealakehe School; Conveyance by Land Patent Grant to County of Hawaii, Kealakehe, North Kona, Hawaii, TMK: (3) 7-4-19:44.
- Item D-9:** Amend Prior Board Actions of August 28, 1998, Item D-27, Direct Sale of Two Perpetual, Non-Exclusive Easements to Nohona Partners Inc. at Kaumalumu and Pahoehe 1<sup>st</sup>, North Kona, Hawaii, TMK: (3) 7-7-04:por. of 02 and 7-7-08:por. of 27.
- Item D-10:** Amend Prior Board Actions of October 22, 1999, Item D-19, and October 13, 2000, Item D-21, Direct Sale of Eight Perpetual, Non-Exclusive Easements to Nohona Partners Inc. at Kaumalumu and Pahoehe 1<sup>st</sup>, North Kona, Hawaii, TMK: (3) 7-7-04:por. of 02 and 7-7-08:por. of 27.
- Item D-11:** Consent to Assignment of Term, Non-Exclusive Seawall Easement Identified as General Lease No. S-5211, Philip D. Gray and Carolyn M. Gray, Trustees of the Philip & Carolyn Gray Living Trust and Mark Van Pernis, Assignor, to Alohi Kai Partnership, Assignee, and Assignment of Easement from Alohi Kai Partnership, Assignor to Ke Alohi Kai Association, Incorporated, Assignee, Kaumalumu, North Kona, Hawaii, TMK: (3) 7-7-24:makai of 07 (formally (3) 7-7-04:makai of 03).
- Item D-13:** Mutual Cancellation of Revocable Permit S-3835 to Tennent Art Foundation and Issuance of a Revocable Permit to Hawaii Preparatory Academy; Auwailimu, Honolulu, Oahu, TMK: (1) 2-2-03:94
- Unanimously approved as submitted (Agor/DeMello).**

**Item D-4: Lease to the University of Hawaii for Education, Housing, and Related Purposes; Waiakea, South Hilo, Hawaii, TMKs: (3) 2-4-01:por. of 24; 2-4-56:17 & por. of 14.**

Member DeMello recused himself.

**Deferred due to lack of quorum.**

There being no further business, Chairperson Young adjourned the meeting at 1:08 p.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, MAY 12, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:09 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Gerald DeMello  
Ms. Taryn Schuman

Mr. Tim Johns  
Mr. Ron Agor  
Mr. Jerry Edlao

**STAFF**

Mr. Sam Lemmo, OCCL  
Ms. Tiger Mills, OCCL

Mr. Russell Tsuji, Land

**OTHERS**

Ms. Julie China, Deputy Attorney General  
Ms. Meredith Ching, K-7  
Ms. Alice Machado, D-1  
Mr. Steven Lim, K-5  
Mr. Ron Self, K-5  
Mr. Bob Graham, K-5  
Mr. Randy Vitousek, K-1  
Ms. Amy Tsuneyohi, K-2  
Mr. Terry Rodrigues, D-8  
Senator Fred Hemmings, D-8  
Mr. Dean Okimoto, D-8  
Mr. Lloyd Ching, D-8  
Mr. Bill Tam, D-8

Mr. Rodney Funokoshi, K-7  
Mr. David Tongg, D-7  
Ms. Marry Carroll, K-5  
Mr. Earl Hanoa, K-5  
Mr. Mich Hirano, K-6  
Mr. David Frankel, K-1  
Mr. Kali Watson, D-8  
Mr. Dave Kendrick, D-8  
Representative Tommy Waters, D-8  
Mr. Patrick Oka, D-8  
Mr. Tom Staton, D-8  
Mr. Jonathan Silverstein, D-8

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

**Item A-1: Minutes of April 13, 2006 briefing**

Members Schuman and Edlao recused themselves.

**Unanimously approved as submitted by the remaining Board Members (Johns/Agor).**

**Item A-2: Minutes of April 13, 2006**

Members Schuman and Edlao recused themselves.

**Unanimously approved as submitted by the remaining Board Members (Johns/Agor).**

**Item A-3: Minutes of April 28, 2006**

Members Johns and Edlao recused themselves.

**The Board amended the minutes as follows:**

**1. Add Toby Martyn under the Section “Members”**

**2. Page 18, Item D-14**

**“Item D-4: Lease to the University of Hawaii for Education, Housing, and Related Purposes; Waiakea, South Hilo, Hawaii, TMKs: (3) 2-4-01:por. of 24; 2-4-56:17 & por. of 14.**

**Member DeMello recused himself.**

**[Unanimously approved as submitted] Deferred due to lack of quorum.**

**Unanimously approved as submitted by the remaining Board Members (Schuman/Agor).**

**Item K-7: ATF CDUA filed by Kauai Coffee Company for Unauthorized Grading and Grubbing, Excavation, Access Road Construction, Tree Removal, Bypass Ditch Construction; and Request Approval for Future Land Use Activities Involving Operations and Maintenance Activities Related to Alexander Dam, Kauai Coffee Company, P.O. Box 8, Eleele, Kauai 96705, Applicant Rodney Funakoshi, Project Manager, Wilson Okamoto Corporation, 1907 South, Beretania, 4th Floor, Honolulu, Hawaii 96826, Subject Parcel's TMK's: (4) 2-4-008:001, 002, and 016 & 2-4-009:001 and 003.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) noted that there were two supplemental correspondences from Alexander & Baldwin (A&B) asking for amendments to the report and changes to the recommended conditions. Mr. Lemmo acknowledged that he has no problem with their recommendations. He went on to say that A&B originally came in for an after-the-fact approval for unauthorized activities conducted at

the subject site in 2001 due to some problems that arose as a result of a ditch collapse. At the present the after-the-fact application is being processed. In addition A&B proposes to conduct future maintenance activities on the dam. At this time due to some complexities resulting from the floods on Kauai and dam maintenance issues, AB has asked that the two issues be separated and set aside the issue of future maintenance activities for a later date. Mr. Lemmo recommended the Board approve the after the fact conservation district use application for all of the actions that were conducted in 2001 without the Board's authorizations subject to the terms and conditions listed in staff's submittal.

Meredith Ching, representing Alexander and Baldwin was present to answer any questions and provided written testimony.

**The Board amended the following:**

**1. "Discussion" Section**

**"The proposed use is an identified land use in the Conservation District, according to Section 13-5-23, Hawaii Administrative Rules (HAR), L-1, AGRICULTURE, (D-1), "Agriculture within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry, and L-3, EROSION CONTROL, (D-1), "Erosion control, flood control, and other hazard prevention devices or facilities."**

**Staff notes the ATF CDUA is for improvements that were conducted without authorization - unauthorized grubbing and grading action, unauthorized excavation of 33,000 cubic yards of soil, unauthorized construction of an access road, unauthorized tree removal, and unauthorized bypass ditch construction - and for future land use activities that involve operations and maintenance activities related to Alexander Dam, the Forebay, irrigation ditch, and appurtenant facilities, and revegetation. ~~[Another related issue, but separate from the CDUA, was the landslide that recently occurred during heavy rain. A landslide blocked a 150-foot section of the repaired irrigation ditch. The ditch carries water from the 810 million gallon Alexander reservoir to a forebay supplying the Kalaheo hydroelectric plant and Kauai Coffee irrigation system. With the exception of the emergency spillway the irrigation ditch was the sole means of releasing water from reservoir. Water was released from the reservoir via the spillway, and was overflowing the ditch upstream of the slide and undermining the ditch (causing erosion downstream). Restoration actions were necessary to: 1) prevent excessive erosion to the ditch banks and down slope areas; 2) allow water released from the reservoir to reach Kalaheo hydroelectric plant and coffee irrigation system; and 3) maintain Wahiawa Stream water quality.~~**

**~~The applicant notes that the emergency repairs to the ditch and access road were intended solely to restore the structures to the same condition as existed prior to the damage. Work would consist of clearing and restoring the ditch and access road, and stabilizing the slope above and below the ditch as necessary to ensure the structural integrity and to minimize potential future erosion. Staff notes on that day emergency authorization was given to Kauai Coffee to make the requested~~**

~~emergency repairs (Exhibit 5). Repairs were completed and the ditch restored to operation by April 12, 2006. However, the applicant notes that they were not able to stabilize the slide area above the ditch, and as a result there remains a potential for another slide to cover the ditch again in the future.~~

~~According to the applicant, they intend to install approximately 400 feet of high-density polyethylene (HDPE) pipe in the ditch, anchored by a concrete headwall; additional engineering studies are being conducted to complete the additional work (which is necessary to ensure that the ditch remains in operation in the event of further landslides in the area). The applicant notes that they understand the work is covered by the March 21, 2006 emergency repair authorization, and the work will also be covered by the CDUA. A plan identifying the repair work will be submitted under separate cover (Exhibit 6). Staff believes that the emergency repair work on the irrigation ditch may be extended to take additional measures to ensure that the irrigation ditch remains open, subject to the Department's approval of an engineered plan prior to such action-taking place and only if the additional work is deemed as emergency in nature.~~

#### Future Maintenance Activities

~~Staff notes that the Final Environmental Assessment for the project contains a table of "Operations, Maintenance, and Repair Activities" (Exhibit 7, Table 1). The applicant is seeking approval to continue with these activities. Staff notes that some of these activities involve routine maintenance, such as weed control, for which no approval would be required, while there are other uses that could potentially require some level of review and approval from the Department. For instance, Item 7 of Table 1 refers to "general maintenance and landscaping of the surrounding areas in accordance with an approved Soil and Water Conservation Plan, to prevent erosion." These measures could potentially involve modification of landforms, necessitating review by the Department. Staff believes that it would be pre-mature to grant a blanket approval covering all aspects of dam maintenance, beyond routine activities such cutting grass, and clearing debris from ditches.~~

~~This is because the Army Corps of Engineers, and DLNR Engineering Branch referenced needed corrective actions for the Alexander Dam, in the March 2006 "Visual Dam Safety Inspection" Report. Based on the recommendation of this report, staff believes that it would be unwise to pre-approve any future work that might be performed under the guise of "maintenance" until the corrective actions required in the "Visual Dam Safety Inspection" report are addressed.~~

~~Pursuant to staff's conversation with the Engineering Division, Kauai Coffee Company would need to have a consultant review their report with acceptable methods and/or actions to address the issues in the report. Upon acceptance, the Engineering Division will need to issue a "Dam Construction Alteration and Removal Permit."~~

~~Thus, staff will recommend that no additional work will be conducted on the Alexander Dam and its appurtenant facilities, with the exception of routine maintenance and the continued emergency repair of the irrigation ditch (if deemed appropriate and emergency in nature), until Kauai Coffee receives the approval of the Engineering Division for a Dam Construction Alteration and Removal Permit. Staff notes that the corrective actions required by a Dam Construction Alteration and Removal Permit could potentially require Kauai Coffee to obtain another CDUP if the required actions require significant changes to the dam or its appurtenant facilities.~~

~~Lastly, staff notes that Kauai Coffee will need to discuss with the Land Division—Kauai Branch the requirements for an Easement on State-owned land(s) for the bypass ditch, and after the ATF CDUA is approved by the Board, submit and expedite an Easement]~~

2. Recommendation 3)

~~“That this permit is only for the after-the-fact improvements [only] and remedial work to restore the areas affected by the 2001 work [If Kauai Coffee wishes to conduct additional repair work on the ditch it shall submit a request with engineered plans to the Department prior to conducting the work. The Department will review the plans in consultation with the Engineering Division and determine if the repair work qualifies as emergency repair work];~~

3. Delete Recommendation 4)

~~[That this permit is for after-the-fact improvements only and does not provide Kauai Coffee with a blanket approval to operate, maintain and repair dam and dam related facilities, beyond routine maintenance.]~~

4. Delete Recommendation 5)

~~[That upon approval of the Dam construction Alteration and Removal Permit, Kauai Coffee will consult with the Office of Conservation and Coastal Lands to determine in a CDUA is needed for the additional corrective work;]~~

Unanimously approved as amended (Agor/Johns).

**Item D-1: Issuance of Right-of-Entry Permit to Kauai Island Utility Cooperative on Lands Encumbered by Revocable Permit S-7335 to Kenneth Bray, Wailua, Lihue, Kauai, TMK: (4) 3-9-01:02.**

Mr. Tsuji informed the Board that the Kauai Island Utility Cooperative (KIUC) is seeking a right-of-entry permit to conduct soil testing. At present the land is encumbered under a revocable permit to Kenneth Bay. KIUC will need to obtain written concurrence from all users of the subject land. Mr. Tsuji recommended the Board authorize the issuance of a right-of-entry permit to Kauai Island Utility Cooperative covering the subject area under the terms and conditions cited in staff’s submittal.

Alice Machado representing the applicant confirmed they will only be testing the soil.

**Unanimously approved as submitted (Agor/Johns).**

**Item D-7: Consent to the Assignment of Grant of Non-Exclusive Easement Bearing Land Office Deed No. 27766, Shang Wen Chen, Trustee, Assignor, to Association of Apartment Owners of 2765 Round Top Drive, Assignee, Makiki, Honolulu, Oahu, TMK: (1) 2-5-5:5 road.**

Mr. Tsuji indicated the applicant has formed an Association of Apartment Owners and would like to transfer the easement to the Association. Mr. Tsuji recommended the Board consent to the assignment of Grant of Non-Exclusive Easement bearing Land Office Deed No. 27766 from Shang Wen Chen, Trustee, as Assignor to Association of Apartment Owners of 2765 Round Top Drive, as Assignee subject to the conditions listed in staff's submittal.

David Tongg was present.

**Unanimously approved as submitted (Schuman/Agor).**

**Item K-5: Amendment to Condition 7 & 9 of Conservation District enforcement File No. HA 05-19 Located at Hokukano, Ka'u, Island of Hawaii, TMK (3) 9-5-016:036.**

Member Johns recused himself.

Mr. Lemmo pointed out the applicant is requesting an extension in order to comply with the Board's order of January 13, 2006. One of the Board's conditions required the applicant to conduct a study to determine if lighting from the residence has any impact on the hawksbill turtle's behavior. At this time the applicant is asking for an extension until July 12, 2006 to complete the study. In addition the applicants are seeking an amendment to the condition that requires the applicant to work with staff to determine if an after-the-fact subdivision is required. Mr. Lemmo indicated upon review of the land exchange documents, staff believes that an after-the-fact subdivision is not required, however to clarify County tax map records, the Carroll's must obtain the required approval from the County of Hawaii to effect the subdivision/consolidation of the land exchange. Mr. Lemmo recommended the Board approve the amendment for an extension of 90 additional days to complete and submit a report to determine the potential impacts of lights from the Single Family Residence on Hawksbill turtle nesting behavior in the subject area and that the Carroll's obtain the required approval from the County of Hawaii to effect the subdivision/consolidation of the access road land exchange approved by the Board on January 10, 1975 subject to the conditions listed in staff's submittal.

Steven Lim, Attorney for the applicant appeared before the Board. Mr. Lim went on to give the Board a status report on what has been going on since the last time they appeared before the Board. Mr. Lim confirmed that OCCL has approved their "as built" plans and these plans have been given to the county for final approval. OCCL has also approved the applicant's landscaping plan which includes planting of seventeen koa and kamani plants. Mr. Lim noted the turtle study is in progress and their consultant has already been out to the subject site. As

far as the consolidation/subdivision issue, Mr. Lim acknowledged that he has spoken to the county planning office and were essential told that the tax key map is correct. The county also informed him when the subject parcel was consolidated and resubdivided in 2000 that action essentially cured the need to do the consolidation/subdivision that was required in 1970's. Mr. Lim stated he would be working with the planning department on this issue and have them submit a letter to OCCL to confirm this fact. Mr. Lim asked that condition nine be amended to read "The Carroll's shall obtain the required approvals from the County of Hawaii to confirm the subdivision/consolidation of the land exchange of the access road with the subject property within ninety (90) days of the Board's action."

Ron Self, Attorney representing Kau Preservation noted that this has been a controversial approval as 1) the subject structure is built on a graveyard; 2) the area has an enormous amount of endangered species and 3) because of the cultural and historical factors that have existed along this coast for thousands of years. Mr. Self pointed out the subject structure has altered the view plane of the Kau Coast. He also made it know that the hawksbill and green sea turtle nest along the entire Kau Coast. There are also Hawaiian monk seals that travel along the coast and the area is also visited by the Hoary bats. Mr. Self pointed out the Carroll's have denied grubbing and grading the subject area but he provided the Board with a declaration from the individual that conducted the grubbing and grading on the property. He also provided the Board with an Archaeological Burial Record of the subject area and the applicant's building permit application. In closing Mr. Self asked the Board to set aside their previous order and have the applicant remove the subject structure.

Earl Hanoa disputed the claim made by Mr. Lim by stating that the National Park's Service does not allow their employees to conduct private studies. He told the Board they could contact Cindy Orlando from the National Park's Service to confirm this fact. Mr. Hanoa believes the structure was illegal built on an unspoiled coastline. He let it be known the turtles nest about a hundred to two hundred yards from the subject structure.

Bob Graham, a resident of Kau and a retired teacher testified. He spoke of his concern with outsiders coming into the area with real cultural insensitivity as they do not respect the current situation. He feels the Board is just rubberstamping the situation. He spoke of a television interview with Mrs. Carroll in which she stated that she sees nothing wrong with living next to a cemetery. Mr. Graham noted there are 2 chiefess buried on the subject site. He feels this process has been dragging out and the applicant is living in the subject structure that has not been inspected. Mr. Graham feels the applicant has a blatant disregard for the rules. Mr. Graham asked the Board to use common sense and have the applicant remove the subject structure.

Written testimony was received from Donald C. McIntosh and Ronald G. Self.

**The Board amended Recommendation 2) as follows**

**“~~[That condition 9 of Enforcement File HA-05-19 is amended to provide that the [Carrolls obtain the required approval form the County of Hawaii to effect the subdivision/consolidation of the land exchange of the access road within 90 days of Board action]~~ The Carroll's shall obtain the required approvals from the County of Hawaii to**

**confirm the subdivision/consolidation of the land exchange of the access road with the subject property within ninety (90) days of the Board's action;**

**Unanimously approved as amended by the remaining Board members (DeMello/Agor).**

**Item K-6: Conservation District Use Application (CDUA) MA-3286 for the Replacement of the Waiehu Golf Course Maintenance Building and Associated Improvements Located at Waiehu, island of Maui, TMK (2) 3-2-013:006.**

Mr. Lemmo noted the proposed project site is located at Waiehu on the north side of the island of Maui. The proposed action will involve the demolition of three existing maintenance structures and the construction of a new maintenance building and associated improvements. Upon completion and occupancy of the new building, the remaining maintenance building will be demolished. Mr. Lemmo recommended the Board approve this application for the replacement of the Waiehu Golf Course maintenance building and associated improvements.

**Unanimously approved as submitted (Edlao/Johns).**

**Item K-1: Waive Oral Request for a Contested Case Hearing, and Appointment and Selection of a Hearing Officer to Conduct All Hearings for One (1) Contested Case Hearing regarding Conservation District Use Application (CDUA) HA-3269 for Mr. Jonathan Cohen's Request to Construct a Single Family Residence at Paoo, North Kohala, Hawaii.**

Mr. Lemmo indicated a public hearing was held on this permit at Spencer Beach Park and at that meeting there was no request for a contested case hearing (cch). He went on to say according to the rules of practice and procedure one has to make a request for a cch at the public hearing and follow it up with a written request. However when this item came before the Board, the attorney for the applicant requested a contested case hearing. Mr. Lemmo noted the Board has the power to waive the requirement for the request to be made at the hearing. Mr. Lemmo recommended the Board waive the petitioners' failure to make an oral or written request for a contested case hearing by the close of the public hearing at which the matter was heard, authorize the appointment of a Hearings Officer of Contested Case HA-06-03 and let the Hearing Officer conduct all the hearings relevant to the subject petition and delegate the authority of selection of a Hearing Officer to the Chairperson.

Chairperson Young noted at the last meeting there were others that requested a contested case hearing relating to this matter. Mr. Lemmo pointed out at the time this submittal was written staff had not received the other petitions for a cch and he chose not to address that issue. Mr. Lemmo announced he would address those petitions when it was received. Mr. Lemmo stated there would be the opportunity for those parties to request to be interveners should there be a contested case hearing.

Randy Vitousek, Attorney for the applicant pointed out the 180 day time extension expired on May 9 and if staff believes there was not a proper request for a cch then there would be no basis to request an extension of the 180 day deadline. Mr. Vitousek disclosed that he was planning to request an extension to the 180 day deadline but was told by staff that he would also need to

request a contested case hearing at the same time. With respect to the interveners, Mr. Vitousek noted they can either proceed with their own contested case hearing or he'd stipulate that they could be viewed as petitioners to join in this contested case hearing as parties.

David Frankel, representing Makai Kamakani O Kohala confirmed at the last meeting they made an oral request for a contested case hearing and followed that oral request with a written request. He pointed out at the last meeting Kakoo submitted a written request for a contested case hearing. Mr. Frankel disagreed with the statement made by staff that the request was late because the public hearing held was not required, it was a discretionary decision. He asked the Board to either amend staff's recommendation to simultaneously waive the time requirement for Makai Kamakani O Kohala and Kakoo as well as Mr. Cohen today or alternatively defer this item to complete everything at the next meeting.

Julie China, Deputy Attorney General stated that according to the rules a public hearing on this matter was required (HAR 13-5-40). She also confirmed that the Board would need to waive the oral request for a contested case hearing.

### **The Board amended**

#### **1) Recommendation 1)**

**“That the Board waive the petitioners’ (Mr. Cohen, Makai Kamakani, O Kohala and Kokoo) failure to make an oral or written request for a contested case hearing by the close of the public hearing at which the matter was heard.”**

**Unanimously approved as amended (DeMello/Johns).**

#### **Item K-4: Time Extension for the Processing Period for Conservation District Use Application HA-3250 for the Commercial Use of Hand Quarried Volcanic Ash Located on State Land, Puu Nene, Humuula, North Hilo, island of Hawaii, TMK (3) 3-8-001:001.**

Mr. Lemmo acknowledged that staff received two petitions requesting a contested case hearing on this issue therefore the applicant is requesting a sixty (60) day time extension to complete the hearing process. Staff believes that it's not enough time to complete the process therefore Mr. Lemmo recommended the Board amend the applicant's request and extend the processing period for CDUA HA-3250 an additional 120-days (to September 18, 2006) to allow sufficient time to complete the contested case hearing process.

Mr. Vitousek, attorney representing the applicant informed the Board the request for a contested case hearing was done at the December 9, 2005 meeting. Aside from the fact that a hearings officer has been appointed, Mr. Vitousek points out nothing else have been done to move the hearing forward in the last five months. Mr. Vitousek feels that this is a simple application. Mr. Vitousek pointed out staff's submittal states that the applicant wishes to extend the 60 day time extension request and this is not true. He feels people will work better under short deadlines.

Tiger Mills, Planner with OCCL stated that a hearings officer has been selected but she is in the process of blocking out dates for the hearing as well as finding a location.

**Unanimously approved as submitted (DeMello/Edlao).**

**Item K-2: Conservation District Use Application (CDUA) for OA-3274 for the Makaha Valley Fence Project, Island of Oahu, Ms. Donna Kiyosaki, Deputy Manager, Board of Water Supply, City and County of Honolulu, 630 South Beretania Street. Honolulu, Hawaii 96843-0001, Subject Parcel's TMK's: (1) 8-4-002:001 and 014.**

Mr. Lemmo announced that the proposed project is located in Makaha Valley. The project is being funded by the military to protect native ecosystems in Makaha Valley. The Board of Water Supply (BWS) will build a large fence enclosure of 100 acres to protect important plant species and three small fence enclosures to protect other areas within the valley. A public hearing on this matter was held on March 6, 2006 at Waianae District Park in which seven participants attend and voiced approval of the proposed project. However, the hunters requested unrestricted access to the project area. Mr. Lemmo noted the area is a closed watershed and the BWS does not allow recreational activities within the area. With regards to native Hawaiian practices, BWS has proposed to provide a fence ladder or walk over so individuals could access the area. As far as the issue of hunting, Mr. Lemmo feels that issue needs to be worked out between the BWS and the hunters association. Mr. Lemmo recommended the Board approve this application to construct the proposed Makaha Valley Fence Project subject to the eleven conditions listed in staff's submittal.

Amy Tsuneyoshi, representing the Board of Water Supply was present. Ms. Tsuneyoshi informed the Board whenever they receive a request from hunters to enter the watershed it is processed through their land division and if their activity is approved a right-of-entry permit approved by the manager of BWS is issued. She also made it known for this project they will conduct a controlled hunt.

**Unanimously approved as submitted (Schuman/Johns).**

**Item K-3: Request to Amend Title 13, Chapter 222, Hawaii Administrative Rules (Shoreline Certification Rules).**

Mr. Lemmo indicated the definition of shoreline provides direction and guidance on delineating our shoreline for the purposes of jurisdiction and county setback. The definition of "shoreline" according to § 205A-1, Hawaii Revised Statutes differs from the definition under § 13-222-2. The proposed action is to bring the definition of shoreline under the rules into conformance with the definition under the Hawaii Revised Statute. To accomplish this goal, staff would like to delete some language from the rules as follows: "Shoreline" means the upper reaches of the wash of the waves, other than storm or seismic [tidal] waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or [~~where there is no vegetation in the immediate vicinity,~~] the upper limit of debris left by the wash of the waves." Mr. Lemmo communicated that public hearings were held on Kauai, Maui, Hilo, Kona and Oahu. Approximately 15 individuals testified on the proposed action. While most of the individuals spoke in support of the proposed action rule

amendment, several attorneys submitted written testimony expressing concerns or objections. Mr. Lemmo recommended the Board approve the Office of Conservation and Coastal Land's request to amend Chapter 13-222, Hawaii Administrative Rules inclusive of all amendments as proposed in Exhibit A and authorize the forwarding of rule amendment to the Governor, State of Hawaii, for approval and enactment.

**Unanimously approved as submitted (John/s DeMello).**

**Item D-8: Resubmittal for Forfeiture of General Lease No. S-5707, All Tree Services, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:48.**

Mr. Tsuji reminded the Board this is a resubmittal that was heard by the Board on two previous occasions. Originally this item was brought to the Board because the tenant was using the subject area as a baseyard and for storage of equipment for his tree trimming business. At the last meeting the item was deferred and the Board asked staff to reconfirm the type of activity going on at the site. Since that time, staff has conducted several unannounced inspections of the subject area and it appears to staff that the tenant is using the area solely for nursery operations. Mr. Tsuji confirmed the tenant has complied with and cured any remaining defaults except for a county violation that came up in April relating to lack of a building permit. Staff has discussed this issue with the tenant and he is in the process of remedying the default. Mr. Tsuji recommended the Board defer this matter another sixty (60) days, in accordance with Staff's comments and recommendations cited in its submittal.

Mr. Tsuji let it be known that the tenant has signed a sworn declaration stating the subject area is solely being used for his nursery operation.

Member Johns had concerns that the tenant continues to accrue additional violations while cleaning up previous violations. With regards to the County violation, Mr. Tsuji noted the tenant failed to acquire a building permit for the structures on the site. He noted that the tenant will be submitting plans for the area which the department will review and there is no guarantee that the plans will be approved. Upon approval from the department the plans will be submitted to the county. Mr. Tsuji also confirmed that Mr. Rodrigues declared that kiawe wood is no longer being sold from the subject site although staff was provided a receipt of kiawe wood purchased after the April 28, 2006 meeting.

Kali Watson, Attorney representing Terry Rodrigues, the tenant appeared before the Board to provide testimony. He disclosed that he does not agree with the use of the property but his client has complied with staff's recommendations so that his lease would not be terminated. Mr. Watson let it be known they've put together an agricultural plan to use the entire property and together with Dave Kendrick conducted a power point presentation of these plans. Mr. Watson's presentation also showed a revised building plan for the site which will be submitted to the department. Mr. Kendrick clarified testimony given at the April 28 meeting in which a statement was made concerning his use of pesticides on plants. Mr. Kendrick informed the Board that he operates an air layering operation which is independent of the tenant's organic nursery. He pointed out the statement made saying that Mr. Kendrick uses pesticides actually deals with his air layering business. Addressing the declaration signed by Mr. Rodrigues, Mr. Watson would like to revise it to more accurately reflect what the situation is especially dealing with his baseyard as it is no longer in Kapolei but in Aikahi. Mr. Watson believes staff's goal

was to get full compliance and he believes that has been achieved. He also noted his agreement with staff's recommendation to defer action for an additional sixty days in order for his client to obtain the necessary department and county building plan approvals.

When questioned by the Board if a building permit was obtained, Mr. Watson noted they were in the process of obtaining an after the fact permit because the department had not approved the building plans submitted and thus could not be forwarded to the county for final permit approval. Mr. Watson announced the structural engineer has redrawn the plans and it will be submitted to the department prior to May 20, 2006.

Mr. Watson noted the declaration signed by his client was done so with the threat of termination of his lease. He declared that the declaration was signed under duress. Mr. Rodrigues stated the original staff submittal dealt with the property being used as a baseyard but upon compliance with that issue staff brought up additional violations. He questioned what's next and when will this come to an end. Mr. Rodrigues further stated that he was lead to believe that he could conduct his tree trimming business on the subject parcel per the application he sent in which was approved by the department.

Senator Fred Hemmings communicated the Board's decision must be a strategic decision no matter how hard the decision is as the buck stops with the department. He believes the issue of government officials being intimidated by the threat of lawsuits need to be put aside so the right decision can be made. Senator Hemmings stated that the department must send a message 1) that important agricultural lands must be protected; 2) we must protect individuals complying with the rules and 3) we must protect the integrity of the process.

Representative Tommy Waters who represent the 51<sup>st</sup> district stated that the farmers are concerned that agricultural lands are being used for non-agricultural purposes. Representative Waters disclosed he visited the subject site and he doesn't feel All Tree Service is farming the land. He believes All Tree Service is in default of the terms of their lease. Representative Waters summarized the situation by communicating that the department has given an agricultural lease no a non-farmer under false pretenses. Lastly, Representative Waters questioned if Mr. Kendrick is subleasing the property from All Tree Service as the terms of the lease state that subleasing is a violation. He also questioned if All Tree Service has W-2 forms, and if they are paying workman's comp or unemployment insurance for their workers.

Dean Okimoto, President of Farm Bureau and owner of Nalo Farms provided testimony. Mr. Okimoto disclosed that in the qualification process the committee looked at the business plan and the viability of the business when qualifying to bid. With regards to the plans submitted he noted that All Tree Service's plans did not indicate a baseyard on the property if it did Mr. Okimoto would've denied the application. He went on to say All Tree Service's business plan was based on growing trees and selling the trees. Mr. Okimoto feels there are too may abuses in which agricultural lands are being used as a baseyard. In closing Mr. Okimoto disclosed that the original plans did not call for an organic farm so why now is there an organic farm.

Patrick Oka a nursery man and landscaper who is helping All Tree Service testified before the Board. Mr. Oka confirmed within the past month he has planted over 100 native Hawaiian palms on the subject property as he believes there is a need for this type of palm. He took offense to the Farm Bureau's characterization that the subject site is an ugly nursery as he feels

he is more qualified to assess the aesthetic aspect of a plant nursery. He feels this nursery is much nicer than a majority of nurseries in Waimanalo. Mr. Oka believes the asset value of the plants on the property when sold would exceed \$50,000. He acknowledged he has built unauthorized structures on this property without a permit therefore he feels the department is merely picking on All Tree Service. Mr. Oka stated what the department is doing to All Tree Service is not justified. In terms of subleasing the subject property Mr. Oka believes it is a standard practice being done by everyone in Waimanalo and he sees nothing wrong with subleasing the property.

Lloyd Ching, Owner of Ching's Nursery testified. He feels what All Tree Services is doing complies with the terms of the lease. He believes State government and its officials should represent all people by helping its citizens not tear them apart. Mr. Ching communicated that tree trimming is a part of agriculture and pointed out that there are many parcels in Waimanalo using their property as a baseyard. Mr. Ching announced that he is afraid of the authority the Board holds as he feels the Board can take away his lease which is not fair. He asked the Board to come up with policy that is clear to everyone.

Tom Staton, owner of the property located directly across of the subject property and a farmer for over twenty years testified. Mr. Staton acknowledged he has a master of science degree in botany from the University of Hawaii and knows plants very well. Mr. Staton testimony focused on the history and track record of willful violations by All Tree Service. He spoke of All Tree Service's baseyard a mile away from the subject site, selling of kiawe wood on the property, grubbing and grading on the subject property, lack of a conservation plan which led to major erosion from the property, construction of asphalt parking lot and buildings, and using the subject site for the tree trimming business.

Bill Tam, Counsel for the Waimanalo Agricultural Association spoke of the building violation by All Tree Service. He provided the Board with copies of the original plans signed by the department and pointed out the revisions made on Mr. Watson's power point presentation was not the same. Mr. Tam indicated the building and the restroom was not included on the original plans. He feels there is a pattern and practice of not complying with the terms of the lease and instead the department has received one explanation after another for the violations. Mr. Tam believes All Tree Service has had its due process.

Jonathan Silverstein, a taro farmer and a subcontractor for Mr. Kendrick testified that the subject parcel is a farm despite the statements made by the Farm Bureau. He stated that the issue of lease compliance is dear to him as he is trying to obtain a lease from the department. He conveyed that the subject nursery is clean and employs people and he believes it is a viable business if given the necessary time.

Responding to Mr. Tam claim regarding the building plans, Mr. Watson indicated the original plans showed the restroom has being attached but when it was constructed it was done as a detached unit. He confirmed the plans being prepared for the county will show the restroom as being detached. Mr. Watson disclosed that Mr. Kendrick is working as an independent consultant/partner in this nursery.

When asked by the Board to clarify how revenue from the business is dispersed, Mr. Watson announced that an LLC was created, but there was no sublease. What they are considering is transferring the lease to the alchemy company so there is purely a nursery type of activity going

on. He noted Mr. Kendrick is working on the property not as an employee nor is he under a sublease. Mr. Watson is suggesting that Mr. Rodrigues and Mr. Kendrick set up an account where revenues from the nursery would be deposited and used to pay for the mortgage and other expenses but at present there is no formal agreement between the two gentlemen. Mr. Kendrick acknowledged the majority of stock on the property belongs to himself. As far as their business relationship, Mr. Kendrick stated he has designed the nursery operation to cater to the operation Mr. Rodrigues had in the beginning with the option of a partnership or Mr. Rodrigues would be allowed to buy him out (paying for installation of the nursery, design and concept and the plants).

Mr. Rodrigues stated prior to Mr. Kendrick coming on board he used his resources to clean the property, remove trees and place the ground work on the property to start the nursery. He made it known he did not remove any trees of value.

Mr. Tsuji noted the lease allows for assignments and subleases with prior approval by the Board. He also stated that he did not know if the business relationship between Mr. Rodrigues and Mr. Kendrick is a default of the terms of the lease.

Written testimony was received from Roland Ejercito, Jr.

**The Board asked staff to provide clarity on the status of the Lessee’s building permit application and a definitive description on the business relationship with Mr. Kendrick.**

**Approved as submitted (Schuman/Agor).**

**Yes – Members Schuman, Agor and Edlao.**

**No – Chairperson Young, Members Johns and DeMello.**

**Motion fails.**

**The Board amended the Recommendation as follows**

**“That the Board defer this matter another [~~sixty (60)~~ thirty (30) days, in accordance with staff’s comments and recommendations cited above.”**

**The Board asked staff to provide clarity on the status of the Lessee’s building permit application and a definitive description on the business relationship with Mr. Kendrick.**

**Approved as amended (DeMello/Edlao).**

**Yes – Members DeMello, Edlao, Agor, Schuman.**

**No – Chairperson Young and Member Johns.**

**Motion passes.**

**Item D-4: RESUMITTAL – Lease to the University of Hawaii for Education, Housing, and Related Purposes; Waiakea, South Hilo, Hawaii; TMK: (3) 2-4-01:por. of 24; (3) 2-4-56:17 & por. of 14.**

Member DeMello recused himself.

**Unanimously approved as submitted by the remaining Board members (Johns/Agor).**

**Item D-2: Rescind Prior Board Approval for Set Aside to Division of Boating and Ocean Recreation for Boatyard; Set Aside to County of Hawaii for Park and Related Recreational Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-32:3, 4, 8,19, 87 & 88.**

**Item D-3: Grant of Perpetual, Non-Exclusive Avigation and Noise Easement to State of Hawaii, Department of Transportation, Airports Division, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:41.**

**Item D-5: Grant of Perpetual, Non-Exclusive Easement to Hilo Meishoin for Utility Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-57:por. 01.**

**Item D-6: Consent to Assign General Lease No. S-5142, Cynthia Lee Kuahuia Baeza, Assignor, to Larry Patrick Kuahuia, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:28.**

**Item F-1: Request for Approval to Amend the Scope of Services and Compensation and Payment Schedule for Contract No. 53058 with the University of Hawaii (UH) to Develop an Aquatic Wildlife Conservation Strategy.**

**Item J-1: Request for Approval to Enter into a contract with CSV Consultants to Develop Strategies to Address Ocean Recreation User Conflicts Across the State.**

**Item L-1: Approval for Award of Construction Contract – Job No. 500BH42A, Demolition, Debris Loading, Hauling and Disposal Puu Anahulu Homestead, North Kona, Hawaii.**

**Item L-2: Rescind Prior Board Action of March 10, 2006 (Item L-2), Award of Contract – J00C302A, Maui Baseyard Office ADA Barrier Removal, Kahului, Maui, Hawaii and Approval for Award of Construction Contract - Job No. J00C302A Maui Baseyard Office ADA Barrier Removal, Kahului, Maui, Hawaii.**

**Item L-3: Request for Authorization for the Geological Survey, United States Department of the Interior (USGS) and its agents, employees, and consultants, to enter upon private property for the purposes of investigating, installing, operating and maintaining remote sensing gages and related instrumentation equipment, conducting inspections and hydraulic calculations on and around dams and reservoirs located within**

**the State of Hawaii pursuant to Hawaii Revised Statutes Chapter 179D and Authorize the Chairperson to negotiate agreements with the USGS.**

**Item L-4: Certification of Election and Appointment of Soil and Water Conservation District Directors.**

**Item M-1: Issuance of a Direct Lease – Mokulele Flight Service, Inc., Honolulu International Airport.**

**Unanimously approved as submitted (Johns/Agor).**

There being no further business, Chairperson Young adjourned the meeting at 12:52 p.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, MAY 26, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Gerald DeMello

Mr. Tim Johns  
Mr. Jerry Edlao

**STAFF**

Ms. Charlene Unoki, Land  
Mr. William Andrews, DOBOR  
Ms. Jennifer Bethel, CO

Mr. Sam Lemmo, OCCL  
Mr. Dan Quinn, Parks  
Mr. Ivan Nishiki, DAGS

**OTHERS**

Mr. Colin Lau, Deputy Attorney General  
Ms. Yvonne Izu, M-2, D-3  
Ms. Shawna Carol, D-1  
Mr. Eldon Franklin, J-1  
Mr. Calvin Choy, D-4

Mr. Steve Lee, D-1  
Mr. Guy Inouye, J-1  
Mr. Peter Schall, K-1

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

**Item A-1: Minutes of May 12, 2006**

**Unanimously approved as submitted (Johns/Edlao).**

**Item M-1: RESUBMITTAL – Issuance of Lease from Department of Accounting and General Services, Lessor, to Washington Place Foundation, Lessee, for a portion of Washington Place, Honolulu, Oahu, TMK: (1) 2-1-18:1.**

**Unanimously approved as submitted (Johns/DeMello).**

**Item D-1: Sale of Remnant to Shawna Carol and Thomas Cobb, Kapaa, Kawaihau, Kauai, TMK: (4) 4-6-08:por. 30.**

Charlene Unoki, Assistant Administrator of the Land Division indicated the applicant who is the owner of parcel 27 is requesting to purchase an abandon irrigation ditch which is owned by the state. Ms. Unoki recommended the Board find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and therefore by definition is a remnant, authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance, authorize the subdivision and consolidation of the subject remnant by the applicant and subject to the applicant fulfilling all of the applicant requirements listed in staff's submittal, authorize the sale of the subject remnant to the applicants.

Shawna Carol and Steve Lee were present. Mr. Lee informed the Board the subject ditch was created twenty five (25) years ago and in its creation landlocked the applicant's property. Mr. Lee requested a formal right of entry or easement to access the applicant's property prior to the subdivision and consolidation of the subdivision as it will take the county six (6) months to process the subdivision and consolidation request.

**The Board amended the Recommendation Section by adding the following**

**“5. Authorize a Right-of Entry permit to the applicant covering the subject area.”**

**Unanimously approved as amended (Johns/Edlao).**

**Item M-2: Consent to Assignment of Harbor Lease of Non-Exclusive Easements Nos. H-94-1 and H-94-4 at Nawiliwili Harbor, Kauai and Honolulu Harbor, Oahu.**

Yvonne Izu, representing the Gas Company was present to answer any questions.

**Unanimously approved as submitted (Johns/DeMello).**

**Item J-1: Issuance of a Non-Exclusive Easement for a sewage transmission line, and a Construction and Management Right-of-Entry for a temporary sewage bypass Line to be placed within the Ala Wai Canal to The City and County of Honolulu, Waikiki, Honolulu, Hawaii, Tax Map Key: (1)**

**2-3-037:, 36:, 35:, 34; (1) 2-7-036:, (1) 2-6-017 and a Right of entry, and  
or an Easement for crossing any other State lands adjacent and within  
the Ala Wai Canal surrounding area to the City and County of  
Honolulu to fully accomplish this project.**

William Andrews, Property Manager with the Division of Boating and Ocean Recreation (DOBOR) conveyed that the City and County of Honolulu, Department of Design and Construction is currently planning to install an emergency temporary construction bypass sewage line for the existing Beachwalk force main. This line is to run across the Ala Wai Canal, then lay along its bottom and exit at a point alongside the Ala Moana Bridge. At the same time, the city and County of Honolulu will install a permanent new 42 inch sewage line directly across its breadth and approximately twenty five (25) feet under the bottom of the Ala Wai Canal to its mauka bank. Once across the balance of this permanent line will continue on a path along the Canal's mauka bank underground to terminate at the existing discharge manhole near the Moana Pump Station. Mr. Andrews noted the bypass would be in place for six years. Mr. Andrews recommended the Board authorize the issuance of a Construction and Management Right-of-Entry Permit and Non-Exclusive Easement to The City and County of Honolulu covering the subject area under the terms and conditions cited in staff's submittal.

Guy Inouye, representing the City and County, Department of Design and Construction disclosed that the goal of this project is to prevent another catastrophic event from occurring. Mr. Inouye confirmed the City will continue to use the current system and should a problem occur they would switch over to the bypass system.

Eldon Franklin, representing the City and County, Department of Design and Construction acknowledged the historical importance of the wall and noted the bypass system will run above the wall and the setback for the bypass line will be 20 feet from the wall. He also let it be known they will have in place pressure test and other monitoring devices to check on the structural integrity of the system. Mr. Franklin feels confident there will be no leaks to the bypass system. Mr. Franklin described the construction process relating to this project. He went on to say the bypass line will be located in the deepest portion of the canal and rest on concrete saddles with strap restraints.

The Board instructed the City and County to notify the Department should they need arise to use the temporary bypass line.

**Unanimously approved as submitted (Johns/DeMello).**

**Item K-1: Conservation District Use Application (CDUA) OA-3297 for the Duke Kahanamoku Lagoon Restoration Project, Hilton Hawaiian Village, Waikiki, Island of Oahu, TMK: (1) 2-3-037:021.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) let it be known this restoration project is a fulfillment of a condition for the special management permit issued to the Hilton Hawaiian Village (HHV). He communicated the Duke

Kahanamoku Lagoon lies within the General subzone of the Conservation District. The lagoon was created by a combination of excavation and fill along the shoreline in 1956 when the Hilton Hawaiian Village was originally developed. The subject parcel is owned by the State of Hawaii however terms of an Indenture and Deed from the Territory of Hawaii Dated September 22, 1955 gives the HHV the right to construct, use and maintain the lagoon. Under the deed covenants it specifies that HHV would maintain the lagoon for as long as economically practical and when it becomes impractical the State must fill the lagoon. Mr. Lemmo went on to say that the applicant proposes to reduce the volume of water in the lagoon by 50% and shrink the surface area by 25%. The anaerobic sediments on the bottom of the lagoon would be sealed in place using an impermeable geotextile fabric covered by 15,000-20,000 yards of sand. With regards to the existing ocean intakes it will be sealed and water would be drawn from ground wells that are currently in place. The various depths of the well are to maximize the well's yield while producing water warm enough for comfortable swimming. Mr. Lemmo pointed out the existing pipe that discharges lagoon water into the Ala Wai Harbor will continue to be utilized and in addition HHV is proposing the installation of a new pipeline for discharge to the inner harbor basin. Other improvements within the conservation district include public walkways, scenic amenities and landscaping. The proposed overall Waikikian Development plan requires the applicant to provide a public walkway that extends entirely around the lagoon. The applicant also proposes to emplace a buried rubble mound structure beneath the existing berm to increase its stability. Once constructed, the berm would be completely covered with sand and would blend in with the surrounding beach. Mr. Lemmo commented there were issues dealing with the introduction of alien species, water quality and the stone revetment which were all addressed by the applicant to the department's satisfaction. Mr. Lemmo recommended the Board approve this application for the Duke Kahanamoku Lagoon Restoration Project subject to the conditions listed in staff's submittal.

Peter H. Schall, representing the Hilton Hawaiian Village told the Board he would appreciate their approval of this item.

**Unanimously approved as submitted (Johns/Edlao).**

**Item E-1: Request for approval to enter into Revocable Permits pursuant to HRS section 171-55 with Adventures in Paradise, Hawaii Pack and Paddle, Kona Boys Inc. and Aloha Kayak Company for landing and launching kayaks at Kaawaloa, Kealakekua Bay State Historical Park, as a part of their commercial guided kayak tours within Kealakekua Bay, on terms and conditions to be negotiated by the Chairperson.**

Dan Quinn, Administrator of State Parks and Jennifer Bethel of the Chairperson's Office appeared before the Board. Mr. Quinn indicated the revocable permits will be issued to the legal names and not the dba names listed in staff's submittal. Currently staff is looking at a capacity of 12 individuals per trip with two trips per day. He noted this permit only covers landings at Kaawaloa and the various companies would need to obtain a permit from DOBOR for the other end of the operation. Mr. Quinn recommended the Board authorize

the issuance of Revocable Permits pursuant to HRS section 171-55 to Adventures in Paradise, Hawaii Pack and Paddle, Kona Boys Inc and Aloha Kayak Company for landing and lunching kayaks at Kaawaloa and Kealahou Bay State Historic Park as part of their commercial guided kayak tours within Kealahou Bay on terms and conditions to be negotiated by the Chairperson and the Chairperson shall determine eligibility of each commercial kayak tour operator for a revocable permit pursuant to HRS section 171-13. No revocable permits shall be issued to a commercial operator who is not eligible under HRS section 171-13.

Chairperson Young clarified that upon review of the previous Board approved documents, the Attorney General's Office made some changes and recommended the item be brought back to the Board for approval.

**Unanimously approved as submitted (DeMello/Johns).**

**Item D-4: Issuance of Right-of-Entry Permit to Hawaiian Telcom, Inc. on Lands Encumbered by Grant of Easement Bearing Land Office Deed No. S-24475, Makawao, Maui, TMK: (2) 2-7-07:por. 05.**

**Unanimously approved as submitted (DeMello/Johns).**

**Item D-3: Consent to Assignment of General Lease No. S-5547, The Gas Company, L.L.C., as owned by HGC Holdings, LLC, as owned by k1 Ventures Limited, Assignor, to The Gas Company, L.L.C., as owned by HGC Holdings, LLC, as owned by Macquarie Gas Holdings LLC, Assignee, Waiakea House Lots, First Series, Lot A, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-27:02**

Yvonne Izu representing the Gas Company was present to answer any questions and noted her agreement with staff's recommendation.

**Unanimously approved as submitted (DeMello/Johns).**

**Item C-1: Subject: Request for Approval to Enter into a 2-Year Contract with The Zoological Society of San Diego to Provide Services to Operate The Endangered Bird Captive Propagation Facility on Maui, The Maui Bird Conservation Center, and to Provide Expert Avicultural Services to Conduct Related Forest Bird Propagation Projects on the Island of Hawaii and Throughout the State.**

**Unanimously approved as submitted (Johns/Edlao).**

**Item L-1: Rescind Prior Board Action of March 10, 2006 (Item L-4), Award of Contract – F00CF59A Individual Wastewater System Improvements at Puaa Kaa State Wayside Hana, Maui, Hawaii and Approval for Award**

**of Construction Contract – Job No. F00CF59A Individual Wastewater System Improvements at Puaa Kaa State Wayside Hana, Mau, Hawaii.**

**The Board amended the Recommendation Section**

**“1. Rescind the Prior Board Action of March 10, 2006 (Item L-4), Award of Contract – F00CF59A Individual Wastewater system Improvements at Puaa Kaa State Wayside Hana, Maui, Hawaii.”**

**“2. That the Board award DLNR Job No. F00CF59A, Individual Wastewater System Improvements at Puaa Kaa State Wayside, Hana, Maui, Hawaii to the Contractor, Maui Master Builders, Inc., for the low bid of \$442,644.00 and that the Board authorize the Chairperson to enter into a contract and sign the necessary documents to implement the project.”**

**Unanimously approved as amended (Johns/DeMello).**

**Item D-7: Amend prior Board Action of July 22, 2005, Item D-5, as amended- Cancellation of a Resolution Designating an Industrial Park; Cancellation of Governor’s Executive Order No. 3892 to the Department of Land and Natural Resources for Industrial Park and Business Purposes; Set Aside to the Department of Transportation, Harbors Division for Maritime Purposes; and Issuance of a Management Right-of-Entry; Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:22 and 334.**

**Motion to withdraw.**

**Unanimously approved to withdraw (Johns/DeMello).**

**Item D-2: Amend Prior Board Action of March 14, 1997 (Item D-21), Set Aside to the Division of Forestry and Wildlife, North Kona, Hawaii, TMKs: (3) 7-3-01:02; 7-4-01:02; 7-4-01:03; 7-4-02:07; 7-5-13:13; 7-5-13:22.**

**Item D-5: Grant of Perpetual, Non-Exclusive Easement to Berry Dorris Trust dated August 24, 2000, for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-03:por. 08.**

**Item D-6: Rescind Prior Board Action of November 5, 2003, Item D-4; Issuance of Direct Lease to Board of Water Supply for Offsite Substation for Kalaeloa Desalination Plant, Kalaeloa, Ewa, Oahu, TMK: (1) 9-1-31:01 por.**

**Unanimously approved as submitted (Johns/DeMello).**

**Item F-1: After-the-Fact Authorization for the Department of Land and Natural Resources (DLNR) to enter into a Memorandum of Agreement for Management of the Northwest Hawaiian Islands with the U.S. Fish and Wildlife Service and the National Ocean and Atmospheric Administration (National Marine Sanctuary Program and National marine Fisheries Service).**

**Item L-2: Approval for Award of Construction Contract – Job No. B46XM74B, Lahaina Small Boat Harbor Comfort Station Improvements Lahaina, Maui, Hawaii.**

**Unanimously approved as submitted (Johns/DeMello)**

There being no further business, Chairperson Young adjourned the meeting at 9:56 a.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, JUNE 9, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:15 a.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Jerry Edlao

Mr. Tim Johns  
Dr. Sam Gon III

**STAFF**

Mr. Russell Tsuji, Land  
Ms. Athline Clark, DAR  
Mr. Dan Quinn, Parks

Mr. Sam Lemmo, OCCL  
Mr. Dan Polhemus, DAR

**OTHER**

Ms. Pam Matsukawa, Deputy Attorney General  
Dr. Jim Anthony, D-13  
Dr. George Antonelis, F-7  
Mr. Ben Welborn, K-5  
Mrs. Lauree Johnson, K-4  
Mr. Tom Schnell, K-5  
Mr. Walton Hong, K-2  
Mr. Edwin Sproat, D-6  
Mr. Bill Tam, D-10

Mr. Guillermo Geldermann, D-13  
Ms. Lynn Wong, D-8  
Mr. Richard Johnson, K-4  
Ms. Marissa Furfaro, K-4  
Mr. Galen Leong, K-1  
Ms. Laurel Bennett, K-2  
Mr. Kali Watson, D-10  
Dr. Leszek Karczmarski, F-3

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

**Item A-1: Minutes of May 26, 2006**

**Motion to defer due to lack of quorum.**

**Unanimously approved to defer (Johns/Edlao).**

**Item D-13: Amend Prior Board Action of June 9, 2005 (Item D-17), Issuance of Direct Lease to Windward Retreat Center for Religious Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, TMK: (1) 5-1-14:por. 47 and 5-1-11:por. 55.**

Written testimony received from Kaaawa Community Association and Guillermo Geldermann.

**Motion to defer.**

**Unanimously approved to defer (Johns/Edlao).**

**Item F-7: Resubmittal of a Request for Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Access Permit to Dr. George Antonelis, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service from June 9, 2006 to September 15, 2006 at French Frigate Shoals to Remove Galapagos Sharks for the Purpose of Enhancing the Survival of Monk Seal Pups.**

Athline Clark, Planner with the Division of Aquatic Resources (DAR) pointed out this request would allow the permittee to enter the Northwestern Hawaiian Islands (NWHI) to engage in activities to enhance the survival of monk seal pups at French Frigate Shoals. The permit will allow the permittee to cull some galopos sharks that are attacking monk seal pups. This item was previous brought before the Board and at that time they were not prepared to issue a permit to the applicant and asked the applicant to consult with Native Hawaiian groups on various issues of concern. As a result of these consultations the group came up with the following conditions: 1) The State reconvene its own cultural advisory committee after working out legal issues to met on this and other permit applications that pertain to the Native Hawaiian culture and practices in the NWHI; 2) Have Dr. Antonelis follow up with the suggestion of having a Native Hawaiian practitioner on the monk seal recovery team and present when the sharks are killed; and 3) If limited shark culling is done, it would have to be done using the proper cultural protocol and any use of the shark would have to be: a) studied to help find answers to their unique behavior, and b) with the purpose of perpetuating cultural practices by using those parts of the shark that can be saved for Native Hawaiian uses. Ms. Clark made it known the applicant has obtained authorization from the NWHI Ecosystem Reserve Cultural Advisory Council, the US Fish and Wildlife Service and the Hawaiian Islands National Wildlife Refuge for the removal of up to five sharks. Mr. Clark recommended the Board authorize and approve with stated conditions, a Research Monitoring and Education Permit to Dr. George A. Antonelis of the National Oceanic and Atmospheric Administration for activities and access within the State waters of the NWHI and for the removal of up to five (5) Galapagos sharks within the State waters.

Ms. Clark clarified that this permit would allow the culling of up to five (5) Galapagos sharks and after consultation with the Native Hawaiian community and approval from the Board they would be allowed to remove an additional five (5) Galapagos sharks.

Dr. George Antonelis noted they would keep the US Fish and Wildlife Service and other involved in this process updated on their culling activities. Once they've culled five (5) Galapagos sharks they would meet with the State and US Fish and Wildlife Service to go over what has happened with the hopes of obtaining a permit to allow the additional culling of sharks. Dr. Antonelis briefed the Board on the decline of the Hawaiian monk seal population. He began by noting that the Hawaiian monk seal is in a crisis situation and extreme efforts must be initiated immediately to enhance recovery. At present their population is estimated at 1200-1300 seals. Dr. Antonelis acknowledged that they've researched the behavior of the Galapagos sharks for over thirty years but it is within the last five years that the sharks have exhibited a threatening behavior towards the Hawaiian monk seals. He noted this behavior is only taking place in the French Frigate Shoals. Dr. Antonelis indicated a discrete number of Galapagos sharks learned to predate on young seal pups due to multiple factors. At present twelve Galapagos sharks have been selectively removed from the French Frigate Shoals over the last six years while they were observed hunting for monk seal pups. Dr. Antonelis believes the removal of sharks preying on young pups before or near weaning is one of the most successful and measurable action taken to enhance juvenile monk seal survival. In the removal of the Galapagos sharks, Dr. Antonelis proposes to use selective shark removal which includes the use of small caliber harpoon guns and a high powered rifle under carefully defined safety protocols.

Written testimony was received from 'Ilioyulaokalani Coalition.

### **The Board amended**

**1. Recommendation 2)**

**“Permittee may be allowed [Allow the removal of five (5) such sharks under this permit, with the potential] to remove up to no more than five (5) additional sharks after [additional] further consultation with three primary resource management agencies (DLNR, USFWS and NOAA) and the Native Hawaiian community and with approval by the Chairperson of the Board;**

**2. Add Recommendation 6)**

**“6. After the close of the current season covered under this permit, the Permittee shall timely report to the Board of Land and Natural Resources in writing and at its scheduled meeting (s) on the activities that have been carried on pursuant to this Permit, and on the results of the activities with Permittee’s recommendations; and”**

**3. Add Recommendation 7)**

**“7. Before the taking and removal of any sharks allowed under this Permit, the Permittee shall have a briefing between a Native Hawaiian practitioner and the staff covered under this Permit.”**

**Unanimously approved as amended (Johns/Edlao)**

**Item D-8: Sale of Reclaimed (Filled) Land to Tsugio Ueyama, as Trustee of the Tsugio Ueyama Revocable Living Trust dated July 10, 2001, Jane N. Ueyama, as Trustee of the Jane N. Ueyama Revocable Living Trust dated July 10, 2001, and Lynn Wong, Wailupe, Honolulu, Oahu, TMK: (1) 3-6-03:15 seaward and Cancellation of Grant of Non-Exclusive Easement S-5669.**

Russell Tsuji, Administrator of the Land Division conveyed that the applicant constructed a seawall and filled land which encroached upon State land. Initially the applicant was interested in a pier lease but now would like to purchase the reclaimed land. Mr. Tsuji recommended the Board authorize cancellation of Grant of Non-Exclusive Easement S-5669 prior to the execution of the quitclaim deed, authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as tax map key: (1) 3-6-003:015 provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five years, find that the sale of the subject reclaimed land is not prejudicial to the best interest of the State, community or area and authorize the sale of the subject reclaimed land to Tsugio Uyema, as Trustee of the Tsugio Ueyama Revocable Living Trust dated July 10, 2001, Jane N. Ueyama, as Trustee of the Jane N. Ueyama Revocable Living Trust dated July 10, 2001, and Lynn Wong, covering the subject area under the terms and conditions listed in staff's submittal.

Lynn Wong was present and noted her agreement with staff's recommendation.

**Unanimously approved as submitted (Johns/Gon).**

**Item K-5: Conservation District Use Application (CDUA) KA-3280 for Proposed Noel and Suzi Ochwat Single Family Residence (SFR) Located at Haena, Island of Kauai, TMK: (4) 5-9-002:058.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) made a change to page one of the submittal by indicating the applicant was Noel and Suzi Ochwat and the consultant was Ben Welborn of Landmark Consulting Services, Inc. The applicant proposes to construct a single family residence (SFR) on approximately 7,931 square foot parcel. Mr. Lemmo recommended the Board approve CDUA KA-3280 for the proposed Ochwat Single Family Residence located in Haena District, Island of Kauai subject to the terms and conditions listed in staff's submittal.

Ben Welborn, the consultant was present.

**Unanimously approved as submitted (Johns/Edlao).**

**Item K-4: Conservation District Use Application (CDUA) HA-3288 Single Family Residence and Peach Palm Cultivation, Located at Papaikou, South Hilo, Island of Hawaii, TMK: (3) 2-7-008:128 (residence) and 2-7-030:026 (access).**

Mr. Lemmo communicated the applicant proposes to construct a single family residence (SFR) and expand a peach palm cultivation on the subject 16 acre coastal property on the Hamakua coastline. An Environmental Assessment was completed on this case and was found to have to

significant impact. Mr. Lemmo let it be known a public hearing was held on this issue as there might be concern as to the location of the proposed SFR. Mr. Lemmo conveyed his concern regarding the detached structure as it looked like a separate dwelling which is not permitted in the conservation district. Mr. Lemmo proposed the applicant remove the interior wall so it would look like a recreation room with a bathroom. Mr. Lemmo recommended the Board approve CDUA HA-3288 for the proposed Johnson Single Family Residence in Papaikou, South Hilo subject to the seventeen (17) conditions listed in the submittal.

Tom Schnell, of PBR Hawaii the consultant for the proposed project came forward to provide testimony. Mr. Schnell acknowledged his agreement with staff's request to remove the wet bar in the third bedroom but he had concerns with the removal of the interior wall. He asked the Board to remove condition 15) as he believes the wall is an integral part of the homes structural integrity and the removal of the interior wall would result in the redesign of the closet. Mr. Schnell instead proposes to include a condition which would state "The third bedroom will not be used as a separate dwelling, rental unit, bed and breakfast, or any other commercial purpose."

Richard Johnson, the applicant noted the wall is there for support and should you remove that wall the building would not fall down but, it would compromise the stiffness of the building.

Written testimony was received from PBR Hawaii.

**Unanimously approved as submitted (Johns/Edlao).**

**Item K-1: Conservation District Use Application (CDUA) OA-3301 Legalizing a CRM Wall and Encroachment Located at Kahaluu, Koolaupoko, Island of Oahu, TMK: (1) 4-7-019:073.**

Mr. Lemmo communicated this item is to legalize a CRM wall and encroachment along Kaneohe Bay. He went on to say these improvements were made at an unspecified time in the past. Mr. Lemmo indicated the subject structure was not targeted by the Department's zero tolerance policy on recent encroachments as it was not built within the last ten years. Mr. Lemmo recommended the Board approve this application for an after the fact permit for Easement E-9 and CRM wall subject to the ten conditions listed in staff's submittal.

Galen Leong, agent for the applicant noted his agreement with staff's recommendation.

**Unanimously approved as submitted (Johns/Gon).**

**Item K-2: Resolution of an Enforcement Action Involving the Unauthorized Construction of an Access Road on State Land at Waioli Valley, Island of Kauai, TMK: (4) 5-5-08:02.**

Mr. Lemmo announced that this action is to resolve an enforcement action involving unauthorized work that was conducted in Waioli Valley. As a brief history, Mr. Lemmo reminded the Board the violation took place in 1991. At that time a group of landowners conducted some unauthorized land improvements, graded and cleared land, constructed stream crossings and removed an access road from private land onto state land. At present, two of the current

landowner is requesting staff's help in resolving this situation so they could apply for an easement. As they are benefiting from the road constructed by the previous landowner, Mr. Bonar, Mr. Lemmo is requesting they pay a portion of the fines that remained unpaid by Mr. Bonar. Mr. Lemmo recommended the Board allow Ms. Lamberson and Ms. Bennett to apply for easements for roadway access to their respective parcels, provided that an after-the-fact CDUP is executed for the unauthorized portions of the road, and provided that the balance of Mr. Bonar's fine of \$8,134.20 relative to the State parcel is paid as a condition of the granting of a CDUP.

Walton Hong, Attorney for Ursula Lamberson appeared before the Board. Mr. Hong announced that the current landowners recognize they are faultless but bought land that had a colorful history. He went on to disclose that prior to purchasing the subject property, his client and Laurel Bennett conducted a title report which indicated there were no outstanding problems with the subject properties except the need to obtain an easement. He stated that his client and Ms. Bennett are willing to pay the fines so they can move ahead with obtaining an easement over state lands. Mr. Hong made it known he will be working with staff to determine what is legally required to obtain an easement.

Ms. Bennett disclosed she purchased her property approximately four years ago but prior to the purchase she conducted a title search and the property and found that there were no outstanding issues. She went on to tell the Board how she came to purchase her property.

**Unanimously approved as submitted (Johns/Edlao).**

**Item K-3: Request to Amend Title 13, Chapter 5, Hawaii Administrative Rules (Chap. 13-5, HAR), to Designate a Portion of the State Land Use Conservation District Located at Kealia, Island of Kauai, TMK (4) 4-7-007:029.**

Mr. Lemmo conveyed that the County of Kauai is requesting the subject area be designated a resource subzone on the other hand, staff would like the area to be designated in the limited subzone as the land around the subject parcel has been designated in the limited subzone. Mr. Lemmo believes if a limited subzone is granted the County would still be able to conduct the proposed park improvements. Mr. Lemmo recommended the Board amend the petitioner's request to amend Chapter 13-5 Hawaii Administrative Rules to designate approximately 44 acres of undesignated Conservation District land into the Limited Subzone and authorize the forwarding of the rule amendment to the Governor, State of Hawaii for approval and enactment.

**Unanimously approved as submitted (Johns/Gon).**

**Item D-6: Re-Submittal Reconsideration of Rent under General Lease No. S-5497 to Trustees for the Apostolic Faith Church of Honolulu for Church and Allied Facilities Purposes, Lahaina, Maui, TMK: (2) 4-5-05:portion 17.**

Mr. Tsuji noted this is a resubmittal based on a rent issue for a church that has been designated a 501(c) 3 which also entitles the church to nominal rent. As background information, Mr. Tsuji communicated that the Apostolic Faith Church of Honolulu acquired the property through the auction process. Later that lease was terminated and the church was issued a new lease under the 171-43.1. At that time, in 1992 an appraisal was done which determined the fair market rent at

\$600.00 per year. At its reopening another appraisal was done which determined fair market rent to be \$7000.00 a year. Based on the increase in the rent the Board raised the question if rent should be set at nominal rate. Mr. Tsuji recommended the Board amend General Lease No. S-5497, Trustees for the Apostolic Faith Church of Honolulu by 1) add “Effective July 1, 2002 to June 30, 2047, the annual rental shall be \$480 per annum’ and 2) delete the rental reopenings at the expiration of the tenth (10<sup>th</sup>), twentieth (20<sup>th</sup>), thirtieth (30<sup>th</sup>), and forty-fifth (45<sup>th</sup>) years of the lease term requirement subject to the conditions listed in staff’s submittal.

Edwin Sproat, representing the Apostolic Faith Church of Honolulu noted his agreement with staff’s recommendation.

**Unanimously approved as submitted (Edlao/Johns).**

**Item D-10: Status of General Lease No. S-5707, All Tree Services, Inc., Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:48.**

Mr. Tsuji reminded the Board at five previous meetings All Tree Service, Inc., has appeared before them to address issues dealing with lease violations (intensive agricultural lease) and use of the property as a baseyard. The lessee was given sixty days to cure the default and the issue was brought back to the Board at which time the item was deferred. At present the baseyard has been eliminated and the property is being used as intensive agriculture but an issue of an unpermitted structure on the site was raised. At All Tree Services, Inc. last appearance before the Board they communicated they were in the process of completing the “as built” plans and submitting the building plans to the County. Due to this County violation the Department issued a notice of default on May 6, 2006 and a sixty day cure period was set in place. As the cure period is still in effect, Mr. Tsuji recommended the Board defer this item until the July 14, 2006 meeting in accordance with staff’s comments and recommendations cited in the submittal.

Mr. Tsuji went on to describe the relationship between All Tree Service, Inc. and Mr. David Kendrick as at the previous meeting allegations of an improper sublease were made. Mr. Tsuji let it be known Mr. Watson has conveyed that this issue has been resolved as All Tree Service, Inc., has purchased most of the plants on the subject site and Mr. Kendrick has been employed as a consultant for All Tree Service, Inc.

Chairperson Young made it know he has received the building plans for All Tree Service, and the plans have indicated the removal of the shade house. Chairperson Young questioned the removal of the shade house due to the statement made by the lessee that the shade house is an integral part of their farm plan.

Kali Watson, attorney representing All Tree Service, Inc. indicated it was their intent to include the shade house as part of their operation but after discussion with staff it was suggested that the shade house be removed as it might require another building permit. Mr. Watson noted their view is that the shade house is not a permanent structure therefore a permit is not required. Mr. Watson pointed out should they need the shade house they would send in a request to the department for a permit. In closing, Mr. Watson noted his agreement with staff’s recommendation.

Bill Tam, representing the Waimanalo Ag Association appeared before the Board and raised four points: 1) All Tree Service, Inc., was allowed to bid on the subject lease based on plans submitted to the department but All Tree Service, Inc. did not follow through with those plans and based on the changed plans they would not qualify as a bidder. Mr. Tam acknowledged Dean Okimoto would be submitting a declaration stated the above point. They will also submit declarations from four other bidders who bid for the subject property (but did not win) detailing their particular issues; 2) All Tree Service, Inc. has invested money in activities which are not authorized by the lease; 3) The lessee had an oral sublease with Mr. Kendrick; and 4) There are buildings on the property constructed without permits. Mr. Tam encouraged the Board to ask for a sworn declaration as to whether the file plans submitted to DPP had the Chairman's signature on it.

Member Johns told staff when they return for the July 14, 2006 meeting to report on the current violation, compliance on all issues and to address the points raised by Mr. Tam.

Written testimony received from Hawaii Farm Bureau Federation.

**Unanimously approved as submitted (Johns/Edlao).**

**Item F-3: Request for Authorization to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Leszek Karczmarski of Texas A&M University at Galveston for Acoustic Sampling, Genetic Sampling, and Individual Photo-Identification of Spinner Dolphins within Kure Atoll Lagoon, Valid from July 1, 2006 to October 31, 2006.**

Ms. Clark conveyed this permit would allow the continued research of spinner dolphins at Kure Atoll and allow Genetic and Acoustic Sampling. She indicated the photo capture work is currently underway based on a previous permit issued to Cynthia Vanderlip. Ms. Clark recommended the board authorize and approve with stated conditions, a Research, Monitoring and Education Permit to Dr. Leszek Karczmarski of Texas A&M University, for activities and access within the State waters of the NWHI.

Dr. Leszek Karczmarski went over the procedure used in conducting the genetic sampling. She noted she would be using a biopsy system which shoots a dart into the dolphin which will take a sample of about five millimeters. She assured the Board this technique is the most humane technique and has very little impact on the dolphins. Dr. Karczmarski informed the Board that the research must take place in the Northwestern Hawaiian Islands (NWHI) as opposed to the main Hawaiian Islands as the spinner dolphins in the NWHI exhibit factors such as a completely different social system, more stable social groups, smaller population sizes and lower genetic diversity.

Member Gon encouraged Dr. Karczmarski to engage in dialogue with 'Ilioyulaokalani Coalition to discuss concerns they may have.

Written testimony was received from 'Ilioyulaokalani Coalition.

**Unanimously approved as submitted (Johns/Gon).**

- Item F-1: Request for Approval to Enter into a DLNR/RCUH Contract to Develop Tools to Access Land Based Pollution Impacts in Corals (\$119,998) to be Conducted from June 1, 2006 through May 31, 2008.**
- Item F-2: Request for Authorization to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. John J. B. Rooney of the National Oceanic and Atmospheric Administration (NOAA), Pacific Island Fisheries Science Center (PIFSC) for Multibeam Surveying for Benthic Habitat Mapping Purposes in the Waters Surrounding Kure Atoll and Pearl and Hermes Atoll, Valid from June 29, 2006 to July 14, 2006.**
- Item F-4: Request for Authorization to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Russell Brainard of the National Oceanic and Atmospheric Administration (NOAA), Pacific Island Fishery Science Center (PFISC), Coral Reef Ecosystem Division (CRED), for the Removal and Mitigation of Marine Debris in the State Waters of the Northwestern Hawaiian Islands, Valid from July 17, 2006 to September 6, 2006.**
- Item F-5: Request for Authorization to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Hans Van Tilburg of the National Oceanic and Atmospheric Administration (NOAA), National Marine Sanctuary Program (NMSP) for the Documentation of Archaeological Material and Environmental Parameters Around Historic Wreck Sites in the Waters Surrounding Kure Atoll and Pearl and Hermes Atoll, Valid From June 29, 2006 to July 14, 2006.**
- Item F-6: Request for Authorization to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Christina Claire Johnson of the National Oceanic and Atmospheric Administration (NOAA), National Marine Sanctuary Program (NMSP) for Education and Outreach Activities at Kure Atoll and Pearl and Hermes Atoll, Valid form June 29, 2006 to July 14, 2006.**

**Unanimously approved as submitted (Johns/Edlao).**

- Item E-1: Request for Approval to Execute a Contract with the Hawaii Tourism Authority for Improvements to Akaka Falls State Park, Hawaii and Kalalau Lookout at Kokee State Park, Kauai.**

**Unanimously approved as submitted (Johns/Edlao).**

- Item D-11: Issuance of Right-of-Entry Permit to Hui Ku Maoli Ola, LLC, on Unencumbered Lands, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-13:01 (por.).**

**Motion to defer.**

**Unanimously approved to defer (Johns/Edlao).**

- Item D-1: Grant of Term, Non-Exclusive Easement to Lorren and Lina Van Fossen for Access and Utility Purposes, Kapaa Homesteads 3<sup>rd</sup> Series, Kawaihau, Kauai, TMK: (4) 4-6-32:portion of 35.**
- Item D-2: Issuance of Right-of-Entry Permit to the County of Hawaii, Department of Water Supply on Lands Encumbered by Governor's Executive Order No. 2554, Ahualoa, Hamakua, Hawaii, TMK: (3) 4-6-11:42.**
- Item D-3: Approval in Principle of a Proposed Acquisition of Private Lands and Set Aside to Department of Land and Natural Resources, Division of State Parks for a Heiau Protection and Preservation Buffer Area, Kukuipahu, North Kohala, Hawaii, TMK: (3) 5-6-01:75 por.**
- Item D-4: Consent to Assign General Lease No. S-5136, Felisa S. Kaniho, Assignor, to Leonard Naboa St., Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:22. y)**
- Item D-5: Set Aside to Department of Transportation, Highways Division; Issuance of Construction and Management Right-of-Entry at Kaalaala-Kapapala, Kau, Hawaii, TMK: (3) 9-6-12:portion of 4; 9-6-13:portion of 2; and 9-8-01:portion of 11.**
- Item D-7: Request for Extension of Cure Period for Notice of Default, Sand Island Business Association, General Lease No. 5261; Honolulu, Oahu; TMK: (1) 1-5-41:302.**
- Item D-9: Acquisition of County Lands and Set Aside to Department of Land and Natural Resources, Division of State Parks, and Department of Transportation, Highways Division, for the Ka Iwi Scenic Shoreline project, Maunaloa, Oahu; TMK: (1) 3-9-11:06.**
- Item D-12: Issuance of Direct Lease to Jeffrey Isao Tsuzuki and Charlotte Chiemi Higa for Private, Noncommercial Pier Purposes, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-4-18:80 seaward.**
- Item D-14: Withdrawal of Two Parcels from Governor's Executive Order No. 3765, State Parks, Kahana Bay Beach Park, Reset Aside to the Department of Transportation, Highways Division for the North Kahana Stream Bridge Replacement Project No. BR-083-1(53), Kahana, Oahu, TMK: (1) 5-2-05:03. Issuance of a Perpetual Non-Exclusive Easement to the Department of Transportation over Governor's Executive Order No. 3765 and Governor's Executive Order No. 3518 for Highway Purposes, TMK: (1) 5-2-02:01 and TMK: (1) 5-2-05:03. Issuance of Right-of-Entry, Construction Purposes over Governor's Executive Order No. 3518 and Governor's Executive Order No. 3765, Kahana, Oahu, TMK: (1) 5-2-02:01 and TMK: (1) 5-2-05:03.**

**Item D-15: Grant of Perpetual, Non-Exclusive Easement to Yukio Yonekawa for Access Purposes, Waianae-Kai, Waianae, Oahu, TMK: (1) 8-5-04:36 & 39.**

**Item L-1: Certification of Election and Appointment of Soil and Water Conservation District Directors.**

**Item L-2: Approval for Award of Construction Contract – Job No. J00CF69A, ADA Barrier Removal, Manuka State Wayside, Kona, Hawaii.**

**Unanimously approved as submitted (Johns/Gon).**

There being no further business, Chairperson Young adjourned the meeting at 11:27 a.m. Tapes 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,

Terry Crowell

Approved for submittal:

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PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

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

DATE: FRIDAY, JUNE 23, 2006  
TIME: 9:00A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

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

MEMBERS

Mr. Peter Young  
Mr. Ron Agor  
Mr. Jerry Edlao

Mr. Tim Johns  
Ms. Taryn Schuman

STAFF

Mr. Dan Quinn, Parks  
Ms. Yara Lamadrid-Rose, Parks  
Mr. Paul Comy, DOFAW

Mr. Russell Tsuji, Land  
Mr. David Gaud, DOCARE  
Mr. Randy Kennedy, DOFAW

OTHERS

Mr. Randy Ishikawa, Deputy Attorney General  
Mr. Ron Baird, D-I  
Mr. Bill Yuen, D-IO  
Mr. Robert Childs, D-9  
Mr. Mark Anderson, E-2

Ms. Sandy Pfund, D-3  
Mr. Ron Baird, D-IO  
Mr. Ron Gibson, E-I, E-2  
Mr. Rex Johnson, E-2

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

Item A-I: Minutes of May 26, 2006

Unanimously approved as submitted (Johns/Edlao).

ItemA-2: Minutes of June 9, 2006

Member Schuman recused herself.

Unanimously approved as submitted by the remaining Board members (Johns/Agor).

Item E-3: Subject: Kokee State Park, Waimea, Kauai - Concession Lease SP-0039, The Lodge at Kokee, LLC – Proposal to increase cabin rental rate.

Dan Quinn, Administrator of the Division of State Parks indicated the operators of the Lodge at Kokee would like to increase the rental rate of their cabins. He pointed out the present cabin rates are \$45.00 per night plus \$5.00 per person after the first three people plus Transit Accommodation Tax and GET. The lessee is requesting a new visitor rate of \$90.00 and a Kamaaina Rate of \$65.00 also adding a \$5.00 per person after the first three people per cabin plus Transit Accommodation Tax and GET. Mr. Quinn recommended as of July 1, 2006 the rate be increased accordance with staff's request.

Written testimony was received from the Friends of the Forest, Kokee Leaseholders Association and Wayne Jacintho.

Unanimously approved as submitted (Agor/Johns).

Item 0-1: Amend General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Covering Portions of Government Lands at Hamanamana, Kalaoa 1<sup>st</sup> - 4<sup>th</sup>, and Ooma 1<sup>st</sup> & 2<sup>nd</sup>, North Kona, Hawaii, TMK: (3) 7-3-09: and 7-3-43:

Russell Tsuji, Administrator of Land Division gave some background information by disclosing that the Natural Energy Laboratory of Hawaii Authority (NELHA) is an agency attached to Department of Business, Economic Development and Tourism (DBEDT) and is presently under a master lease with the department. Terms of the lease states that NELHA must come back to the Board for consent should they want to sublease a portion of the master lease. Over the years, due to the amount of subleases the process has become a burden on the department and NELHA staff. Mr. Tsuji pointed out pursuant to Act 261, Session Laws of Hawaii 2000 as amended relating to Chapter 171-25, Hawaii Revised Statute states the Board of Land and Natural Resources is now authorized to waive requirements to obtain consents to subleases under public land leases for good cause. He believes there is good cause because NELHA has been a good tenant and a good steward of the lands in issuing subleases to their tenants who are trying to diversify Hawaii's economy.

The Board questioned if the department is entitled to sandwich profits from the sublease. Mr. Tsuji acknowledged that he was not sure if the lease terms allow for sandwich profits but the issue before the Board is that of consenting to NELHA's subleases. Mr. Tsuji went on to say that NELHA charges rent substantially below fair market value but they've been moving towards setting land and water rates more towards the fair market value.

Ron Baird noted his agreement with an addition to staff's recommendation section. Addressing the Board's question about the rent NELHA charges, Mr. Baird noted the lease usually call for rental reopening of the lease on the fifth, tenth or fifteenth years. Since December they've conducted a study to look at the fair market rate based on an internal rate of return and these are the values they are using to determine the rental rate. Mr. Baird also communicated that they're trying to develop a two tier lease structure - one for extractive uses (water bottling companies) and the other for aquaculture companies.

The Board

1. Amended the second C) recommendation to read

~~“[C] D.~~ Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.”

2. Added the following

“E. The Land Board expresses its support of the NELHA Board's efforts to establish land use rents and water charges at fair market rate.”

Unanimously approved as amended (Johns/Edlao).

Item D-3: Amend Prior Board Action of July 22, 2005, Item D-5, as amended- Cancellation of a Resolution Designating an Industrial Park; Cancellation of Governor's Executive Order No. 3892 to the Department of Land and Natural Resources for Industrial Park and Business Purposes; Set Aside to the Department of Transportation, Harbors Division for Maritime Purposes; and Issuance of a Management Right-of-Entry; Sand Island, Honolulu, Oahu, TMK: (1) 1-5-41:22 and 334.

Sandy Pfund was present.

Written testimony was received from the Department of Transportation.

Unanimously approved as submitted (Schuman/Johns).

Item D-I0: Consent to the Merger between Sunrise Capital, Inc. and Kona Bay Marine Resources, Inc., as it relates to: (1) General Lease Nos. S-4946 and S-5367, and Revocable Permit Nos. S-7256 and S-7252, issued by the Board of Land and Natural Resources to Sunrise Capital, Inc.; and (2) Sublease K-20 issued by the Natural Energy Laboratory of Hawaii Authority to Kona Bay Marine Resources, Inc.

Mr. Tsuji stated that Sunrise Capital is a lessee of the department while Kona Bay Marine Resources is a sublessee of NELHA. Based on the department's and NELHA's lease there

is a provision which states if there is a merger of more than twenty (20) percent or fifty (50) percent in NELHA's case in the interest of the company it would trigger the assignment paragraph. This assignment paragraph would require staff to analyze if the department is entitled to a premium based on the assignment and to acquire the Board's consent on the merger. Mr. Tsuji recommended the Board consent to the merger between Kona Bay Marine Resources, Inc. and Sunrise Capital, Inc. with the later being the surviving entity subject to the conditions listed in staff's submittal.

Bill Yuen, attorney for Kona Bay Marine acknowledged that NELHA has already consented to the merger but they are still discussing the premium issue.

Ron Baird noted his concurrence with staff's recommendations.

Unanimously approved as submitted (Johns/Schuman).

Item D-9: Amend Prior Board Action of February 10, 2006, Item D-9; Issuance of Direct Lease for Private Noncommercial Pier Purposes, Honolulu, Oahu, TMK: (1) 3-6-01:30 seaward.

Robert Childs informed the Board it was unclear to him the relationship between the two (2) easements and the pier lease. Mr. Tsuji clarified that the easement for the wall was due to an encroachment onto state lands while the pier lease was needed if the pier would be kept in place. He went on to explain that the action before the Board is to include Mr. Childs in the Kaneohe Bay Piers Amnesty Program.

Unanimously approved as submitted (Schuman/Johns).

Item B-1: Request Board Approval to Enter into a Joint Enforcement Agreement between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the National Marine Fisheries Service, Office of Law Enforcement.

David Gaud, Assistant Chief of the Division of Conservation and Resources Enforcement (DOCARE) summarized the submittal by stating that since 1992 they've worked with the National Marine Fisheries Service and this agreement would allow DOCARE to obtain additional federal funding.

Unanimously approved as submitted (Johns/Schuman).

Item E-1: Briefing to the Board on the Diamond Head Crater Celebration at Diamond Head State Monument.

Mr. Quinn briefed the Board on the last Diamond Head Crater Celebration. He let it be known the days leading up to the crater celebration brought lots of rain which in turn caused a landslide outside of the crater as well as a lake on the inside of the crater. Upon completion of the event it was revealed that there was one complaint from the community regarding a

bus making a right turn at Diamond Head Theater resulting in traffic being backed up. Mr. Quinn noted the only other concern was the muddy condition inside of the crater which resulted in reorganization of the portable toilets as well as some additional work. As a condition of the permit the Board asked the event organizer to include Hawaiian music performers in the event and Mr. Quinn went over that list of performers. He also pointed out the event organizer was required to conduct a briefing to the attendees of the crater celebration which talked about the cultural significance of the crater. The Board listened to a portion of that recording. Mr. Quinn pointed out the transportation worked out really well as people were cleared out of the crater within forty (40) minutes of the completion of the event.

Ron Gibson, the individual in charge of the crater celebration conveyed to the Board he approached the surrounding community boards to see if they would like to discuss the impact of the crater event and he was told since there were no complaints it was not necessary for him to appear before the neighborhood boards. He pointed out the only negative comment was the bus making a right run at Diamond Head Theater.

Mr. Quinn informed the Board that the Diamond Head Citizens' Advisory Committee has gone on record as being not in favor of this event continuing in the crater.

No Action.

Item E-2: Request to Use Diamond Head State Monument Once a Year for Two Years for the Diamond Head Crater Celebration.

Mr. Quinn noted there were several changes made in the permit requirements that vary from the previous permit conditions. The first change dealt with a non-refundable deposit of \$2,100.00 to reserve the Monument as well as a payment of 5% of gross ticket sales for rental of the Monument. Mr. Quinn indicated the non-refundable fee was based on the daily amount collected by the department should the park be open to the public. As far as the 5% of gross ticket sales Mr. Quinn conveyed that the figure was based on similar events that were held at the Waikiki Shell and Aloha Stadium. Other conditions added required the event organizer to: 1) pay for security by Division of Conservation and Resources Enforcement Officers during set-up and take-down for the event and whenever event personnel are on-site; 2) provide and pay for security for the Event in addition to the Division of Conservation and Resources Enforcement personnel; 3) pay State Parks 5% of gross receipts of food, beverage, event mementos and/or other related concert items during the event; and 4) allow the sale of alcoholic beverages in compliance with all City and County of Honolulu Liquor Commission rules and regulations. In closing Mr. Quinn recommended the Board authorize the issuance of a permit for the closure and use of Diamond Head State Monument one day in 2007 and 2008 for the DHCC and that the Board authorize the Department to enter into an Agreement with GM Entertainment subject to the conditions listed in staff's submittal.

Mr. Quinn acknowledged the event organizer committed to making a donation to a yet to be formed foundation but due to the terrible weather conditions which contributed to a lack in

attendance as well as additional costs that arose because of the weather Mr. Gibson is instead committing to making a personal contribution of \$10,000 to this foundation.

Ron Gibson, organizer for the DHCC announced that the rates proposed by State Parks are fair but he'd like to have certain cost items (toilet rentals, electrical set up, water, etc.) off set by the rental rate charged. He believes the "magic" of the event is created by the venue itself. Mr. Gibson also asked that a cap be placed regarding how much they pay the department.

Mark Anderson, representing the Department of Business, Economic Development & Tourism spoke in support of the approval of a multi-year permit for the Diamond Head International Music Festival and Conference. Mr. Anderson spoke of their belief that the 'creative industries' such as the music industry are a vital part of Hawaii's economy. In fact their department has created a division dedicated solely to develop and promote the 'creative industries.' Like any industry, Mr. Anderson pointed out the industry requires infrastructure to be successful and Hawaii can assist in providing venues for artists to gain exposure to both local and international audiences. DBEDT believes that interest in a Diamond Head International Music Festival and Conference can be sustained on a yearly basis and with the proper permitting can become a major international event that will attract worldwide attention and participation. In closing, Mr. Anderson communicated that with proper sensitivity to the impacts on surrounding neighborhoods and the environmental impacts to Diamond Head Crater approval of a multi-year permit is consistent with their plans to develop and promote Hawaii's creative industries.

Rex Johnson, President and Chief Executive Officer of the Hawaii Tourism Authority (HTA) testified in strong support to use the Diamond Head State Monument. Mr. Johnson pointed out the goal of the HTA is to provide a "high quality tourism product unique to Hawaii that enhances the Hawaii visitor experience and enriches residents' quality of life." Mr. Johnson stated that the total value of the crater celebration's advertising and promotion was placed at approximately \$827,000. From a marketing perspective, he feels the Diamond Head Crater Celebration can become an important complement to the Hawaii Arts Season which markets Hawaii to visitors from North America and Japan.

Written testimony was received from the Diamond Head Citizens' Advisory Committee, Hawaii Tourism Authority, Events International, the Honolulu Police Department and the Department of Business, Economic Development & Tourism.

The Board amended the Recommendation Section by adding the following

"21. the agreement is subject to the review and approval of the Office of the Attorney General."

Unanimously approved as amended (Schuman/Johns).

Item C-1: Amend Prior Board Action of May 26, 2006 (Item C-1), Approval of a Continuing Contractual Relationship for Operation of the Captive Propagation Program with the Zoological Society of San Diego.

Unanimously approved as submitted (Johns/Schuman).

Item C-2: Request Approval of Interim Actions to Implement the Legacy Land Conservation Program, Including Criteria for Evaluating Applications and Other Associated Materials; Request Authorization to Advertise for Land Conservation Funding Proposals Using the Proposed Interim Procedures: (2006).

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) communicated a new bill allowed the establishment of funds to purchase important conservation lands.

#### The Board

1. Amended page 3 of staff's submittal dealing with the list of attachments as follows:

"Legacy Land Conservation Grant Application form (See attachment 4)  
Legacy Land Conservation Commission Application instructions and form (See attachment 5)

Criteria for evaluating applications (See Attachment 6)

~~[Tentative]~~ Illustrated timeline (See Attachment 7)

Program brochure (See Attachment 8)

Program logo (See Attachment 9)

2. Amend Recommendation 1)

"Approve the interim actions to implement the Legacy Land Conservation Program, including criteria for evaluating applications and other associated materials with adjustments to meet requirements of Senate Bill 3077 if enacted.

3. Amend Recommendation 2)

"Authorize the Chairperson to advertise for Land Conservation Fund proposals, using the proposed interim procedures with an adjusted timeline to allow public a minimum of one (1) month to submit applications."

Unanimously approved as amended (Schuman/Johns).

Item D-2: Authorize Sale of Road Right-of-Ways and Related Improvements to the County of Hawaii and Issuance of Management Right-of-Entry; Authorize Bill of Sale and Grant of Perpetual, Non-Exclusive Easement

and Issuance of Management Right-of-Entry to the Water Board of the County of Hawaii for Water System Infrastructure and Related Appurtenances, Kikala and Keokea, Puna, Hawaii, TMK: (3) 1-2-43.

- Item D-4: Amend Prior Board Action of January 28, 2005 under Agenda Item D-8, for Grant of a 55-year Non-Exclusive Easement for Seawall Purposes to Kaulani LLC, Honolulu, Oahu, TMK: 3-6-02:02 seaward.
- Item D-6: Sale of Remnant to Jensen of Hawaii, Inc., Kapaa, Kawaihau, Kauai, TMK: (4) 4-6-39: Ditch No.9.
- Item D-7: Forfeiture of General Lease No. S-5576, Rex Provisor and Pantip Provisor, Lessee, Papa, South Kona, Hawaii, TMK: (3) 8-8-04:11.
- Item D-8: Acquisition of Non-Exclusive Easement Over Private Lands and Set Aside to Department of Land and Natural Resources, Commission of Water Resource Management for Deep Monitor Well Purposes, Waihee, Maui, TMK: (2) 3-2-01:03 por.

Written testimony was received from the Office of Hawaiian Affairs.

- Item K-1: Time Extension Request for Conservation District Use Permit HA-3137 for Saddle Road Improvements Section III - Located at Saddle Road, Milepost 19-27, island of Hawaii, TMKs: (3) 3-8-001:7, 8, 19; (3) 2-4-008:1,4,8; (3) 2-6-018: 4 & 10.
- Item L-1: Approval for Award of Construction Contract - Job No. 500B041A, Komo Mai Drive Rockfall Mitigation, Oahu, Hawaii.
- Item L-2: Approval for Award of Construction Contract - Job No. 500B041B, Old Puunui Rockfall Mitigation Nuuanu, Oahu, Hawaii.
- Item M-1: Consent to Assignment of Harbor Lease No. H-87-29, as Amended, at Nawiliwili Harbor, Kauai.
- Item M-2: Rescind Prior Board Action of November 19, 2004, Agenda Item M-1, Issuance of Lease by Direct Negotiation, Diamond Head Seafood Wholesale, Inc., Pier 38, Honolulu Harbor, Island of Oahu, Tax Map Key No. 1'1/1\_5\_42.
- Item M-3: Issuance of Direct Lease and Construction Right-of-Entry, Applicant: The Gas Company, LLC Vicinity of Pier 38 and Domestic Commercial Fishing Village, Honolulu Harbor Area, Kapalama and Iwilei, Honolulu, Oahu.


Unanimously approved as submitted (Johns/Schuman).

Item D-5: Amend Prior Board Action of February 23, 2001 (Item D-11) and August 24, 2001 (Item D-20), Issuance of Revocable Permits to Various Private Parties; Issuance of Immediate Rights of Entry; and Set Asides to DLNR Division of Aquatic Resources, Freshwater Fisheries Development, County of Kauai, DLNR Division of Forestry and Wildlife, and DLNR Division of State Parks, WaUua, Lihue, Kauai, TMK: (4) 3-9-01; 02; 3-9-02:01,09,20 and 4-2-01:03.

Unanimously approved as submitted (Agor/Johns).

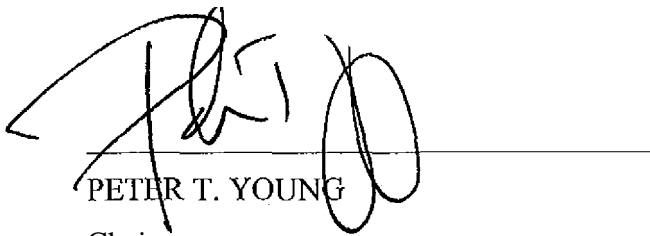
There being no further business, Chairperson Young adjourned the meeting at 10:12 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

**MINUTES OF THE  
BOARD OF LAND AND NATURAL RESOURCES  
LAND BOARD BRIEFING**

DATE: THURSDAY, JULY 13, 2006  
TIME: 4:30 P.M.  
PLACE: KALANIMOKU BUILDING  
1151 PUNCHBOWL STREET, ROOM 132  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the briefing of the Board of Land and Natural Resources to order at 4:39 p.m. The following were in attendance:

**MEMBERS**

Mr. Peter Young  
Mr. Ron Agor  
Mr. Jerry Edlao

Mr. Tim Johns  
Ms. Taryn Schuman  
Mr. SamGon III

**STAFF**

Mr. Russell Tsuji, Land  
Mr. Keith Chun, Land  
Mr. Gavin Chun, Land  
Mr. Richard Rice, DOBOR  
Mr. William Andrews, DOBOR

Mr. Paul Conry, DOFAW  
Ms. Megan Laut, DOFAW  
Ms. Linda Chow, AG  
Mr. Randall Ishikawa, AG  
Mr. Brian Aburano, AG

**OTHERS**

Representing Jacoby Development:  
Mr. Frank Brandt  
Mr. Scott Abrigo  
Mr. David Tarnas  
Mr. Rick Robinson

Mr. Scott MacKinnon  
Mr. Scott Condra  
Mr. Bob Tong

**Item 1. Status Report on Jacoby Development Inc.'s progress under the Development Agreement for the Kona Kai Ola master-planned mixed-use development project at Kealakehe, North Kona, Island of Hawaii, Hawaii. Tax Map Keys: (3) 7-4-08: 71 and portion of 3.**

This is a briefing of the Board, non-action item, but we will receive testimony. Some testimony has been submitted.

Introduction

Jacoby Development Inc. (JDI) is giving a report on their progress since the Development Agreement (DA) in November 2004. JDI is approximately one month ahead of schedule.

### Project Timeline

The Department of Hawaiian Home Lands (DHHL) had an agreement with JDI to develop 200 acres of land under their jurisdiction along Queen Kaahumanu Highway. The DLNR sought the BLNR's approval to develop approximately 330 acres of land on the makai side of the DHHL property to the shoreline that included Honokohau Marina. The BLNR later withdrew Honokohau Marina (30 acres) from the agreement.

Presently, JDI is processing the requirements of the DA with DHHL and DLNR concurrently.

In 2004 the BLNR gave approval to the DLNR to issue an RFQ/RFP and to negotiate a master lease and called it the Kealakehe Master-Planned Mixed-Use Development Project. In October 2004 the BLNR approved the selection of JDI as the developer for the DLNR land and authorized the DLNR to negotiate a DA.

At the BLNR meeting on November 2004 in Kona, the Board executed a DA with JDI to proceed on the process of fulfilling all of the requirements of the DA. Jacoby was given one year to complete all of the requirements in the DA.

Since then, the compliance with the general lease and conditions are fairly similar with DLNR and DHHL.

As part of the DA, JDI periodically briefs the staff of both departments and their respective boards on their progress.

JDI's deliverable deadline to submit the draft EIS, Preliminary Master Development Plan, Preliminary Core Infrastructure Plan, CC&R's, and Basic Marina Facilities Plan is due on November 17, 2006, for the DLNR and DHHL and are running concurrently. JDI anticipates an October submittal.

Because the EIS is in process and must be approved before the BLNR can act on the Master Development Plan, JDI anticipates completion in January. JDI is looking at the January 26, 2007, BLNR meeting to present the approved EIS, the Preliminary Master Development Plan, along with the other requirements for BLNR approval.

Following that, JDI will pursue entitlements--going to the county for zoning, shoreline management permit. In between, JDI must come before the BLNR for a CDUA application because of the shoreline.

BLNR member Tim Johns asked if six weeks was sufficient for the State to approve all of the plans. The DA allows the State 90 days. JDI feels that submitting in October will give the State enough time and they are keeping the administration and staff apprised along the way to get their feedback to meet their deadline. JDI indicated that they would like the meeting to be held on Hawaii island.

Once the BLNR approves, JDI can start with the general plan through the Council. .

JDI would then go into county designation and SMA concurrently. JDI is looking at a resort mode for their plan. Permanent residential is not allowed. JDI needs a transient use.

One of the requirements of the DA is to put in 800 slips in the marina (45 acres). JDI must obtain Conservation District and Army Corps permits.

There are no plans to expand the harbor entrance.

DHHL does not have to go through county zoning, as they have a Memorandum of Understanding with Hawaii County to designate the zoning they want. As a result, they will be able to move ahead faster.

#### Conceptual Master Plan, the Phasing Plan, Open Space Plan, Deviation from Original Concept

To support the marina JDI plans, they have approximately eight acres of industrial. JDI is working with Division of Boating and Ocean Recreation (DOBOR) to extend the existing marina support into JDI's property.

For commercial they have three commercial sites, two regional-related commercial along Queen Kaahumanu Highway (geared towards local residents) and a hotel/marina, tourist-oriented site modeled after Aloha Tower. It will include ocean and education uses, marine science center (to run marina-related classes and programs), water features, cultural park, parks/recreation areas, one marina/canoe park in response to requests by the community to launch (single/ double-man canoes), and a community area (requested by DHHL for employment training and health center). A fishing club and yacht club are included.

Plans include 700 hotel-use units over three properties and eight development parcels with 225 time share units on each (total time share 1,800 units). Three acres to be set aside for utility support of the hotel/time share units including employee parking, etc.

A sea water air conditioning system (SWAC) is planned using deep water draw to air condition the buildings since the water is onsite (like NELHA). Using the ocean water from the SWAC system, JDI plans a series of water features. The ocean water will pump water into lagoons, come thru the property and work its way back to the marina. This will flush the marina.

Water features to include wetland pond, a marine park (possibly include a dolphin experience), and a swimming lagoon.

There will be 136 acres of open space, which includes roads, parks and buffer areas, (this is the 400-foot setback from the coastline (conservation use boundary) which is 48 acres of shoreline park. Within the shoreline park, JDI is considering a King's Trail plan along the shoreline and have met with Na Ala Hele to discuss this.

Open space plan (includes parks, water features, etc.) will cover 250 acres or approximately 40% of the entire project. JDI has included greenways and access plans.

Presented the draft three-phase plan

- 1) The first phase in response to entitlements is divided into two sections.  
Phase 1A - Develop mauka section of the Kealakehe Parkway and the intersection (coming thru the project and the project boundary), and the secondary access to the police station (the intersection, thru the site and connecting to the parkway) and some of the commercial sites on the DHHL areas.

Phase 1B - Develop marina and some of the time share/hotel resort associated with the marinas, an 80-foot right-of-way road that goes makai of the wastewater treatment plant, some community areas, and balance of commercial areas.

Based on community input, JDI wanted to do the cultural and harbor park in the Phase I.

Phase 2 – Move mauka and develop the marina and connect to Phase 1, water features, marine science center, hotel marina commercial village, canoe parks, fishing clubs.

Phase 3 – Reserving the coast for this phase and developing the two time shares around the marina and the hotel and two time shares along the coast.

Currently, cesspools are in use. Instead there will be three pump stations. The DLNR may want to develop a pump station to handle their waste.

Deviations from the Original Concept Plan (June 12, 2006 plan versus the October 2004 plan submitted with the RFP/RFQ)

- 1) One of the differences from the original plan is the elimination of the golf course. The community had strong opposition. After doing water-quality studies and in speaking with National Park and OEQC, they were concerned of the potential of pesticide and fertilizer into the water. DHHL had concerns with the first plan, as most of the development was going to be on the DLNR property. Instead, JDI expanded commercial use and used water feature amenities in lieu of the golf course.
- 2) The Kealakehe Parkway was realigned. Originally it came thru the property and exited makai of the wastewater treatment plant. The current plan keeps the Parkway at the top of the property and exits mauka of the STP. This was a big change as they realized they had to work with Queen Liliuokalani Trust (QLT) because the Parkway would connect Queen Kaahumanu to Kuakini-Kailua Kona. In working with QLT on the corridor, they wanted to push the Parkway as further off as possible to protect the cultural sites along the coastline. The county wanted

the most direct route between Queen Kaahumanu and Kuakini – to keep the traffic at the top of the project site rather than thru the site and on to QLT lands.

- 3) The density in the RFP/RFQ plan was 1,700 units. The new plan is now 2,500 units and added water features. By replacing 200 acres of golf course into a viable use, it creates value to the property.
- 4) They have better numbers for the infrastructure costs onsite and offsite. The costs are high. To offset these costs, they had to increase density, but added open space and met all of DLNR's requirements.
- 5) There was concern that the development was too close to the coastline, and there should be a larger buffer from the coastline. The setback is now 400 feet.
- 6) Two years ago the only set aside was the existing marina but the fast lands was put into the RFP based on the November 17, 2005 meeting. DLNR chose to retain the marina and the fast lands.
- 7) The basic marina configuration has been changed. They are working with a consultant. The new configuration works with the proposed use of the property and it is still is 45 acres, 800 slips.

#### Basic Marina Use Facilities Plan

Approximately 45 acres/803 slips that range in size from 25 to 120. Consultant has started a market assessment study, which will include the demand for slips in Kona, the slip mix (sizes), so they can determine the layout, mix, sizes, what kind of facilities should support the marina. Initial uses are the yacht club, the fishing club, the harbor master location (consulting with DOBOR) as some of the land will be returned to the National Park.

Also other uses include marina operations and maintenance, commercial areas, oil bilge facilities, sewer pump outs, shipyard and haul out facilities. The consultant is also doing a boat traffic assessment (congestion at the existing harbor entrance, peak and non-peak times) to determine the constraints of the present harbor entrance, which will control the number of slips. Information from the study will be shared with the DLNR staff.

#### Core Infrastructure Plan

The scope of improvements primarily focuses at the Kealakehe Parkway and the extension. The main purpose is to alleviate traffic on Queen Kaahumanu Highway, which is critical. The plan would provide an alternative route in and out of Kailua-Kona going to the airport. Realign the Parkway to the property line, build an intersection, and construct the Parkway to service all of the development parcels.

When they realigned the Parkway above the STP, it did not touch the development parcels on the coastline. JDI would have to build the 80-foot right-of-way makai as well as access roads to the coastline to accommodate the DA requirements.

They have had discussions and a right-of-entry with QLT re the corridor, consultants have studied the corridor, and it will be part of the EIS. JDI met with county officials re the realignment and have agreement with the county.

There was discussion on the phasing of the roadway work.

#### Master Covenants, Conditions and Restrictions (CC&R)

There are two sections of the Master CC&R. The first half is design guidelines and standards that you would impose on the development that would create guidelines for architecture, site planning, landscaping, lighting, entry ways, etc. JDI has a draft of this CC&R document. The second half of the CC&R submittal to DLNR is the community benefits package—what kind of employment and job training programs, cultural programs, educational and community development programs that JDI would commit to in relation to the project. JDI has a draft and is working on the community benefits package, which will be presented to DLNR for review

Chair Young questioned the intervals on the time shares. JDI explained the different types of products—time shares and hotel. They anticipate having an agreement with a firm to manage it—but this is too early. JDI is fully aware that permanent residential will not be allowed. They do not anticipate the typical time shares taking non-owner occupants for weekend stays where it may look like a hotel. JDI does not have this in mind.

Chair Young asked if any of the marina slips would be associated through ownership or assignment in connection within the hotel/time shares. JDI is looking at this. This is a new, good idea within the marketplace and it is being reviewed through the marketing study. Questions raised would be: what percentage would be dedicated, where would it be. This all needs to be fleshed out through the study. JDI hopes to get results of the study at the end of November. Chair Young reminded JDI that one of the conditions in the DA was the marina with the intent that we are seeking to serve the local boating needs. So when they are looking for percentage of assignment also need it in the context that the local community needs to be served. JDI is cognizant of this. They see it possibly as a small percentage – approximately 25%.

#### Draft Environmental Impact Statement

##### EIS Studies and EISPN

The Draft EIS was to be ready on November 17, 2006. However, they are five weeks ahead and have advanced the submittal timeline to October 11 2006.

To meet this goal, JDI initiated the formal process by publishing in the July 8, 2006, in OEQC's Environmental Notice the EIS preparation, which has generated a great deal of interest. The comment period will be in 30 days. The EIS prime contractor is Oceanit and they have a large number of subcontracts for the EIS. This project is meeting all of the requirements of Chapter 343 and goes beyond that in addressing the community concerns that have been raised about environmental impact. Among the studies will be traffic, cultural impact analysis, archaeological survey, visual impact, noise impact, socio-economic impact, flora and fauna surveys, air quality and water supply.

Beyond what is required in Chapter 343, many additional studies for the monitoring and understanding of water quality – both the groundwater, marine, flow of water and impacts, waves, etc., as this is a concern of many. JDI has been in close contact with the National Park.

JDI will follow the proper process for public comment and review, notification, and announcements. DLNR will also review and comment before submittal to the BLNR.

#### Community and Government Relations

Key elements are communication and to seek consultation with community leaders early and often and bring their comments into the planning and design process so their concerns can be addressed in the design portion of the project or in surveys for the Draft EIS. His team has been meeting one-on-one and with small and large groups in the community—a cross section of over 300 persons from all areas of the community.

Community members have many positive comments and concerns, which they are trying to address. David Tarnas, a JDI member, explained in greater detail.

They are meeting/working with County and Council officials regarding the land designation. There is a County Council Planning Committee hearing on July 18, 2006, and looking for support from DHHL and DLNR.

#### Summary and Planning Schedule

Frank Brandt synopsis timeline. (copy attached)

#### Concerns of BLNR Members Addressed by JDI

JDI has received concerns from the community re density of the project, but there have been no questions or challenges re the deviation of the plans.

Public access is presently limited to the shoreline. Plans will provide more access.

The project will improve view planes.

The original RFQ required Hawaiian architecture.

Resolution of traffic/congestion.

The meeting was adjourned at 6:00 p.m.

Respectfully submitted,

Jeannie Fujikawa

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, JULY 14, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Ron Agor  
Mr. Jerry Edlao

Mr. Tim Johns  
Ms. Taryn Schuman  
Mr. Sam Gon III

**STAFF**

Mr. Paul Conry, DOFAW  
Mr. Sam Lemmo, OCCL  
Mr. Steve Lau, Land

Mr. Russell Tsuji, Land  
Ms. Tiger Mills, OCCL  
Ms. Athline Clark, DAR

**OTHERS**

Mr. Colin Lau, Deputy Attorney General  
Ms. Linda Chow, Deputy Attorney General, D-9  
Ms. Annette Lee, D-6  
Mr. David Thompson, D-6  
Mr. Tom Staton, D-6  
Mr. An Sui Lee, D-12  
Ms. Elizabeth Martinez, D-8&9  
Mr. Chuck Burrows, D-8&9  
Ms. Laverne Higa, D-9  
Ms. Susan Miller, D-8&9

Mr. David Yamada, D-7  
Mr. Richard Wada, D-7  
Mr. Lawrence Peck, K-1  
Mr. Rick Barboza, D-6  
Mr. Bill Tam, D-6  
Mr. Paul Mizue, D-9  
Ms. Jenny Masunaga, D-9  
Ms. Tracy Manhon, D-11  
Mr. Walter Kamalolo, D-10  
Mr. James Wood, D-8&9

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

**Item A-1: Minutes of June 23, 2006**

**Unanimously approved as submitted (Johns, Schuman).**

**Item C-3: Issuance of Special Use Permit to Mid Pacific Communications, Inc. on Lands Encumbered by the Division of Forestry and Wildlife, Kawaihao District, Kauai, TMK: (4) 4-2-001: por.2.**

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW), indicated that the purpose of this request is to allow the establishment of the telecommunication facility at the site. They have checked with OCCL to verify that there is no further conservation district use permits are needed. The use that has been proposed falls within existing permits issued for the site. There was a question about the power supply, and Mr. Conry disclosed that there is a hospital and some radio cams that would help in supplying power. It was unknown if either of the two had the necessary permits. Staff recommended that the board pass the proposal. Also the applicant had requested a full year, rather than six months that is proposed in the special use permit. A year would allow them to gather a full range of data on the applicability of the solar panels.

**The Board:**

**1. Amendment to item 29:**

**“Precautions will be taken to prevent introduction of plants or animals not naturally present in the area, including consultation with DOFAW and the Kauai Invasive Species Committee. Should an infestation develop, SUP is responsible for eradication by methods to be specified by DOFAW in consultation with the Kauai Invasive Species Committee.”**

**2. Amend Page 2 under “Remarks” to read**

**“. . . After [~~six~~] twelve months of study they expect to determine the adequacy of this site for their purposes. If found adequate, an outside appraisal and other required steps to develop a revocable permit or lease would be undertaken by the Division for longer-term use lease of this site.”**

**3. Amend recommendations to include:**

**“3. Approval of an amendment in the duration of the special use permit from 6 months to 1 year.”**

**“4. The Board approved a request by applicant to amend the duration of the Special Use Permit will be amended from 6 months to 1 year.”**

**Unanimously approved as amended (Schuman, Gon).**

**Item M-1: Issuance of Lease by Direct Negotiation Together with a Right-of-Entry to Paradise Inn Hawaii, LLC, DBA Tsukiji Fish Market Restaurant, Parcel 6, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu.**

**Unanimously approved as submitted (moved and second)**

**Item K-1: Conservation District Use Application (CDUA) HA-3291 for a Single Family Residence for Applicant Mr. Lawrence K. Peck in Kaiwiki Homesteads, South Hilo, Hawai`i, TMK (3) 2-6-11:31.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) gave some background information in which he disclosed that the applicant is also the land owner. The case is a standard CDUP, involving a house about 4,500 sq. ft. on a relatively large parcel. The area has a rural nature, and there are other structures, houses, and agriculture taking place in the area. The staff feels that the use is in keeping with the character of Kawiki Homestead. The project went through environmental review process in which a FONSI was issued in May 2006. No major issues came up. Therefore, staff is comfortable in recommending approval of this project subject to standard conditions.

**The Board:**

**1. Amendment to section 9**

**“The applicant will give preference towards using native plants for the remaining landscape work and to avoid introduction of problem alien species and to consult with DOFAW and the Hawaii Invasive Species Committee.”**

**Unanimously approved as amended (Edlao, Johns).**

**Item K-2: Conservation District Use Application (CDUA) HA-3298 for After the Fact Subdivision & Consolidation of Conservation District Land for Right of Way Public Highway Expansion and Highway Improvements, Adjacent & Makai of Queen Ka’ahumanu Highway, Keahuolu, North Kona, Island of Hawaii, TMK:(3) 7-4-008:002**

Mr. Lemmo gave a brief summary of the submittal which was a Department of Transportation (DOT) project and is an after the fact CDUP to affirm a subdivision that took place and to approve one phase of the Highway improvements at Kailua-Kona. Staff has run it through the permit process and has found that it meets all of the required regulatory processes.

**Unanimously approved as submitted (Johns, Schuman).**

**Item K-3: Request to Extend the Processing Period in Order to Process a Contested Case Hearing for Conservation District Use Application (CDUA) HA-3269 for a Single Family Residence for applicant Mr. Jonathan Cohen in Pao`o, North Kohala, Hawai`i, TMK (3) 5-7-001:005.**

Mr. Lemmo and staff are requesting a time extension to allow additional time to process a contested case hearing for the Cohen single family residence. It's a request for a 90-day extension.

**Unanimously approved as submitted (Johns, Edlao).**

**Item D-10: Consent to Assign Homestead Lease No. 16A; Walter Kimokeo Kamalolo, Heir to the Estate of Annie Aukai Kamalolo, Assignor, to Walter Kimokeo Kamalolo and Pok Ye Kamalolo, Assignee; Hauula, Koolauloa, Oahu, TMK: (1) 5-4-1:26, 29 & (1) 5-4-7:26.**

Russell Tsuji, Administrator of the Land Division stated that the submittal is for consent to assign a homestead lease from Walter Kamalolo to Walter Kamalolo and Pok Ye Kamalolo.

Walter Kamalolo was present.

**Unanimously approved as submitted (Johns, Schuman).**

**Item D-11: Consent to Assign Revetment Easement bearing General Lease No. S-5341, Thomas William Coulson, Patricia Marie Coulson, Tracy Minard Patrick, III, and Cathy Ann Patrick, Assignor, to Linda Renaud, Assignee, Pupukea, Koolauloa, Oahu, TMK: (1) 5-9-020:48 Seaward.**

Applicant was present.

**Unanimously approved as submitted (Johns, Gon).**

**Item D-12: Encroachment Determination on State Land and Imposition of Fine, An-Sui and Tracy Leiko Sakotani Lee, Aiea, Ewa, Oahu, TMK: 9-9-09:013 (por).**

An-Sui Lee was present.

Mr. Tsuji stated that there is a dispute between the prior owner (An-Sui and Tracy Leiko Lee) and current owner. The Lees had hired a contractor who did some work and shoved some material and debris on to state land. The land was sold to the Kanes and then there was a dispute where the Lees wanted to go in and clean it, but Kanes would not allow the Lees access. Recommending the Board find that an encroachment does exist and to order them to remove the debris and material and issue a fine if it's not removed within thirty days of the Board's decision. Mr. Lee said that an agent has gone down and there is about 15 wheel barrels worth of debris. It is near the property perimeter. It does not affect the sewer easement and the path is about 200ft below the valley (it's a sloping valley). The debris is easily accessible once given permission by the current owners. Mr. Lee requested to extend the 30 days to 60 days which will allow his attorney to draft an

agreement with the Kanes, to allow him enough time to schedule a contractor to go down and cleanup, as well as an agent to go in and inspect the cleanup and approve that the necessary cleanup has been done.

**The Board:**

**1. Amendment to Recommendation C**

**The Respondent (Lees) is allowed sixty (60) days to remove the debris and material, before triggering the fine of \$500.00 per day rather than the originally stated 30 days.**

**Unanimously approved as amended (Edlao, Johns).**

**Item D-8: Withdrawal from Governor's Executive Order No. 4102 to Department of Land and Natural Resources, Division of State Parks for Kawaiui Marsh State Park Reserve Purposes and Reset Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Kawai Nui Wildlife Sanctuary Purposes at Kailua, Oahu, TMK: (1) 4-2-13:portion 5.**

Testimony given by:

Susan Miller: President of the Kawai Nui Heritage Foundation (also has written testimony; originally meant for D-9 but applicable to D-8). She brought written testimony as well as a map from the 1983 resource management plan in which she states is the first study done on Kawai Nui and recommends DLNR be the agency to administer the marsh. The foundation is asking for the motion (in writing, in the recommendations) to include direction to DOFAW to involve the other appropriate divisions in the work that they do. State Parks was mentioned in the recommendation, but Ms. Miller would like to include Historic Preservation and the many community organizations so the work and concerns are dealt with more publicly.

Chuck Burrows: President of Ahahui Malama i ka Lokahi (also has written testimony; originally meant for D-9 but applicable to D-8) in support of Ms. Miller's proposal to include other community organizations. Asking to specifically be in partnership with DOFAW when the executive order is implemented of transferring the SP jurisdiction of portion 5 to DOFAW. Would like to see it stated in writing that Ahahui Malama i ka Lokahi community organization would have access to (more specifically) the area called Knott's ranch in order to help with the maintenance of not only the wetlands, but also the dry land forest ecosystem that surrounds this area in portion 5.

Todd Hendericks: In support of the proposal, but would like the board members to sit with the city and resolve the issue of flood control management/maintenance.

Jim Woods: Windward Ahupuaa Alliance supports, in general, the approach of switching the management of the area to DOFAW and also gives support to the comments of those mentioned above.

Elizabeth Martinez: In favor of both D-8 and D-9 and in support of Chuck Burrows and other community organizations.

Fred Hemmings: Supports efforts being proposed and hopes for more federal recognition and participation in developing this resource (Kawai Nui) as a cultural and environmental asset for future generations.

**The Board:**

**1. Amendment to Number 3**

**"Division of Forestry and Wildlife to work cooperatively with the Division of State Parks, the Historic Preservation Division, and community groups and other interested parties, as stated in the memorandum dated May 31, 2006, attached to the submittal as Exhibit "C"."**

**Unanimously approved as amended (Johns, Gon ).**

**Item D-9: Acquisition of Lands and Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife for Habitat Restoration and Marsh Wildlife Sanctuary Purposes, Kawainui Marsh, Kailua, Oahu, TMK: (1) 4-2-13:22, 4-2-16: Portion 1, 5, and portion 6;**

Mr. Tsuji stated that in addition to the original proposal, they are asking for an issuance of easements for access purposes for the City as well as the Army Corps for their purpose of flood control management of the marsh. He then gave some background information. He stated that County acquired the marsh in 1964 from a private owner to prevent development of the marsh. The County then entered into an agreement with the Federal Government for flood control purposes in the area. The County received \$5 million of federal funds to implement the flood control project. Pursuant to the agreement that the County entered with the Army Corps, they are tasked with the responsibility of flood control into perpetuity. The Federal Government will look to the City and County of Honolulu based on this agreement regardless of any other contracts they may enter into or third parties that may join. There is a question of whether or not the cooperative agreement can be amended and the City and County released from their responsibility. Legislature in 1990 passed Act 314 and as amended in Act 47 in 1998, said that the state would acquire certain portions of the Kauai Nui Marsh specifically for managing the economic, ecological, and cultural resources of the marsh.

The County has taken the position that before it will allow DOFAW to pursue its project as directed by the legislature; DLNR and the state must agree to take over the flood control management. DLNR's position is that nothing in the act or its legislative history

indicates that the legislature intended the state to take over flood control of the marsh. In fact, the Act merely intended that the state to manage the economic, ecological, and cultural resources of the marsh and not flood control. Various chapters and sections in the Hawaii Revised Statutes indicate that flood control is a County function. The County clearly has regulatory and enforcement jurisdiction when it comes to management of streams, channels, etc.

Board Member Johns mentions that Act 314 states that DLNR needs to approve flood control projects to their satisfaction. Provided that the City and County and the Corps shall first complete all pending flood control projects to the satisfaction of DLNR. State shall enter into required operation and maintenance agreements. Tsuji responds that the committee reports don't indicate much beyond what the land act says as far as legislative intent. Mr. Tsuji believes that its purpose is that before DOFAW goes into to do their projects these agreements should be in place. There is nothing in the act or the legislative issue that indicates that the state was supposed to take control of flood control.

Paul Mizue, program manger for the US Army Corps of Engineers for Honolulu, in response to Chairman Young's question about what happens if the ownership of the land transfers from the City to the state, in terms of flood control, stated that as far as the operation and maintenance of the flood control facility, it would remain in accordance with their current agreement with the City and County, which specifies that they would be the responsible agent for the operations and maintenance for the purpose of flood control.

The State is not required to enter into any agreements with the Army Corps, the agreement is currently only with the City and County, but the agreement can be modified to allow the state to be the agent for flood control operations and maintenance. Deputy Attorney General Linda Chow said that their interpretation is that if there were any agreements required for operation/maintenance of any Army Corps project, the board would have to enter into them. Because the City is already bound to operate and maintain, there is no requirement even if the title is transferred to the state.

Paul Conry: DOFAW is agreeable to take over the management responsibility for the cultural, economic, and ecological aspects of the marsh, but they lack the expertise and capacity to deal with flood control management, therefore, are in agreement to have the responsibility stay with the County. In answer to Board Member Johns question about proceeding with the habitat restoration project with something other than fee simple ownership, he answers that there are other choices such as a license agreement, or entering an easement, or some other form of control over a long term. Fee simple will allow this project to move forward. They have approached the City and County (Mayors Fasi, Harris, and Hannemann) to enter into a license agreement, but they had rather proceed with land transfer and transfer of the flood control.

Laverne Higa, director for the City Department of Facility Maintenance gave some additional background information. In 1998, DLNR had requested a description change of what was to be transferred to the state and still included the levy and the marsh. The

City would take control of stream between the levy and coconut grove in exchange for Oneawa canal (part of flood control project). She argues that Act 47 states that the State shall enter into a maintenance agreement and because of the levy acquisition, flood control responsibility should be transferred to the state. Kathleen Kelley, Deputy Corporation Counsel for the city also argued the interpretation of the legislative intent and Act 47 saying that it was meant for flood control responsibility to be transferred to State. The City does not want to share responsibility for the flood control because it may eventually cause a conflict of interest since there will eventually be restoration projects around the levy which might interfere with flood control projects. Deputy Attorney Chow indicates that the flood control should stay under the control of one committee only and Mr. Tsuji suggests to the board that they should pass the proposal and keep the flood control at status quo (with the City).

Chuck Burrows, Jim Wood, and Linda Paul gave testimony in supporting the approval of this project and to find a cooperative agreement with the City on flood control.

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

**Item D-7: Consent to Assign General Lease No. S-3767, Kazuto Yamada and Ayako Yamada, Assignors, to A & K Nursery, Inc., Assignee, Consent to Mortgage and Extension of Lease Term, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-027:028.**

Kazuto Yamada, applicant, was present.

**Unanimously approved as submitted (Johns, Schuman).**

**Item F-2: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue Two (2) Northwestern Hawaiian Islands (NWHI) Native Hawaiian Permits to Nainoa Thompson of the Polynesian Voyaging Society for the Sailing Canoe Hokulea and the Escort Vessel Kamahele to Conduct Navigational Training in the State Waters of Nihoa from Mid-July to Mid-August, 2006.**

No one from the Department of Aquatic Resources was present.  
One person present in support of submittal.

**Unanimously approved as submitted (Johns, Schuman).**

**Item D-6: Report on General Lease No. S-5707, All Tree Services, Inc., Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:048.**

Mr. Tsuji states that the remaining issues for this case is that the tenant has applied for an after the building permit with the city and the building permit should be more of a ministerial act rather than a discretionary act and therefore staff believes that the permit

will be approved. Based on this, staff is recommending the withdrawal of their original request for forfeiture of this lease to All Tree Services, Inc.

Kali Watson, representative for All Tree, states he just found out that the final branch that needed to approve the building permit has approved it; therefore all that is really left is the payment of fees and penalties that may be imposed. He and the owner, Mr. Rodrigues attended the board meeting of the Windward Soil and Water Conservation District and the application for cooperative status (filed in September 2005), according to the chair, will be approved. The conservation plan (submitted November 2005) should be reviewed by their staff and taken to their board for approval the second Wednesday in August. There have been no changes in the farm plan.

Staff had gone out to check on the property after the last meeting and found that everything they see there is what they believe to be in accordance with the purpose of intensive agriculture. Staff recommends taking this project off the forfeiture status under the condition that by December 30, 2006 he (Mr. Rodrigues) can submit the actual building permit and conservation plan assuming that no violations or alleged violations occur. If new violations come up, it will be brought to the board.

Testimony given by:

Dean Okimoto (also provided written testimony): President of the Farm Bureau and member of review panel who approved people for the bidding process. From reviewing the business plan submitted, there was no inclination that other businesses besides intensive agriculture were going to be run on the premises. The original footprint of the buildings on the plan was smaller than what it is. He believes that All Tree was going to subvert the whole process to begin with and believes it's unfair to the other bidders and subverts the entire public bidding process. They were given numerous chances to cure their mistake, but should have been only allowed one chance. This puts the integrity of the bidding process at risk.

Bill Tam: Council for the Waimanalo Agricultural Association. He sees that there are two problems: First that this action was not a result of a harmless error. Other bidders suffered financial and personal loss due to this. Either All Tree was never qualified to acquire this lease or mislead the department. He requests that the Board should rescind the lease and start all over. He states that the cure period is past and All Tree doesn't have the building permit or the conservation plan, therefore he is at default. In response Mr. Tsuji said that the building permit is more ministerial and that there are many other instances in which others have not submitted conservation plans on time. Therefore if they were to start terminating all of their agriculture leases, that would set a bad precedent.

Chairman Young stated that there is always going to be an ongoing concern because from the very beginning the lease was supposed to be used for intensive agriculture and it was used as a base yard and a place where the tenant was operating other businesses. In addition there is a default on rent and a default on performance and inconsistency with the provisions of the lease for making improvements without building permits. There is an ongoing series of violations.

Tom Staton, Rick Barboza (also provided written testimony) and Fred Hemmings: Also gave testimony against staff's recommendation based on losses incurred due to the situation. They are in favor of rescinding the lease. Mr. Staton states that base yard was not cured in the 60-day cure period as noted in the record. DLNR inspected the site after the 60 days, and it had not been cured within the allotted time period. Mr. Kendrick was described as a consultant at the March 10 meeting and at the May 13 meeting; it was revealed that he was growing his own plants on this site. He was described as a partner with 80% ownership with an LLC in the process of being formed with a preceding verbal agreement. Mr. Rodrigues declared that Mr. Kendrick has not been paid even a dollar, yet he was previously described as a paid consultant. A local vendor has stated in a declaration that Mr. Kendrick said in November 2005 that he was renting from All Tree.

Board member Agor brought up that there was some ambiguity in the business plan about what Mr. Rodriguez was going to do on the site. The business plan did mention that Mr. Rodriguez was going to incorporate his previous business (tree trimming and creating mulch from the trimmings).

Mr. Watson mentioned that when the conservation people came out to review the site, they commended Mr. Rodrigues and were impressed with what he did to the site. He believes that Mr. Rodrigues should be made an example of because even though he did wrong, he did everything he could to make it right.

Mr. Tsuji offered another recommendation in which a \$500 fine is issued for each violation equaling a total of \$2500 administrative costs for compensation.

When asked his opinion about his site visit, Board member Agor felt that All Tree was in compliance with the lease.

Written testimony was also provided by Fred Humphrey and Rod Oshima.

#### **The Board:**

**The Board denied staff's recommendation and voted to Terminate General Lease No. S-5707.**

**~~["Therefore, as long as no further defaults arise, staff is recommending that this current request for forfeiture of General Lease No. S-5707 to All Tree Services, Inc. be withdrawn, subject to All Tree Services providing to the Department by December 31, 2006: (1) a copy of a building permit issued by the County for the improvements situated on the property; and (2) a copy of the soil conservation plan for the property approved by the Board for the Windward Soil Water Conservation District by December 31, 2006."]~~**

**Motion to Terminate General Lease No. S-5707 (Johns, Schuman)**

**Yes – (Schuman, Johns, Edlao, Gon)**

**No - Agor**

Members Schuman and Johns excused themselves from the meeting.

**Item J-1: Requesting final approval of amendments to Chapter 13-242, Hawaii Administrative Rules, as they relate to cruise ship fee increases and requesting authorization to submit the approved rules to the Governor for final adoption.**

**Request to be deferred.**

**Unanimously approved (Edlao, Gon).**

**Item C-1: Request Approval of Memorandum of Agreement (MOA) Between the Department of Land and Natural Resources and the Research Corporation of the University of Hawaii for Cooperative Firefighting Activities, Statewide.**

**Item C-2: Request for Approval of a Memorandum of Understanding Between the Board of Land and Natural Resources, Division of Forestry and Wildlife, and the United States Department of Agriculture, Animal and Plant Health Inspection Service Wildlife Services to Provide More Effective Procedures for Technology Transfer, Planning, Coordinating, Exchanging Information and Expertise and Developing Measures to Enhance the Beneficial Aspects of Wildlife, Statewide.**

~~**Item C-3: Issuance of Special Use Permit to Mid Pacific Communications, Inc. on Lands Encumbered by the Division of Forestry and Wildlife, Kawaihau District, Kauai, TMK: (4) 4-2-001: por.2.**~~

**Item C-4: Request Approval of Contract with Ms. Teresa Trueman-Madriaga to Coordinate the Federally Funded Urban and Community Forestry Program for the Division of Forestry and Wildlife.**

**Item C-5: Request Approval of Contract with Ms. Jacqueline Ralya to Coordinate the Federally Funded Volunteer/Technical Assistance Function of the Urban & Community Forestry Program for the Division of Forestry and Wildlife.**

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

**Item L-1: Approval for Award of Construction Contract – Job No. H10C631A, Improvements to Main Comfort Station Wailoa River State Park Hilo, Hawaii.**

- Item L-2:** Approval for Award of Construction Contract – Job No. F00CF57A, Individual Wastewater System at Kahana Valley State Park (Boat Ramp) Koolauloa, Oahu, Hawaii.
- Item L-3:** Approval for Award of Construction Contract – Job No. H10C767A, Water System Improvements, Kaena Point State Park, Waianae, Hawaii.
- Item L-4:** Approval for Award of Construction Contract – Job No. B45CM71A, Maalaea Small Boat Harbor Electrical Improvements, Maalaea, Maui, Hawaii.
- Item F-1:** Amendment to Board Resolution No. 33 – Relating to Appointment of Dan A. Polhemus, Robert T. Nishimoto, William j. Walsh, Skippy Hau, and Alton K. Miyasaka, Public Hearing Masters for the Division of Aquatic Resources.
- Item E-1:** Request from the Federation of American Natives to Hold the Second Annual Hilo Inter-Tribal PowWow on Portions of Wailoa River State Recreation Area, Hilo, Hawaii.
- Item D-1:** Grant of Perpetual, Non-Exclusive Easement to Tonia B. Vyenielo and Louis C. Green, trustees for the Green-Vyenielo Revocable Trust for Access and Utility Purposes, Kapaa Homesteads 2nd Series, Kawaihau, Kauai, TMK: (4) 4-4-003:through parcel 85, over State Ditch 7.
- Item D-2:** Grant of Term, Non-Exclusive Easement to Kawaihau 31 Acres, LLC for Access and Utility Purposes, Kapaa Homesteads 1st Series, Kawaihau, Kauai, TMK (4) 4-6-007: portion of Parcel 12, in favor of Parcel 17.
- Item D-3:** Amend Prior Board Action – Department of Transportation Request for Governor’s Executive Order to Set Aside Government Lands at Puako Bay, South Kohala, Hawaii, Being the Puako Boat Launching Ramp – TMK (3) 6-9-01: Por. of 01 and 6-9-02:20.
- Item D-4:** Cancellation of Revocable Permit No. S-7156 to S & S Dairy, Inc. and Issuance of Month-to-Month Revocable Permit to Richard E. and Donna Lee Souza, dba R & D Farm. for Pasture Purposes; Poupouwela, Ka'u Hawaii, TMK: (3) 9-5-12:02.
- Item D-5:** Amend Prior Board Action of July 10, 1970, under Agenda Item F-5, for Withdrawal of Portion of Kapiolani Park (Executive Order No. 22); Reset Aside to the Department of Education; Conveyance to City

**and County of Honolulu and Sale of Remnant to abutting Owner,  
Waikiki, Honolulu, Oahu; current TMK is 2-6-27:52.**

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

There being no further business, Chairperson Young adjourned the meeting at 12:20 p.m.  
Tapes 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,

Lauren Yasaka

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, JULY 28, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Ron Agor  
Mr. Jerry Edlao

Mr. Tim Johns  
Ms. Taryn Schuman  
Mr. Sam Gon III

**STAFF**

Mr. Paul Conry, DOFAW  
Mr. Sam Lemmo, OCCL  
Ms. Dawn Hegger, OCCL

Mr. Russell Tsuji, Land  
Ms. Tiger Mills, OCCL  
Ms. Athline Clark, DAR

**OTHERS**

Mr. Vince Kanemoto, Deputy Attorney General  
Mr. Kimokeo Kapahulehua, F-2  
Mr. Rusty Mau, F-2  
Kendall Struxovess, F-2  
Mr. Tom Staton, D-4  
Mr. Patrick McNulty, K-2  
Ms. Dawn Chang, K-1

Mr. Pepe Trask, F-2  
Mr. Kawika Kapahulehua, F-2  
Ms. Deena Dray, D-3  
Ms. Zeninia Kapahulehua, F-2  
Ms. Lani Stark, D-2  
Mr. Mike Moberry, K-3

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

**Item A-1: Minutes of July 13, 2006**

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

**Item A-2: Minutes of July 14, 2006**

Paul Conry noted some wording errors in the summary of Item D-9 of the minutes.

**The Board:**

**1. Amendment to Item D-9 of minutes**

**“Paul Conry: DOFAW is agreeable to take over the management responsibility for the cultural, [~~environmental~~] economic, and ecological aspects of the marsh, but they lack the expertise and capacity to deal with flood control management, therefore, are in agreement to have [~~that shared~~] the responsibility stay with the County...”**

**Unanimously approved as amended (Johns, Edlao).**

**Item M-1: Issuance of a Revocable Permit to Rebecca’s Fine Collections, Inc., DBA R. F. C. Group, Keehi Industrial Lots, Kalihi-Kai, Honolulu, Oahu. (DOT)**

**Item M-2: Issuance of a Revocable Permit to Kong Enterprises, Inc., Keehi Industrial Lots, Kalihi-Kai, Honolulu, Oahu (DOT)**

**Item M-3: Issuance of a Master Lease, FAA Agreement #DTFA08-03-1-22327 Federal Aviation Administration Kalaeloa Airport**

**Item M-4: Issuance of a Revocable Permit to Lincoln Timothy Saito, DBA Kokua Recycle, Keehi Industrial Lots, Kalihi-Kai, Honolulu, Oahu. (DOT)**

**Unanimously approved as submitted (Johns, Schuman).**

**Item F-2: Request for authorization to issue one (1) Northwestern Hawaiian Islands (NWHI) Native Hawaiian Activity Permit of Research Monitoring, and Education Activity Permit to Leonard Kimokeo Kapahulehua of the Hawaiian Outrigger Canoe Voyaging Society for a Canoe Voyage from Mokumanamana to Laysan Island Valid for the Month of August 2006.**

Ms. Athlene Clark, Administrator of the Aquatic Resource Division, gave a summary in which she stated that the voyage will have an escort vessel and an outrigger canoe with 18 paddlers who will exchange seats once every hour to paddle continuously from Mokumanamana to Laysan Island, which would take approximately 90 hours. Due to the new permit review process, staff has put together a Native Hawaiian Culture Advisory Group made up of practitioners and brought this permit to the group to ask for their recommendation. Staff felt that they did not have the proper expertise to make the decision on a cultural access voyage therefore they had the cultural group make the final determination. The Cultural Working Group did not feel that this qualified as a native Hawaiian access permit because many of the participants on the voyage have not gone through the same training that the applicant has had. Staff also looked at different

alternatives in which this permit could be granted. It does not qualify as a special activity permit because under the regulation, a special activity permit is granted for the purposes of resource management or to enhance/benefit specific resource management activities. Staff recommends that the application be based on an education access permit pending additional information on specifically. Because they would not be entering in 10 fathoms of water or shallower Fish and Wildlife will not be issuing a permit. If an education permit was granted it would have to be granted under a conditional basis pending approval by NOAA and pending receipt of all information in writing.

Dr. Kamana'opono Crabbe spoke on behalf of the cultural group who felt that the applicant didn't meet the goals of the native Hawaiian access permit. The precise goals and purposes of this project is not clearly stated as it relates to specific cultural and/or religious ceremonies or customs, as well as canoe voyaging as an authentic practice that was conducted up in the Northwestern Hawaiian Islands. Also it was not clearly stated whether this was an excursion for recreation or if it is based on a specific function or purpose for cultural reasons. Another concern was the types of activities being conducted. Based on their evaluation and assessment of all the materials submitted, they would like to recommend denying the application under the native Hawaiian permit application process. They feel that it is unknown or questionable about what educational materials were produced and who they were shared with. If they (the Voyaging Society) could develop a plan that clearly states what they plan to document and how it is put into some kind of educational curriculum or informative documentary, they wouldn't be opposed to it.

A representative from the Office of Hawaiian Affairs (OHA) stated that they are in support of the role that the Native Hawaiian Advisory group plays in reviewing permits.

Pepe Trask, board member the Hawaiian Outrigger Canoe Voyaging Society, stated that their purpose is to ask the board for its blessing to travel from Kauai to Mokumanamana and then paddle from there to Laysan; from August 5<sup>th</sup> to August 16<sup>th</sup>. He then gave some background on the Voyaging Society, the purpose of the trip, and all the precautions taken to ensure a safe voyage. Kimokeo Kapahulehua is a practitioner of Hawaiian culture of blessings, so there will be the blessing of canoes, the escort boat, crew, and food, both prior to launching, during the entire voyage, any stops, and on the return. There is no desire to land or gather any of the resources. They are registered as a non-profit organization and are funded by private donations and individual payments. Cost of this trip is estimated at \$100,000.

In response to questions from the board about the possibility of being considered under an educational permit, Mr. Trask stated that the goal of this organization is to educate others about what they see when they go out on these voyages; that is why they have hired a full time photographer and journalist. There are also two DVDs that were made during their trips to Nihoa and Mokumanamana the years before and they would be glad to release them for DLNR or whoever else's use. They would also be willing to make presentations at schools, the university, and at other cultural events, etc.

Kawika Kapahulehua, uncle to Kimokeo and once a paddler for the Hokulea, believes that this organization will be the ears, the eyes, and the voice of their ancestors because they will be going up to the NWHI to see what is happening. They will be able to tell us about the debris that needs to be cleaned up.

Kendall Struxvess is apart of the organization and is in support of this voyage.

Kimokeo Kapahulehua, founder of the Hawaiian Outrigger Canoe Voyaging Society, gave some background on his training of the protocol for the blessings and said that those who helped to train him made sure that the protocol was set right from when they first started the voyage from the Big Island. He states that the voyage helps to teach about the Ahupua'as and for people in their organization to know about the sources that we have and how to protect them. He and the rest of the organization are very willing to share the information that they have already gathered and that they will gather and reiterated that none of it is for profit.

Zenibia Kapahulehua, sister of Kimokeo, a teacher in the Hawaiian emersion program, testifies that this voyage will have an educational aspect. She has been a teacher for the past 25 years as a part of the Department of Education (DOE). She has used the journeys in her class and has used the map of all the islands. She is a part of the educational component of this trip. She is willing to write up lesson plans and fax them to the Board.

Cha Smith (written testimony also provided), representative from Kahea, the Hawaiian Environmental Alliance, stated that they had found some problems with this application. One problem was that when she googled this canoe club, she found them on a sports page as an attempt to settle a distance record. She is not convinced that this is an educational trip and that there will be a significant value added to the people of Hawaii. She feels that access the NWHI need to be scrutinized because every voyage that goes up there is a threat to this resource.

Aulani Wilhelm, NOAA's acting superintendent for the NWHI Marine National Monument believes that there is good intent in the application, but unsure if they meet all the requirements needed to satisfy both the State's requirements and the Federal requirements. She views this as a precedent for future permit applicants and states that even though it is unsure if State waters are to be included in the monument, both sets of requirements should be taken into account. She suggested that the departure date be pushed back to allow the different organizations to work with them so that they can meet all the criteria and so that the educational requirements are satisfied.

Rusty Knolls, Vice President of American Marine Services Company, stated that the American Islander (the escort vessel) is a US Coast Guard certified vessel and meets all federal regulations. They are familiar with the area and have done three emergency trips to the area. Upon response on whether the trip could be done without discharge, he answered that it cannot be done, not with black water. It was also brought up that monument ruling for black water discharge is 50 miles from the site, rather than outside state waters, but is unknown at this point if there is a vessel with this type of capacity.

Written Testimony Provided By:

Trisha Kehaulani Watson, The Hawaiian Cultural Working Group, James E. Coon, Jamie Woodburn, Matt Muirhead, Stephanie Fried, and Clyde Namu'o

**The Board:**

**Final Decision by the Board:**

**“Issue an educational access permit conditional on working with staff to submit a full and clear expression of the educational activities and products and on obtaining a similar permit from NOAA. Also for Staff to work with NOAA to confirm that the educational aspect meets the criteria for the educational permit for NOAA and the Presidential Proclamation as well.”**

**Unanimously approved as amended (Gon, Johns).**

**Item F-1: Request for Authorization to Enter into a DLNR/UH Contract for a Research Project in the Long-Term, Wide-Range Movement of Adult Surgeonfish Within the Fishery Replenishment Network in West Hawaii (\$45,271), to be Conducted From August 1, 2006 Through August 31, 2007.**

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

**Item D-4: Department of Hawaiian Home Lands, by its Hawaiian Homes Commission, Requests the Fee Simple Conveyance of State-owned Land Situate at Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-08: 10, 81, 91 and 92. (SUPPORT BRANCH/Gary).**

Mr. Russell Tsuji, Administrator of the Land Division, gave some background in which he states that the land they are looking to transfer to the Department of Hawaiian Homelands (DHHL) for their housing project is roughly about seven acres of agricultural land in Waimanalo.

Tom Staton (also provided written testimony), is concerned with the loss of agricultural land and the future of farming in Waimanalo. The area being looked at is comprised of highly fertile soil, the land is flat, and there is good sunlight. Therefore, he wanted this land to be auctioned off for farming rather than being used for DHHL since there are limited agricultural lands in Waimanalo.

Written testimony provided by Dean Okimoto.

**Unanimously approved as submitted (Schuman, Edlao).**

**Item K-3: Time Extension Request to Extend the Construction Period for an Additional Two Years for Conservation District Use Permit (CDUP) MA-2705 for the Advanced Electro-Optical System (AEOS) 8- Meter Class Telescope and Related Facilities Located at the Haleakala High Altitude Observatory Site, Waiakoa, Papaanui, Makawao, Island of Maui, TMK: (2) 2-2-007:008.**

**Unanimously approved as submitted (Edlao, Johns).**

**Item K-1: Conservation District Use Application (CDUA) OA-3360 for Sandwich Isles Communications, Inc. to use Sandy Beach Park on O`ahu as a landing site for a submarine fiber optics cable, TMK: (1) 3-9-015:001 and in state submerged waters off of TMK (1) 3-9-012**

Mr. Sam Lemmo, Administrator to the Office of Conservation and Coastal Lands (OCCL), gave some background on the application in which he stated that this is the last element of the submarine fiber optics telecommunications project, sponsored by the Department of Hawaiian Homelands (DHHL). They had received a permit from OCCL to directionally drill through Sandy Beach Park, the offshore area. The original permit expired before they started construction, therefore staff is asking for a reauthorization of the permit subject to the same conditions imposed by the first permit.

**Unanimously approved as submitted (Gon, Johns).**

**Item K-2: Conservation District Enforcement File No. OA-06-32 Regarding Alleged Unauthorized Construction of Rock Walls Within the Conservation District, Submerged Land Located at Oneula Beach, Ewa, Island of Oahu, Makai of TMK:(1) 9-1-028:001**

Mr. Lemmo gave some background information on the situation in which he stated that the wall was built by Patrick and Margaret McNulty. OCCL had received a report of an unauthorized construction of the shoreline area. A site visit was done on November 4, 2005 and it was noted that there was a newly constructed, single family residence and newly constructed shore, perpendicular walls running down the sides of the property boundaries and the walls extended into the conservation area. OCCL sent its shoreline experts to take a look at it and it was felt that the wash of the waves was above the most seaward point of the seawalls. They then issued a cease and desist order along with the City and County. He stated that one of the major elements of COEMAP, which was adopted in 1999, was a no tolerance policy for unauthorized shoreline structures and the board adopted a position that for any such structures built after 1999, the policy would be a summary removal. Based on the preceding analysis and based on the board's no tolerance policy, staff is recommending that land owner be fined \$2,000 for the violation, \$200 in an administration cost, and that the wall must be removed within 30 days and within 45 of that they would go out and ground treat it. Upon asking for clarification from the Board, Mr. Lemmo stated that approximately a couple feet of the wall is within

the conservation zone and only that part would need to come down. If the Board decides that the part of the wall on conservation land needs to be torn down, OCCL would send out their shoreline specialists to do an on the ground delineation which would specify exactly how much of the wall would need to be torn down to be within regulation.

Mr. Patrick McNulty, applicant, stated that they had put in a permit to build a perimeter rock wall. He and his wife had the contractors start on the front portion of the wall based on the assumption that the permit would be approved. He recognized that the lots neighboring his had seawalls further out than his, but he mentions that he was told that both were grandfathered in due to the date they were built (before 1999). The problem is that while the McNulty's seawall stops at the vegetation line, their neighbors on the Waianae side has a rather large seawall and has built a gate into their cyclone fence (which runs down the sides of the property) which they use to access the beach and they end up crossing into the McNulty's property. They are the main people who are complaining because the McNulty's are cutting off their access to the beach even though they were the ones who chose to build the seawall and there's a public access just a few lots down. There were barbeque pits on the beach in front of his property, from the neighbors, and a large metal dock that he was told to remove. His main point for building the perimeter wall was to safeguard his property, keep trespassers and his neighbors from coming on his property, and cosmetics. He pleads ignorance on his part and there was no shoreline certification because his house is built 55 feet back from the shoreline rather than only the required 40 feet back which therefore makes him exempt from having to have a shoreline certification done. However he believes that there was one done earlier and that there was a metal pin on one side of the property which he thinks marked the shoreline in 1987. He would have taken action sooner if the letter he received back in November didn't give him the option of deferring the matter to the board. He sent everyone the paperwork and chose the option of coming to the board because he wanted to make sure that he couldn't leave the wall. Because of this infraction, it is holding up the rest of the construction on the property therefore he is willing to do whatever is needed to be done.

**Unanimously approved as submitted (Johns, Schuman).**

**Item D-2: Rescind Prior Board Action of December 13, 2002 (Item D-19), Related to the Direct Issuance of Non-Exclusive Easement B to Lani Stark for Access and Utility Purposes, Honopou, Makawao, Maui, TMK: (2) 2-9-03:20 por. (MDLO/Daniel)**

Mr. Russel Tsuji gave some background information in which he states that Lani Stark's property is private property that has Kuliana status. Because there was originally no access to the property, the board issued easement A for access for free. Then either she or the previous owner requested easement B. The explanation for needing easement B was that they were going to build a second dwelling on the property. Easement A can service the entire property so staff is asking the Board to rescind its prior Board action on easement. Because there have been various violations, there never was a second dwelling built and Lani Stark is using her property for ecotourism. The purpose of easement B was

for personal use, a second dwelling, and in the prior Board submittal (in 2002), and exemption was claimed on chapter 343 claiming there would be minimal effect. However what has been happening is that due to her commercial agricultural operation, there has been a lot of traffic and complaints being filed. Staff is concerned that the 343 exemption is no longer valid based on the current use (commercial or agricultural tourism) which would create a more adverse environmental impact. There has been evidence of unauthorized grading on state lands which are currently encumbered to Mr. Lafayette, unauthorized encroachments on to state lands encumbered by Mr. Lafayette, which include unauthorized parking and portable toilets on state property. There are unpermitted stream divergence (confirmed with the Commission on Water Resource Management (CWRM)) and unpermitted electrical lines which are deemed unsafe. The violations are the basis for the rescission. Therefore staff is recommending the rescission of easement B even though it is not formally documented.

Lani Stark, applicant, says that without easement B, because of the steep terrain, it makes it impossible for her to access the sides, lower, and back portions of her gardens. There are small trails that have access to these gardens, but are not big enough for her and the staff to get agricultural tools down there (i.e. lawn mowers). Board member Edlao brings up the fact that easement B was not meant for her to access her gardens, but for a second dwelling. Her response is that she is still planning to build the second dwelling, but there were situations that prevented her from doing so. She wants to be in compliance with the state and has already taken care of the electrical lines and is now up to code with the county, the grading of the road has been repaired and replaced, and she has also removed the portable toilet. In regards to the road, she was told by Milton Arakawa, of the county, that it was an abandoned government road and that they would be liable if they didn't grade it and take care of it because they were experiencing flood and erosion problems. There is also an issue about whether she has water rights to the stream. Ms. Stark testifies that she does because it is mentioned in her property deed and from her understanding that it was her right to use that water to irrigate her gardens when there were droughts.

There are questions from the Board about her access to her property in which she answers that while easement A does allow her access to her property, it does not allow her access to the lower and backsides of her property. According to Daniel Ornellas, the Maui District Land Agent, the main trail that she refers to is easement B, which is a 12 foot drive way, and the other trails are about 46 feet wide gravel pathways and there are other pathways that lead up and over state lands to where the waterfall is. Chairperson Young brings up the point that it is her land and that she is responsible for the access to other parts of her land, the State's responsibility is to provide her access to her property, not within her property, and the State does so with easement A. She is allowed to grade on her own property and create other roadways; however her financial situation doesn't allow her to do so. The biggest problem is that she cannot care for her plants in the above mentioned sections of her property and this is where most of her income is generated from.

The suggestion from the Board is for her to resubmit an application for the uses that she is doing now or for a second dwelling when she has the plans for it. If she was to reapply for the use of easement B for residential purposes, it would be about three months before it came back to the Board or six to eight months if she was to reapply for her current use.

Board member Edlao suggested that perhaps the Land Division would consider a recommendation such as allowing Lani Stark access to maintain (fertilizing, light work, etc.) her gardens; no commercial activity allowed. In conjunction with this, she would need to apply for the use of the easement for her gardens. If there is any evidence or sightings that she is doing anything other than caring for the plants there will be a cease and desist of the easement.

**The Board:**

**Approved Staff's Recommendation, but added the following new conditions:**

**"3. Provided however, the effective date of the rescission of the prior Board action that will effectively terminate any interest in and rights to Easement B shall be deferred for six (6) months on the following conditions: (a) Lani Stark may only use Easement B for access to her private property solely for taking care of and maintaining her garden and plants, provided however, only Lani Stark and her four (4) employees may use Easement B for the aforesaid limited purpose of taking care of and maintaining the garden and plants; (b) Lani Stark must immediately cease and desist using Easement B for commercial, agricultural tourism or any other purpose except as stated in the aforesaid condition (a); (c) Easement B shall not be used for any purpose other than as stated in the aforesaid condition (a); (d) Lani Stark must execute the department's standard right-of-entry that contains, among other provisions, indemnity and insurance provisions, and the purpose of the right-of-entry shall be limited to the aforesaid condition (a); (e) Lani Stark shall remove all of the unauthorized encroachments described in Staffs' Submittal, and remedy or remove the other violations (including but not limited to the unauthorized and unpermitted grading outside of Easement B area, the unauthorized and unpermitted placing of electrical lines outside of Easement B area as described in Staffs' Submittal and the unauthorized and unpermitted stream diversion crossing over State lands); (f) Lani Stark may install a gate at the entrance of Easement where a fence currently exists, with the understanding that the gate will allow Lani Stark to access, and provided further, no other removal of fencing placed on the State lands by Permittee Lafayette Young shall be removed; (g) Lani Stark shall immediately complete and submit an application for Easement B and describe the true and intended purpose and use of Easement B; and (h) such other terms and conditions as may be prescribed by the department with the approval of the Chairperson.**

**Unanimously Approved As Amended (Edlao, Johns).**

Member Schuman recused herself

Member Gon recused himself

**Item: D-3: Mutual Cancellation of General Lease No. S-4411 and Issuance of a 30-year Direct Lease to the Diamond Head Theatre, Inc. for Production of Live Theater and Allied Purposes, including Education in the Theatre Arts Purposes, Honolulu, Oahu, TMK: (1) 3-2-30:01. (ODLO/Robert)**

Member Tim recused himself

Chairman Young had some questions in regards to the recommendation on the rent. He would rather just have a fixed rent at \$480 per year. Mr. Tsuji said that it would be difficult because the applicant does short term rentals out to both non-profit and for-profit entities and the for-profit entities is up to \$1,200 a day. Current rent is about approximated \$4,600 a year and this lease was issued directly without an auction.

Because they are canceling the old lease and creating a new one, they have the right for direct negotiation with out being subjected to an auction. Chairman Young's suggestion is to have the rent fixed at a nominal (\$480) and in the event that there is any subletting, a formula can be figured out on the subletting. Mr. Tsuji is saying then to take 50% of what the applicant makes off of subletting minus allowable deductions. The applicant uses the rent from the subleases to pay for the building maintenance and would charge their subleases less than \$480. Right now the State gets 10% of fair market value or 10% or net receipts. The agreement reached becomes \$480 plus 10% of what they are charging the subleases.

In reference to the term of the lease, Deena Dray, applicant, brought up the fact that the building is old and in need of some renovations. Staff recommendation is for a term of 30 years with the option to extend up to 65 years. However, Ms. Dray is under the impression that the longer the time period, perhaps more people will be willing to invest. Therefore she would rather have a 40 year term with the option to extend for an additional 25 years.

**The Board:**

**Amendment to recommendation 3.B:**

~~["The rent under the new lease shall be determined by an independent appraisal using the formula of 10% of the fair market rental value, or 10% of the net receipts, whichever is greater; rental reopening to occur every ten (10) years."]~~

**"The rent under the new Lease shall be set at \$480.00 per annum and 10% of the gross rental receipts received by DHT when it rents out the Diamond Head Theatre facilities to third parties."**

**Amendment to recommendation 3.C:**

~~["The application of the rent participation formula of 50% of the sublease rents [less certain allowable deduction as stated in the Sublease Rental Participation Policy, Exhibit D, as may be amended from time to time] that exceed the rent paid by the DHT to the State under the new lease.]~~

**"The term of the new Lease shall be for forty (40) years, with an option to extend for an additional twenty-five (25) years upon such terms and conditions as may be negotiated and agreed upon by the Board and DHT."**

**Approved As Amended (Gon, Edlao).**

**Item D-1: Amend Prior Board Action of February 28, 1986 (Agenda Item F-13) Request for Direct Sale of Easement to Edward Lee for Access Purposes at Kaimu, Puna, Hawaii, TMK (3) 1-2-08:08 (HDLO/Gordon)**

**Item D-5: Amend Prior Board Action of January 24, 2003, under Agenda Item D-6, for Grant of Term Non-Exclusive Easement to Edwin Lau, Kaneohe, Oahu, TMK: (1) 4-6-01:27 seaward (ODLO/AI)**

**Item D-6: Amendment to Prior Board Action of September 13, 1996, Agenda Item D-41, Set Aside to City and County of Honolulu, Board of Water Supply by Governor's Executive Order for Well Purposes, Together with a Waterline Easement at Maakua, Hauula, Koolauloa, Oahu, TMK: (1) 5-4-05:01 & 02 (ODLO/AI)**

**Unanimously approved as submitted (Johns, Gon).**

**Item C-1: Request for Approval of a Memorandum of Understanding (MOU) Between the 50<sup>th</sup> Space Wing, Schriever AFB, Colorado, U.S. Department of the Interior and the State of Hawaii, Department of Land and Natural Resources for a Flora and Fauna Conservation Program for the Kaena Point Tracking Station.**

**Item L-1: Approval for Award of Construction Contract – Job No. H10C657, Kokee State park, New Comfort Station at Kalalau Lookout, Waimea, Kauai, Hawaii.**

**Item L-2: Approval for Award of Construction Contract – Job No. H10C663A, Haena State Park, New Comfort Station and Other Improvements, Haena, Kauai, Hawaii.**

- Item L-3: Approval for Award of Construction Contract – Job No. H10C659A, Wailua River State Park, New Comfort Station at Opaekaa falls, Wailua, Kauai, Hawaii.**
- Item L-4: Permission to Hire Consultants for DLNR CIP Projects.**
- Item L-5: Approval for Award of Construction Contract – Job No. H10C623A, Palaau State Park Comfort Station Replacement, Molokai, Hawaii.**
- Item L-6: Approval for Award of Construction Contract – Job No. B75C071B, Replacement of Finger Piers, Waianae Small Boat Harbor Waianae, Oahu, Hawaii.**
- Item L-7: Approval for Award of Construction contract - Job No. 500BH42C, Demolition, Debris Loading, Hauling and Disposal at TMK: (3) 7-1-001:006 Puu Waawaa, North Kona, Hawaii.**
- Item L-8: Approval for Award of Construction Contract – Job No. B31XM82A, Manele Small Boat Harbor Ferry System Improvements, Manele, lanai, Hawaii and Job No. J00CB31A, ADA Barrier Removal, Manele Small Boat Harbor, Lanai, Hawaii.**
- Item L-9: Approval for Award of Construction Contract – Job No. B76DO70B, Haleiwa Small Boat Harbor Improvements to Existing Piers Haleiwa, Oahu, Hawaii.**
- Item L-10: Certification of Election for Windward Oahu Soil and Water Conservation District Directors.**
- Item L-11: Authorization to Execute Amendment No. 1 to the Agreement Between the Department of Army and the Department of Land and Natural Resources For the Ala Wai Canal Project (Watershed) Feasibility Study, Honolulu, Oahu, Hawaii.**

**Unanimously approved as submitted (Johns, Edlao).**

There being no further business, Chairperson Young adjourned the meeting at 1:05 p.m. Tapes 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,

Lauren Yasaka

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, AUGUST 11, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Ron Agor

Mr. Tim Johns  
Mr. Jerry Edlao

**STAFF**

Mr. Paul Conry, DOFAW  
Ms. Athline Clark, DAR  
Mr. Dan Quinn, SP

Ms. Charlene Unoki, Land  
Mr. Dan Pohemus, DAR

**OTHERS**

Mr. Bill Wynhoff, Deputy Attorney General  
Ms. Stephanie, F-2 and F-3  
Mr. Peter Rue, F-2  
Mr. John Plues, E-1

Mr. David Benton, D-3  
Ms. Seema Balwani, F-2  
Ms. Susan Stanon, E-1  
Mr. Anthony Locricchio, E-1

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

**Item A-1: Minutes of July 14, 2006**

**The Board:**

**Amended the Minutes of July 14, 2006 regarding Item C-3 as follows:**

**1. Amend Page 2 under "Remarks" to read**

**". . . After [~~six~~] twelve months of study they expect to determine the adequacy of this site for their purposes. If found adequate, an outside appraisal and other required steps to develop a revocable permit or lease would be undertaken by the Division for longer-term use lease of this site."**

2. Add the following Recommendation

“3. The Applicant will conduct a one (1) year study to determine the adequacy of the subject site.

“4. The duration of the Special Use Permit will be amended from 6 months to 1 year.”

3. Delete reference to Item C-3 on Page 12

~~“[Issuance of a Special Use Permit to Mid Pacific Communications, Inc. on Lands Encumbered by the Division of Forestry and Wildlife, Kawaihoo District, Kauai, TMK: (4) 4-2-001: por.2.]”~~

Unanimously approved as amended (Johns, Edlao)

Item A-2: Minutes of July 28, 2006

Unanimously approved as submitted (Johns, Agor).

Item D-4 Forfeiture of Revocable Permit No. S-4553, Union Oil Company of California, Permittee, Honolulu, Oahu, TMK (1) 1-5-36:001(por), (1) 1-5-41:001,006(por). (ODLO/Cecil).

Staff recommended to withdraw the item because the back rent was paid on August 9<sup>th</sup>.

Unanimously approved to withdraw (Johns, Agor)

Item D-5 Amendment to Prior Board Action of December 12, 2003, Agenda Item D-49, Direct Award of Perpetual, Non-Exclusive Easement for Utility Purposes, Honolulu, Oahu, TMK: 1-5-041:06, 22, 130, 334 portions. (ODLO/AI).

Staff recommended to withdraw item and will bring back at a later date.

Unanimously approved as withdrawn (Johns, Agor)

Item D-3: Amend Prior board Action of June 9, 2006, under Agenda Item D-12, for Issuance of Direct Lease to Jeffrey Isao Tsuzuki and Charlotte Chiemi Higa for Private, Noncommercial Pier Purposes, Kaneohe, Oahu, TMK: (1) 4-4-18:80 Seaward (ODLO/AI)

Ms. Charlene Unoki, Land Division, stated that staff would like to amend prior board action from June 9, 2006, item D-12 so the consideration is corrected as a one time

payment to be determined by a staff appraiser based on the Kaneohe Bay Pier's Amnesty Program formula, using the current assessed values. This is due to the fact that the previous piers were issued and assessed back in 2001 and this is new pier therefore it should be based on present assess value.

Mr. David Betton presented testimony on this item. He feels that the piers are used commercially because the homes (along with the piers) are being rented out. He also feels there is a lack of regulation and enforcement and that specific language should be added to the leases that enforce the non-commercial use of the piers. In response to this, Ms. Unoki responded that the Land Division has not received any complaints that warranted an investigation.

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

**Item D-1      Amend Prior Board Action of May 27, 1994 (Agenda Item F-3)  
Request for Direct Issuance of Perpetual, Non-Exclusive Easement to  
Water Commission of the County of Hawaii (WCCOH) for Water  
Meter Box Purposes at Keonepoko-Iki, Puna, Hawaii, TMK: (3) 1-5-  
09:Por.59 (HDLO/Harry)**

**Item D-2      Amend Prior Board Action of October 12, 1984 (Agenda Item F-3)  
Request for Direct Sale of Easements to Robert R. Nakamoto and  
Alex N. Okada for Irrigation Waterline Purposes at Puukapu,  
Waimea, South Kohala, Hawaii, TMK: (3) 6-4-02:20 (HDLO/Harry)**

**Item D-6      Amend Prior Board Action of July 25, 2003 (Agenda Item D-15), Sale  
of Remnant to Clifford K. Helenihi and Channa Helenihi, Halekou-  
Wikaluakai Homesteads, Kaneohe, Oahu, TMK: (1) 4-5-077:059  
(Portion) (ODLO/Steve L.)**

**Unanimously approved as submitted (Johns, Edlao).**

**Item F-2:      Request for Authorization to issue on Northwestern Hawaiian Islands  
(NWHI) Research, Monitoring and Education Permit to Dr. Russel  
Brainard of the National Oceanic and Atmospheric Administration  
(NOAA), Pacific Islands Fisheries Science Center (PIFSC), for  
Activities under the NWHI Reef Assessment and Monitoring Program  
(RAMP), Valid from Late August Through Late September 2006.**

Ms. Athlene Clark, Division of Aquatic Resources, stated that there was a significant review process on this permit and lot of input from those issuing the permits and the applicant. The applicant has agreed not to do the bot cam work, which was a concern raised by the other agencies and by the division's research reviewers. The applicant has also agreed not to collect any invertebrate samples, to minimize the collection of algal samples, to provide the division with a specific set of locations for the planning solution

of the monitoring pins, to revise the coral species collections, and to specifically name the areas where they will be going in to repair or replace current water quality monitoring motorway samplers. Staff recommends that this permit go forward with the revisions as listed in the summary of submittal section to allow them to do the monitoring and assessment, to allow them to collect the species as stated in the modified collection tables, to allow the collection of new species of micro and macro algae, and to allow only the collection of diseased or bleached corals with a maximum of ten coral samples per site where there are diseased or impacted coral. There will be a specified size for the sample taken and they must ensure that the breakage does not harm the colonies. The co-trustees have given verbal and written comments and Fish and Wildlife will be issuing a permit with revisions.

When the question of discharge came up, Ms. Clark responded that to her knowledge NOAA ships travel outside the monument every night so they are going 50 miles out to discharge and then coming back in.

Seema Balwani, NOAA Coral Reef Ecosystem Division, presented background on the research they have been doing, what they will be doing, and why it's important. The research and monitoring has been done annually since 2000.

Board member Edlao was concerned with the amount of activity and new activity going on in the Northwestern Hawaiian Islands and felt as though there were going to be a lot of research vessels in the area at once. He is also concerned about how all of this research will benefit the people of Hawaii. In response to this Ms. Balwani said that they are beginning to compile a monitoring report that is easy for people to understand. They are also working with their partners (the State and Bishop Museum) as well as other NOAA divisions to distribute this material. Peter Rue, chief scientist, added that there are often two research teams on the same boat doing different research. So essentially, while there may be two permits, they would both be for the same vessel. Ms. Clark stated that this is not an issue of "more" or "new" it's just the first time it's being brought before the Board and that this particular project is actually a joint effort between all the agencies.

Board Member Johns questioned whether there was a cultural aspect to this permit and Ms. Balwani responded that there is a NOAA culture practitioner who reviews their findings. Ms. Clark added that there will be a cultural requirement as part of the permit and that they will make sure that these applicants participate in a cultural protocol orientation.

Board Member Johns also had a question on compliance and how it would be monitored. Ms. Clark responded that there is a state representative that will be on the ship with them and will report immediately if there is a violation and a cease and desist will be ordered.

Stephanie (also provided written testimony), lead scientist from Environmental Defense, voiced her concerns with the number of samples being collected and the size of the samples. She would like for the Board to reconsider the size and the quantity of coral

being collected. She was also concerned with the discharge from the ship and requested that they keep a log of all the waste dumping.

**The Board:**

**Board member Johns made a motion to accept Staff's recommendations upon amendment.**

**Amendment to Staff Recommendation:**

**"That the Board authorize to issue, with stated conditions, a NWHI Research, Monitoring, and Education Permit to Dr. Russell Brainard of the National Oceanic and Atmospheric Administration, for access and certain activities within the designated State waters of the NWHI and to consider the concerns raised by environmental defense before the departure date as well as taking into account the recommendation made by Monument Staff regarding a Native Hawaiian culture orientation before the departure date."**

**Unanimously approved (Johns, Agor)**

**Item F-3 Request for Authorization to Issue Two Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permits: 1) One to Dr. Carl Meter of the Hawaii Institute of Marine Biology for the Monitoring and Service of Previously Deployed Devices and Deployment of Additional Acoustic Receivers, and 2) Another to Mr. Paul Murakawa of the Division of Aquatic Resources for Activities under the NWHI Ulua Fish Tagging Project, Both Valid from Late August Through Late September 2006 in State Waters of the NWHI State Marine Refuge.**

Staff had a last minute change in which they recommended the permit to be issued only to Dr. Carl Meter. Mr. Paul Murakawa had withdrawn his request. Environmental Defense had some concerns, but it was mostly due to Ulua Tagging. The other permit was just to download the data on the receivers that already exist.

**The Board:**

**Amendment to Staff Recommendation:**

**"That the Board authorize to issue, with state conditions, [~~two~~] a NWHI Research, Monitoring and Education Permits to [~~1~~] Dr. Carl Meter of the Hawaii Institute of Marine Biology, [~~and 2) Paul Murakawa of the Division of Aquatic Resources,~~] for [~~their~~] access and certain activities within the designated State waters of the NWHI State Marine Refuge."**

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

**Item F-1: Request for approval to enter into a facilities use agreement with the natural energy laboratory of Hawaii authority regarding office space for a department staff person assigned to the Hawaiian Islands Humpback Whale National Marine Sanctuary.**

**Item L-1: Appointment of West Oahu Soil and Water Conservation District Director.**

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

**Item E-1: Request Approval for Issuance of Revocable Permits at Pu'u Ka Pele, Halemanu, and Koke'e Camp Lots, Koke'e and Waimea Canyon State Parks, Waimea, Kaua'i.**

Dan Quinn, administrator of State Parks, stated that this submittal is strictly concerning issuing revocable permits for the existing leases that will expire at the end of this year. This will allow the department to negotiate individually with those who would like to be issued a revocable permit to allow them to continue. It would follow the same terms and conditions as the original lease, but would also allow for other terms and conditions as prescribed by the Chair to best serve the interest of the State.

Testimony given by Susan Stanton and John Plues asking for a 90 day notice of termination rather than 30 days due to the amount of personal possessions and conditions of the road during the time when the permits would expire.

Testimony given by Anthony Locricchio said that he understands that there is a need to pass this item and that he has no objection to it.

**The Board:**

**Amendment to Staff Recommendations:**

**“2. Revocable permit to be generally subject to current lease terms and the department will provide a minimum of 90 days notice of termination or cancellation.”**

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

Due to the loss of quorum, Chairperson Young adjourned the meeting at 10:15 a.m. Tapes 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,

Lauren Yasaka

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, AUGUST 25, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Ron Agor  
Ms. Taryn Schuman  
Mr. Rob Pacheco

Mr. Tim Johns  
Mr. Jerry Edlao  
Mr. Sam Gon III

**STAFF**

Mr. Paul Conry, DOFAW  
Mr. Dan Quinn, SP

Mr. Russel Tsuji, Land  
Mr. Sam Lemmo, OCCL

**OTHERS**

Ms. Linda Chow, Deputy Attorney General  
Mr. Geoff Hand, E-1  
Mr. Alikea Desha, E-1  
Mr. Robert Fox, D-9

Ms. Betsy Morigan, E-1  
Mr. Mahialani Pai, E-1  
Mr. Gordon Leslie, E-1  
Ms. Carolyn Oshiro, D-3

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

Chairman Young welcomed the new interim Big Island Land Board Member, Rob Pacheco.

**Item A-1: Minutes of August 11, 2006**

Members Schuman and Pacheco recused themselves

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

**Item E-1: Request Approval of Curator Agreement between State of Hawaii, Department of Land and Natural Resources, and Hale Mua Cultural Group which Establishes Hale Mua Cultural Group as Curators of Ka`awaloa Village, Kealakekua Bay State Historical Park, South Kona, Hawai'i Island.**

Dan Quinn, Administrator of the Division of State Parks, presented a map of the proposed area within the curator agreement. The makua boundary of the site has not been determined yet. The initial efforts of this project will be to clear the vegetation from the historical and cultural resources, document, and monitor the resources. This will help to determine the best way for the curators to manage and preserve these resources. The Hale Mua Cultural Group is a non-profit organization of which their board members are also members of the Royal Order of Kamehameha I. Staff's recommendation is to authorize the department to enter into a 5 year period for this curatorship agreement, subject to approval by the attorney general and also to allow the Chairperson to negotiate other potential and future terms and conditions, including future revisions and amendments to best serve the objectives of this agreement, the preservation of the park's cultural resources, and the interest of the State.

Mahialani Pai (Hale Mua) (written testimony also provided), Alike Desha (Royal Order of Kamehameha), and Gordon Leslie (Hale Mua) all provided testimony in which they expressed their gratitude for being chosen as the curators of Ka`awaloa Village and stated that they are very willing to work closely with the community and other organizations to preserve the area and returning it to its natural state.

Betsy Morrigan (written testimony also provided) provided testimony in which she expressed her concerns with this agreement. One concern is landscape removal and how it can be done without affecting the natural resources of the area and how it will affect visitors. The logging of the area is also a concern because it wasn't stated where the logs would go, whether there would be run off, etc. Another concern is that there was no mention of toilet facilities. Overall though, she is generally in favor of the curator agreement.

Member Johns, suggested that staff take into account the concerns of Ms. Morrigan as they further develop their plans with the curators.

To address the concerns in regards to the toilet facilities, Mr. Leslie stated that when they (Hale Mua) had met with the vendors at Ka`awaloa and state agencies, the vendors agreed that they would have their own portable toilets. They also agreed that there would be an area close to the waters edge that would be cleared and used for a staging area.

Written testimony was also provided by Karen Hand

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

**Item D-3: Amend Prior board Action of June 9, 2006, under Agenda Item D-12, for Issuance of Direct Lease to Jeffrey Isao Tsuzuki and Charlotte Chiemi Higa for Private, Noncommercial Pier Purposes, Kaneohe, Oahu, TMK: (1) 4-4-18:80 Seaward (ODLO/AI)**

Mr. Russell Tsuji, Administrator of the Land Division stated that this was a request by the tenant for a voluntary forfeiture of a lease. The tenant was present, but was ill. Mr. Tsuji had an amendment to recommendation number 2 where instead of using the performance bonds for liquidated damages, rather use it for the cost of phase 1 and phase 2. The property is an industrial site and more than likely it is going to require a phase 3. The tenant's attorney was also present.

**The Board:**

**Amend Recommendation 2:**

**“Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-3729 [as liquidated damages] to pay for the costs of a Phase I and Phase II environmental site assessments, and any clean-up that may be required;”**

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

**Item D-12: Authorize the issuance of a Request for Qualifications/Request for Proposals for public lands at Honouliuli, Ewa, Island of Oahu, Hawaii. TMK: (1) TMK 9-1-31:01, 25, 26, and 37 (PLANNING & DEVELOPMENT/Keith)**

Member Johns recused himself.

Mr. Tsuji stated that the property is 100 plus acres, located behind Campbell Industrial Park and already zoned industrial and ready to go. Because of lack of industrial space on Oahu, staff feels that this is a viable project that will attract a lot of interest. He also provided some background information that most of the revenue is generated by 98% of the land that managed by the Division of Land which reverts to the general fund, OHA, and DHHL. The other 2% goes to their special land development fund.

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

**Item D-9: Sale of Reclaimed Lands to Robert M. Fox. Waialae-Iki, Honolulu, Oahu, TMK: 3-5-22:05, seaward. (ODLO/AI)**

Applicant, Mr. Robert Fox, was present.

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

**Item D-2: Approval of Lease of Private Property with Mr. Clifford H. Furukado and Mrs. Keri R. Furukado on behalf of the Department of Health, Clean Air Branch, for Air Monitoring Station Site at Keaau, Puna, Island of Hawaii, TMK: (3) 1-7-21: portion of 9 (HDLO/Wesley)**

A member from the Clean Air branch was present.

Member Edlao had a question about liability. Mr. Tsuji responded by saying that since DLNR is the leasee the State would be liable.

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

**Item B-1: Request approval to authorize Chairperson to negotiate amendments and additions to existing joint enforcement agreement from NOAA, National Marine Fisheries Service, Office of Law Enforcement.**

David Gauld, from the Division of Conservation and Resource Enforcement (DOCARE), stated that their Division recently acquired an agreement with NOAA's Office of Law Enforcement which provided them with \$60,000 in Federal grant funding. Since then, additional funding has become available and there may be a possibility of obtaining additional funding. Chairman Young acknowledged that we are close to obtaining \$94,000.

**Unanimously approved (Johns, Edlao)**

**Item C-1: Request for approval to implement landowner incentive program projects.**

Member Gon recused himself

**Unanimously approved as submitted (Schuman, Johns)**

**Item F-1: Request for approval to enter into an \$873,651 project agreement with the research cooperation of the University of Hawaii for fish and habitat monitoring and assessment (10/1/06-9/30/09).**

**Item F-2: Request for approval to enter into a cooperative agreement with the National Oceanic and Atmospheric Administration for the conservation of threatened and endangered marine species.**

**Unanimously approved as submitted (Johns, Schuman)**

**Item D-7: Resubmittal: Amendment to Prior Board Action of December 12, 2003, Agenda Item D-49, Direct Award of Perpetual, Non-Exclusive**

**Easement for Utility Purposes, Honolulu, Oahu, TMK: 1-5-041:06, 22, 130, 334 portions. (ODLO/AI)**

Member Johns recused himself

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

- Item D-1: Set Aside to the County of Hawaii for Public Water Spigot Facility and Other Related Public Purposes, Nanawale and Kaniahiku Homesteads, Puna, Hawaii TMK: (3) 1-5-04:001 (HDLO/Harry)**
- Item D-4: Rescind Prior Board Action of September 27, 1996 (D-20), Request by the Veterans of Foreign Wars for Cancellation of Revocable Permit No. S-4892 and the Direct Issuance of A General Lease for Eleemosynary Purposes, Kihei, Maui, TMK: (2) 3-9-7:3 (ADMINISTRATION/Charlene)**
- Item D-5: Rescind Prior Board Action of September 10, 2004 (D-4), Consent to Issuance of Revocable Permit for Lands Under Governor's Executive Order No. 1189 to Molokai General Hospital, Pukoo, Molokai, TMK: (2) 5-7-7:16 (ADMINISTRATION/Charlene)**
- Item D-6: Grant of Perpetual, Non-Exclusive Easement in Favor of TMK: (1) 1-5-33:9, 16 and 19, for Sewer Line Purposes, Kapalama-Kai, Honolulu, Oahu, TMK: (1) 1-5-33:14 (SUPPORT BRANCH/Gary)**
- Item D-8: Consent to Assign General Lease No. S-4899, Applicants Ronald K. Lopes, Assignor, to Ronald Keelikolanimaluhiakeao Lopes, Cindy Keonaonaokapuakakahiaka Lopes Torres and Darren Kealii Lopes, Assignees, Maunalaha Homesites, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24:32 (ODLO/AI)**
- Item D-10: Amend Prior Board Action of February 10, 2006, Item D-9; Issuance of Direct Leases for Private Noncommercial Pier Purposes, Honolulu, Oahu, TMK: (1) 3-6-1:18, 19, 20, 23, 31, 33, 34, 37, 38, 41, 122; 3-7-2:43-seaward (ODLO/Barry)**
- Item D-11: Direct Sale of Remnant Ditch to Plant Research Corp., and Withdrawal from Governor's Executive Order No. 1598, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-025:037 (por) (ODLO/Steve L.)**

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

- Item L-1: Request for authorization to retain various consultants and governmental agencies for the purpose of conducting surveys, studies,**

**and assessments of dams and reservoirs statewide to determine their current physical integrity, and authorize the Chairperson to enter into and negotiate agreements with various consultants and government agencies, as direct by Act 118, SLH 2006, relating to Emergency Relief for Natural Disasters.**

**Unanimously approved as submitted (Johns, Schuman)**

**Item K-1: Conservation district use application (CDUA) HA-3302 for consolidation and re-subdivision of Ka’ohe, South Kona, Hawai’i, TMK (3) 8-7-19:34, 35, 36, 37. Applicant is the Killeen Family Trust.**

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) stated that this application is for a consolidation and re-subdivision of 4 lots (each lot is less than 10,000 sq. ft) to 3 lots, which represents a decrease in population density of the area. Existing rules of the Conservation District requires a minimum of 10,000 sq. ft to qualify as “buildable.” Mr. Lemmo explained that turning 4 unbuildable lots into 3 buildable lots would actually increase the density in the conservation district rather than decrease. Staff is recommending approval because the lots are in an existing subdivision and the applicant could easily ask for a rule amendment which could potentially increase density. This application would only allow the lots to become buildable and the applicant would be required to file a CDUP to construct a house. One lot is a shoreline parcel which may or may not create a constraint on allowing the applicant to build a house in that area.

**Item K-2: Request to Extend the Processing Period for an Additional 60-days for Conservation District Use Application HA-3250 for the Commercial Use of Hand Quarried Volcanic Ash located at Pu’u Nene, Humu’ula, North Hilo, island of Hawaii, TMK:(3) 3-8-001:001**

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

There being no further business, Chairperson Young adjourned the meeting at 9:56 a.m. Tapes 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,

Lauren Yasaka

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, SEPTEMBER 8, 2006  
TIME: 9:00A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

MEMBERS

Mr. Peter Young  
Mr. Jerry Edlao  
Mr. Sam Gon III

Mr. Ron Agor  
Ms. Taryn Schuman  
Mr. Rob Pacheco

STAFF

Mr. Paul Conry, DOFAW  
Mr. Dan Quinn, SP  
Ms. Dawn Hegger, OCCL  
Mr. Steve Molman, Land

Mr. Russel Tsuji, Land  
Mr. Sam Lemmo, OCCL  
Mr. Curt Cottrell, DOFAW  
Representative from DOT Harbors

OTHERS

Mr. Reid Shimabukuro, C-1  
Mr. Ken Miller, K-2  
Ms. Tootsie Peleiholani, D-5  
Ms. Leona Alatini, D-12

Mr. Glen Koyama, K-1  
Mr. Mark Hee, K-3  
Mr. Johns S. Carroll, D-12  
Mr. An Sui Lee, D-15

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

Item A-I: Minutes of August 25, 2006

Unanimously approved as submitted (Edlao, Schuman)

Item D-S: Amend (48) General Leases Awarded for Residential Purposes, Pursuant to Act 314, Session Laws of Hawaii 1991, as Amended, Covering Portions of Government Lands at Kikala and Keokea, Puna, Hawaii, TMK: (3) 1-2-43:1-69 (HDLOIWesley)

Mr. Russel Tsuji, Administrator of the Land Division, stated that this is a series of the amendments to the leases for Kikala and Keokea. These leases were issued, through legislation, to those displaced by volcanic activity. Further legislation allocated money for the construction of infrastructure which the Department of Engineering is currently wrapping up. At the request of the lessees, Staff is bringing to the Board some amendments to these leases that they felt were just and equitable due to lessee's having trouble applying for insurance and mortgages.

Aunty Tootsie Peleiholani expressed her concern over certain lots that are not yet filled and would like to see them leased to the Ohana of the lessees, mostly the children of those who were issued the original leases. Otherwise she was happy with staff's recommendations.

Mr. Tsuji disclosed that Attorney General Linda Chow, not present, had raised a question in regards to not charging rent for a certain period of time for certain lessees. To clarify, Mr. Tsuji stated that they are not waiving anyone's rent, rather they are not charging people rent for the period in which they could not be on their property (i.e. during construction).

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

**Item M-5: Issuance of Revocable Permit to Dewain A. Dedrick, Sole Proprietor, Vicinity of Pier 24, Honolulu Harbor, Oahu.**

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

**Item K-2: After the Fact Conservation District Use Application for a Single Family Residence Located at Ninole, Island of Hawaii, TMK (3) 3-2-004:044**

Mr. Sam Lemmo, Administrator for Office of Conservation and Coastal Lands, stated that the Land Board, approved this area for farm use and granted permission to build a shed. However a single family residence has been built without permits. The applicant has gone through the violation process, has paid the fines, and has completed an after the fact CDUP. All requirements have been fulfilled; therefore staff is recommending Board's approval.

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

**Item K-3: Briefing for Conservation District Enforcement File HA 04-08 Regarding Unauthorized Logging of 135 Koa Native Trees, Unauthorized Extraction of 2 Ohia Native Trees, Unauthorized Grubbing and Grading and Unauthorized SkidHaul Road**

**Construction Located at Papaikou Paukaa, island of Hawaii, TMK (3)  
2-7-001:00.**

This is a follow up with an enforcement problem dealing with the logging of 135 Koa trees, unauthorized grubbing and grading, and an unauthorized skid/haul road on the Big Island. A few years ago, the Board imposed a penalty on Koa Timbers for these actions and the end result was a payment of a large fine (aprox. \$141,000), which has been paid, and a habitat restoration plan for Land Board approval, which would outline the steps they would take to restore the land.

There were 3 major objectives in the plan:

1. Koa Timber must restore the native habitat in the conservation district
2. They would remove exotic and invasive species growing in the conservation district areas.
3. They will comply with mandated fines as opposed by the board

The Board allowed Koa Timber \$20,000 to be spent on the 6 acre, test plot area and Koa Timber has taken steps to meet the objectives as listed above. Ultimately, they spent \$30,000 on herbicide, weed removal, etc. and Staff has conducted several site visits and has undergone several plan reviews. Staff feels that the restoration plan's goals and objectives were not completely met and the Department of Forestry and Wildlife has also concurred with this in a written report. Compliance fell short of expectations because the native koa regeneration wasn't as high as expected. There were also a few timing issues: a) Koa Timber was late with a few of the plans b) OCCL had failed to do a site visit and c) Koa Timber failed to submit a 3<sup>rd</sup> final plan so OCCL decided to accept the 12 month plan as a 24 month plan. Mr. Lemmo mentioned that the agreement stated that if the Board did not feel that Koa Timber had not met their expectations, the Board could continue to fine them. OCCL staff feels this is not necessary.

Mr. Paul Conry, Administrator for DOFAW, reiterated that the restoration efforts fell short of expectations, but staff feels that a fine would be unwarranted at this time. This was a good case to show that what may work in one location is not going to deliver the same results in another. There may be environmental factors involved and we just don't know what all of them are and how the environment will respond.

Michael Constantinides did most of the monitoring for the area. He stated that it was a challenging site and that the goal was to restore the site to a similar condition to what might have been before logging. It underscores that after the expenditure of significant amount of funds per acre, more than would be normally economically viable, they weren't able to see the site get restored to the condition they had hoped. In response to a question by Board Member Gon, about key limiting factors, Mr. Constantinides stated that this is one of the wettest locations where there are standing pools of water, therefore, he believes that soil moisture definitely was a key factor. Also, there may have been some type of pathogen or fungus within the soil and that the weed and pig pressure is high in this location. The under story was heavily infested with tall strawberry guava thickets and there was a lot of California and tall grass.

Mark Hee, from Koa Timbers, stated that the area was losing about 9 trees a day due to strawberry guava. Regeneration did occur some within the buffer zone considering there was absolutely no regeneration of koa outside the buffer area. They worked as hard as they could and were very respectful to the area.

This was a non-action item.

**Item K-1: Conservation District Use Application KA-3307 for a 500,00-Gallon Water Storage Tank and Site Improvements Located at Kapaa Homesteads, Kawaihau, Kauai, TMK (4) 4-6-003:010**

Mr. Lemmo stated that this area already has a 1 million gallon water tank so they're not developing new water supplies, just more storage capacity. It has already gone through the permitting process and the County and State (Feb.8, 2006) had issued them a FONSI. Staff is recommending the Board's approval of this request, subject to standard conditions.

**The Board:**

**Amendment to page 5 under criteria 6**

**"Staff notes that the ~~foree~~ project main will have a minimal impact on open space."**

**Amendment to Recommendations page 5:**

**"Based on the proceeding analysis, staff recommends that the Board of Land and Natural Resource APPROVE this application for ~~both~~ a water tank, associated site improvements, and subdivision of the parcel."**

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

**Item D-15: Amendment of Prior Land Board Action of July 14,2006, under Agenda Item D-12, Encroachment Determination on State Land and Imposition of Fine, An-Sui and Tracy Leiko Sakotani Lee, Aiea, Ewa, Oahu, TMK: 9-9-09:013 (por) (ODLO/Cecil)**

Mr. Tsuji stated that Mr. An Sui Lee and Tracy Leiko Lee is requesting for a 30 day extension due to their lawyer not having completed the right-of-entry agreement with the Kane's, who own the property.

Mr. An Sui Lee stated that an agreement was reached with the plaintiff, but the written agreement has not been finalized yet.

**Unanimously approved (Schuman, Edlao)**

**Item D-12: Forfeiture of General Lease No. 8-3856, Hemaloto Alatini and Leona Alatini, husband and wife, Lessee, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-024:023 (ODLO/Cecil)**

Mr. Tsuji stated that the property was supposed to be used for diverse agriculture as defined in the lease. Pursuant to a complaint received by the land division, staff went out and conducted a site visit and discovered it was being used as a base yard for Nilasoni Landscape, Inc. There is very little agriculture going on and it seems it is being used for personal consumption rather than as a farming operation. It is about 10 acres of prime agriculture land in Waimanalo. Staff received a call yesterday that the applicants were attempting to clean out the area and as of today they have remove roughly 70-80% of all of the stuff. However, the notice of default was issued in April 2006 and clean up started a day before the Board meeting.

Chairman Young stated that the Board has had some experience in Waimanalo recently through a number of meetings and during that process he hopes not to repeat that extended process.

This situation looks very similar to the last case that they encountered. However this applicant was allowed a 90 day cure period from the date that the notice of default was issued. It was also stated in the lease that the lessee shall derive his/her principle income from diversified agriculture.

Steve Molman, from the Land Division, stated that 20% of the land is being used for some type of agriculture. The reason that the Alatini's acquired the land was for their relatives to do their business out there. He stated that Staff recieved a letter in December from the Alatini's CPA stated that they were not using the land for agriculture rather they were using it for their personal use. Mr. Molman met with the Alatini's and Mrs. Alatini was very sincere in wanting to do the right thing. He worked with her and informed her what needed to be done. He also spoke with the Alatini's lawyer; John Carroll, who also knew what needed to be done. He stated that Mr. Alatini was traveling and upon his return, the relatives realized the severity of situation and is now trying to comply. When question about a farm plan, he answered that they received none. Mr. Tsuji added because the lease was acquired out of bankruptcy, most likely it wasn't necessary.

Mrs. Alatini's lawyer, Mr. John Carroll was hired 3-4 weeks ago. Mr. Carroll on the subject of diversified agriculture stated that there are agriculture practices occurring on the land. They have a tapioca crop, palm trees worth \$3500, bread fruit, banana trees, and they did have a kawa crop, but it was infested. Mrs. Alatini has been sending him daily reports on their progress. He is asking for an additional 45 days for the Alatini's to finish the clean up, fix the defects in accounting documents, and to get conservation plan done.

If the Board grants them an extension the applicant will be asked to develop a diversified agricultural plan.

Motion to accept Staffs recommendation (Schuman, Edlao)

Chairman Young asked to meet with their attorney, therefore to go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Board member Edlao withdrew his second to the motion.

Board member Schuman, withdrew her motion.

Motion to go into executive session, unanimously approved (Edlao, Gon)

Board went into executive session at 10:15 am

Meeting back in session at 10:33 am

Mr. Tsuji stated that the applicant is not denying the violations. The reason for the harshness of the submittal is because has made several site visits and nothing has changed. He feels that the submittal has allowed Mrs. Alatini to gain control of the situation and come into compliance.

The Board:

**Approved staffs recommendation for forfeiture, but delayed implementation of the lease forfeiture until this matter is again brought before the Land Board at its meeting on October 13, 2006.**

**Additionally, the Lessee is required to: (a) provide staff by October 2, 2006, a Diversified Agricultural Business Plan for the 9.470 acres of leased lands; and (b) complete cleanup and removal of all items and personal property inconsistent with the use restriction of diversified agriculture.**

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

**Item D-II: Grant of Perpetual, Non-Exclusive Easement to Faauuga Tootoo and Sheryl Turbeville for Access Easement Purposes, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-010:088 (por) (ODLO/Cecil)**

Mr. Tsuji stated that this was a kuliana access easement for personal use only.

Applicant was present.

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

Item C-1: Proposed Off-Highway Vehicle (OHV) Project and lease to Sand Island Off Highway Vehicle Assoc., Inc. for a portion of Sand Island State Park, Oahu, TMK: 1-5-041:006

Mr. Conry stated that the proposal is asking the Board to agree in concept and authorize the Division to work with the Sand Island Off Highway Vehicle Assoc. to develop a part of the Sand Island State Park for off highway vehicle use. The land would remain under State Parks and would be a new use for the Sand Island State Park. The Sand Island Off Highway Vehicle Assoc. would then go into a 2 year lease with the board and would have the authority to develop, construct, and manage the site. There will be a series of public trails and riding areas designed for off highway vehicles. DOFAW's Na Ala Hele Trail and Access Program would help to fund this because they are given Federal money to develop programs such as this. The Sand Island Off Highway Vehicle Assoc. Inc. would be giving the Department help in managing and staffing the area and in exchange, they would receive funding from the Division for the operation and maintenance of the site. The need is due to the limited sites here on Oahu and they want to get the riders off private lands and away from the sensitive areas.

There were corrections in the aerial shots taken, in which the motor cross track would switch with the parking area.

Curt Cottrell, Na Ala Hele Program Manager, states that he believes that this is a great program. The track in Kahuku, run by Hawaii Motor Sports, has been doing great and has been open since the 1970's. They have also finished a program out in the Waiakea forest reserve that has also been doing well. He has a lot of confidence in this group and feels this would be a unique program. This would be the 3<sup>rd</sup> authorized OHV park on DLNR land. The track record at Kahuku has been good and they will have the required insurance.

Reid Shimabukuro, head of the Sand Island Off Highway Vehicle Assoc. Inc, believes that they can provide kids a safe place to learn rather than letting them go out into the pineapple fields or trespassing on private land. The YMCA in Kalihi had a program 20 years ago called Honda 50 Motorcycles for Kids but stopped when they lost their lease in Keehi Lagoon. Therefore this is not a new program in Hawaii and they are asking for support from the Board.

The Board:

Amendment to Staff Recommendations:

"4. Authorize to the Sand Island Off Highway Vehicle Assoc. Inc. and its agents/representatives a right of entry to conduct any studies necessary to prepare the documentation."

Unanimously approved as amended (Schuman, Agor)

Item C-2: Request for approval to enter into contracts to implement the FY07 watershed mgmt grant program

Board member Gon recused himself.

Unanimously approved as submitted (Edlao, Pacheco)

Item D-13: Consent to Assign Homestead Lease No. 37, (1) Joseph L. Kaahu, Assignor to Joseph L. Kaahu, Hattie K. Kaahu, Kehaulani M. Kaahu, Kevinnoa K. Kaahu, Assignees, (2) Susiana K. Kanoa, Assignor to Cedric K. Kanoa, Herman Olsen Kanoa, Assignees, (3) Agnes K. Alo, Assignor to Lefty N. Alo, Assignee, Hauula, Koolauloa, Oahu, TMK: 5-4-01:027,030. (ODLO/Cecil)

Lefty Alo was present.

Unanimously approved as submitted (Schuman, Gon)

ItemM-1: Consent to Sublease Retail Concession DFS Group L.P to Island Shoppers, Inc. Kahului Airport.

Item M-2: Amendment No.1 to Concession Agreement No. DOT-A-05-0009 Retail Concession at Hilo International Airport and Kona International Airport at Keahole.

Item M-3: Issuance of Concession Agreement for the Statewide In-Bond (Duty Free) Statewide Airports.

Item M-4: Consents to Sublease Retail Concession DFS Group, L.P. to Maui Divers of Hawaii, Ltd. Kahului Airport.

Item M-6: Issuance of Construction Right-Of-Entry Sandwich Isles Communications, Inc. Kalaeloa Airport.

Unanimously approved as submitted (Agor, Gon)

- Item L-1: Approval for Award of Construction Contract - Job No. JOOCF34A Lava State Monnment, ADA Barrier Removal, Hilo, Hawaii.
- Item L-2 Certification of Election for Hamakua Soil and Water Conservation District Directors.
- Unanimously approved as submitted (Edlao, Agor)
- Item D-1: Withdrawal from Governor's Executive Order No. 4007 and Reset Aside to County of Kauai, Department of Water for Water Storage Tank and Emergency Generator Shelter Purposes, Kekaha, Waimea, Kauai, TMK: (4) 1-2-02:por. 01. (KDLOITommy)
- Item D-2: Forfeiture of General Lease No. S-3960, Hitoshi Miyabara and Hatsue Miyabara, and Mark Kakimoto, Lessees, Hanapepe, Kauai, TMK: (4) 1-9-2:1 and 20. (KDLOITommy)
- Item D-3: Cancellation of Revocable Permit No. S-7309 to George B. Fernandes and Issuance of Revocable Permit to Michael J. Fernandes for Pasture Purposes; Wailua, Kawaihau, Kauai, Hawaii, TMK: (4) 4-1-9:08. (KDLO/Joanne)
- Item D-4 Request to Write-off Uncollectible Accounts on the Island of Hawaii (ADMINISTRAnON/Charlene)
- Item D-6 Sale of Lease at Public Auction for Commercial Purposes, Waiakea, South Hilo, Hawaii, TMK: 2-4-41:45 (HDLOIHarry)
- Item D-7 Amend Prior Board Action of October 14, 2005 (Item D-7), Cancellation of Revocable Permit Nos. S-7208 and S-7209; Issuance of a New Revocable Permit to Raycom National, Inc. dba KHNLKFVE-TV, Makawao, Maui, TMKs: (2) 2-2-7:14 and 15. (MDLOIDaniel)
- Item D-8 Amend Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-28226, Issued to Friedrich Bathelt and Thorunn Bathelt, Honopou, Maui, TMK: (2) 2-9-3:portions 16, 17, 20 and 39. (MDLOIDaniel)
- Item D-9 Grant of Perpetual, Non-Exclusive Easement to Misha Bowman for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-3:portion 50. (MDLOIDaniel)
- Item D-10 Set Aside to City and County of Honolulu for Park Purposes, Honolulu, Oahu, TMK: (1) 1-7-027:001. (ODLOIBarry)

Item D-14 Issuance of Perpetual Non-Exclusive Easement for Access and Utility Purposes, Dillingham Ranch Aina LLC, Mokuleia, Waialua, Oahu, TMK (1) 6-8-3:41 (ODLO/Barry)

Unanimously approved as submitted (Schuman, Agor)

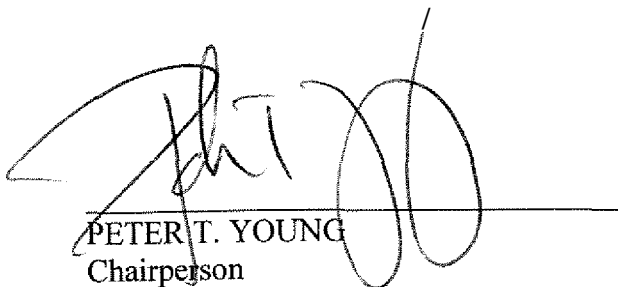
There being no further business, Chairperson Young adjourned the meeting at 11:18 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Lauren Yasaka

Approved for submittal:



PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, SEPTEMBER 22, 2006  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Jerry Edlao  
Mr. Timothy Johns

Mr. Ron Agor  
Ms. Taryn Schuman  
Mr. Rob Pacheco

**STAFF**

Mr. Dan Polhemus, DAR  
Mr. Dan Quinn, SP

Mr. Russel Tsuji, Land  
Mr. Sam Lemmo, OCCL

**OTHERS**

Mr. Keola Nakanish, E-1  
Mr. Gregory Dunn, E-1  
Mr. Uluwehi Keaunui, E-1  
Mr. Rusty Brainard, F-1  
Mr. John Lamer, D-8  
Ms. Kapeka Moses, D-8  
Mr. Richard Takase, K-1  
Mr. David Tongg, K-1  
Ms. Sandy Gillis, M-1, M-3  
Ms. Joanne Leong, F-2  
Mr. Dave Gulko, F-2  
Mr. Steve Stanley, F-2  
Ms. Lina Paul, F-2  
Mr. Don Pollaki

Ms. Micky Huihui, E-1  
Mr. Pono Batalona, E-1  
Ms. Noe Kalipi, D-5  
Mr. Scott Godwin, F-2  
Mr. Ron Matheiu, K-1  
Mr. Glenn Soma, D-7  
Mr. Henry Curtis, D-5  
Mr. Jesse Sehid, K-1  
Mr. Peter Stern, K-1  
Dr. Charles Lipman, F-2  
Mr. Dave Rainey, F-2  
Ms. Kat Brady, F-2  
Mr. Randy Kosaki, F-2

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

**Item A-1: Minutes of September 8, 2006**

Member Johns recused himself

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

**Item M-1: Amendment No. 5 to Lease No. DOT\_A\_92-0018 Restaurant and Lounge Concession Lease Host International Inc., Honolulu International Airport.**

**Item M-2: Issuance of Mater Lease FAA Agreement No. DTFAWP-06-L-00089 United States of America (USA) Federal Aviation Administration (FAA) Waimea-Kohala Airport.**

**Item M-3: Consent to Sublease Retail Concession DFS Group L.P. to Shakanet, Inc. Kahului Airport.**

**Item M-4: Issuance of Revocable Permit to Jas. W. Glover, Ltd, Keehi Industrial Lots Kalihi-Kai, Honolulu, Oahu.**

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

**Item E-1: Request for Approval for Issuance of a Revocable Permit and Non-Exclusive Lease of State Park Lands at Makiki Valley State Recreation Area, Makiki, Oahu to Halau Ku Mana Public Charter School for educational uses.**

Member Johns recused himself

Mr. Dan Quinn, Administrator for State Parks, gave some background information in which he stated part of Makiki Valley is already being leased to the Hawaii Nature Center and this lease to Halau Ku Mana would actually be for use of the lower portion of the valley. This Hawaiian immersion, charter school was recently displaced from Manoa Valley. The school focuses on cultural education and since the Hawaii Nature Center focuses on natural resource based education for the public schools, the Nature Center believes that this would be a good partnership. They have already worked with this school before and the curators for the valley have sent in letters of support. Staff feels that this is consistent with the master plan for the Makiki/Tantalus area and public use and access shall be maintained. Staff is recommending the Board to issue an immediate, revocable permit during the interim while the lease conditions are being worked out.

Keola Nakanishi, principal of Halau Ku Mana, stated that they are excited at the prospect of “returning home” because their host communities are Papa Kolea and Maunalaha Valley. Residents of these communities were their founding and visionary members as well as make up their current board members, council members, volunteer teachers, and staff, students, and parents. They have been around for only 6 years and he believes that

having the school in this particular area will strengthen their partnerships with the Hawaii Nature Center and the Ka'awa Ohana Curatorship. They will also be able to continue work that they had already started in this area (in 2001 Halau Ku Mana did a forest restoration project in this area). Mr. Nakanishi also stated that programmatic and funding collaborations from this 3 way partnership (themselves, the Hawaii Nature Center, and the Community) brings about endless possibilities. The increase in funding could allow a duplicate a water quality study that they had done for Manoa Stream, but can now be applied to Makiki Stream. The school could also help further efforts to educate locals and visitors who frequent the area, both in environmental and cultural aspects. Halau Ku Mana would like a long term place to settle due to the investment of time, money, and energy that goes into establishing a school.

Ms. Mikey Huihui, the Ohana and Community Development Director, has been with the school for 3 years. She puts on a quarterly community and family day to showcase what the students have been doing and feels that it will bring about a sense of sharing and connecting with the host communities. Other foreseen possibilities are a curriculum based around the dissemination of Hawaii and the preservation of natural resources.

Mr. Nakanishi stated that a 30 year lease would be good start so that they can establish the long term planning and partnerships.

Two of Halau Ku Mana's students who have been a part of the school since its beginning, expressed their feelings about the school and how it has changed them and their fellow classmates as people and how much they enjoy their school. The stated that they have learned a lot about the culture through hands on learning and also expressed how grateful they would be if the school was granted a permanent home.

Gregory Dunn, the executive director of the Hawaii Nature Center, stated that he was in support of a 30 year lease to Halau Ku Mana. He states that this project is in compliance with the 1996 master plan and EIS which shows that the lower park area was to be leased to the Nature Center. Instead, the Hawaii Nature Center is asking for that portion to be leased to Halau Ku Mana as a part of a collaborative community effort. For the last 5 years, the Hawaii Nature center has been reaching out to the community and sees a great benefit as having Halau Ku Mana being the leading charter school. He feels that the school with bring a culture aspect to their programs and can only be enhanced by this relationship.

Mr. Quinn stated that the applicants are now asking for a 30 year lease; however the staff recommendation is for a concurrent lease term with the Hawaii Nature Center, but that will be up in 2022. Amendments will eventually need to be made to the Hawaii Nature Center's lease.

**The Board:**

**Amend Condition 2 & 3 to read:**

**“2) That the Board approve, with the consent of the Hawaii Nature Center, [~~Hale~~ Halau Ku Mana’s use of land currently under Hawaii Nature Center’s lease with the State.**

**3) That the Board approve immediate issuance so a revocable permit to [~~Hale~~ Halau Ku Mana for portions of Makiki Valley State recreation Area for the interim period while the lease is being processed.**

**Unanimously approved as amended (Schuman, Agor)”**

**Add to Recommendations:**

**“7) That the lease issued to Halau Ku Mana will be for 30 years.”**

**Item E-2: Request for Permission to Construct a Welcome Gateway Sign, at Ka Iwi Scenic Shoreline, Oahu**

Mr. Quinn stated that the Waimanalo Community is asking for permission to install a sign to let people know that they are entering Waimanalo. It will be similar to the one on the other side of Waimanalo, across from the golf course. They are looking to place it on the Ka Iwi scenic shoreline, in the planting area of the lookout where it will be a few feet away from the start Waimanalo. The sign will not block the view of the panorama and will be slightly smaller than the Kailua side sign. It is out of the DOTs right of way and the site picked does not interfere with people’s sight distance.

**Unanimously approved as amended (Schuman, Johns)**

**Item K-1: Enforcement Action and Request to Modify Conditions of Conservation District Use Permit OA-1947 Regarding the Koolau Golf Course (formally Minami Golf Course) Located at Kaneohe, Island of Oahu, TMK: (1) 4-5-042:001 & 006.**

Mr. Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands, stated this is a combination of an enforcement action and a request to modify conditions to a CDUA permit. Current owner and permittee is the First Presbyterian Church of Honolulu. Koolau Golf Partners (KGP) acquired the gold course in 1998 through a foreclosure deal which required them to comply with the conditions of previous permit. These conditions included:

1. Financial obligations to the Minami Foundation, a community group that was set up under the original permittee. Staff learned that KGP hadn’t met all of the financial obligations to the group.

2. Water quality monitoring to ensure management practices weren't impacting the streams that eventually empty into Kaneohe Bay. Staff found no evidence that it was done.

3. Well tests since they perform well pumping. Again Staff found no evidence that it was done.

Staff discovered these breeches when First Presbyterian Church became interested in the property, but did not want to acquire all the lands. Therefore, they had to consolidate and resubdivide the land to partition the club house and the golf course from the rest of the land, which would still belong to KGP. Since the discovery of the breeches, KGP has met the financial obligations to the Minami Foundation and Staff has followed up with the Foundation who said everything was currently paid in full. In regards to the water quality monitoring of the streams, it was concluded there were no impacts from golf practices. Staff found this satisfactory but would like to issue a \$2000 fine due to the fact the monitoring should have been done earlier and they are unsure if there were any previous impacts. Staff would also so like to issue a \$2000 fine for the breach of financial obligations. The well pumping was a difficult situation because Staff couldn't find the genesis of the condition. Staff went to the Water Commission who indicated the pump levels in the area are so low, you couldn't attribute an impact on stream flows from the pumping of those wells. Staff had found a pump test done a long time ago which indicated there shouldn't be a problem. Therefore, Staff is recommending \$6000 in fines for the breach of conditions in 3 instances, an administration fine of \$1000, and potential modifications to the permit conditions. These modifications would include deleting condition 8 of the permit, record this action as part of the deed instrument, and to implement the environmental compliance protocol recommended by BA Environmental. Staff is also recommending the removal of the condition about an impact study of well pumping, due to the Water Commission's comments.

Member Johns suggested in deleting the condition in the permit stating that the permittee has to do the well pumping study. Peter Stern, First Presbyterian's attorney, responded that in Staff's recommendation, item 3, it states that compliance with the BA environmental proposed protocol will constitute full compliance by the permittee of all prospective environmental testing, sampling, and studies. He feels that this is sufficient language to override the condition.

Chairman Young questioned the fine due to the Minami Foundation and Mr. Lemmo stated that it is due KGP never paying Minami the full sum. Chairman Young and Board Member Johns noted that it was unusual for a condition in a CDUP to have payment due to a foundation. Mr. Stern believes that the genesis of the condition was that the Minami Foundation got the original permit and at the time there was community opposition, therefore a number of conditions were added to alleviate some of the community concerns. One of those conditions was the creation of the Minami Foundation for the benefit of the Kailua-Kaneohe community and agreeing to contribute funds to it. Mr. Stern believes the condition is stated in the first amendment of the permit and was done so back in 1991.

Mr. Stern stated the Church would like to assure the Board that as the new owner they have every intention of complying with the CDUP. The Church has entered into 10 year agreement with the American Golf Corporation to continue with the operation of the golf course. They are the ones who ran the facility prior to the purchase and this means that everything will continue to operate seamlessly. Catering and community events in the clubhouse will continue on as normal with no changes foreseen in near future. The Church had acquired the clubhouse and golf course because of church membership growth and it will help to alleviate the space limitations they had faced on their old property.

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

**Item D-5: Approval in Principle of the Issuance of a Direct Lease to Kaheawa Wind Power II, LLC for Commercial Renewal Wind Energy Generation Facility Purposes, Olowalu-Ukumehame, Lahaina, Maui, TMK: (2) 4-8-01: Portion 1 (SUPPORT BRANCH/Gary)**

Mr. Russel Tsuji, Administrator for the Land Division, stated that this is a request by Staff for the Board's approval, in principle, of a direct lease to this Maui wind farm project. They are an already existing lessee for 200 acres in Haleakala, Maui, and are requesting an additional 325 acres. This approval would allow the entity to pursue its due diligence to comply with the CDUP and Chapter 343. They would then proceed with negotiations for a direct lease and bring it back to the Board for final approval of the lease terms. They will need a right of entry because they are going to conducting studies and would like to install some test turbans. Staff is also asking for \$12,000 fee, annually, during this due diligence period. There have been no other requests for the lease of these lands and due to the substantial amount of money invested to build the road and install the electrical infrastructure when the entity did the first project, Staff felt it was fair to proceed in this manner.

Member Johns mentioned that there was a visual impact problem from the first time and was wondering if Staff received any negative comments. Mr. Tsuji replied that the Land Division had received no formal comments, but have heard complaints due to the wind turbans being white and very visible. However, it is believed that the color was negotiated with the county and white was chosen so that the planes could see the turbans due of the wind farm being close to the airport. The synchronizing of the lights was also a problem, but will be addressed in the compliance of Chapter 343.

Mr. Tsuji stated the expense the entity would incur would be great therefore this action would grant them good faith that they can negotiate a lease for the 325 acres. Chairman Young stated that the last time, after all of the EIS and environmental studies were done, a company who had invested no money came in and wanted the lease and can see how this is more of an added precaution.

Noe Kalipi, representing UPC Hawaii, one of the partners requesting this lease, stated that through the process of the CDUP and Chapter 343 compliance, they will allow for

public comment at both times and continue with their community outreach, which has been in place over the last 2 years. She was also able to answer many of the Board's questions. In regards to the turban color, white was chosen because of the safety issues dealing with aviation. People may believe that the color should be determined by where you're looking at the towers from a certain point on Maui, but for them it was more about safety. In dealing with the synchronizing of lights, the current project has red lights on 5 out of the 20 towers and they all blink at the same time. If this was not to go through then the project would be useless. Wind development is driven by the entitlement based on location. In this case the lease will only be executed when all of the requirements have met by Federal and State law. This is so they can have assurance as they go forward with this project. In dealing with construction debris, there was a condition in their permit where they had to clean it up. Initially there was a violation, they cured it, paid a fine, and are now in compliance. Currently, they do have a right of entry provided as of August 30<sup>th</sup> to begin some of the initial EIS steps and have begun the archeological research.

Henry Curtis, from Life of the Land, stated that they are strong advocates of renewable energy. They were in support of the first wind farm, but still have some serious concerns. They feel that for this area to qualify as a wind site there has to be meteorological testing and this was a problem that came up in the first project. It was done without a permit and it should actually be one of the first permits applied for. Another concern is that this area might not be the only site from the access road that can be used for a wind farm. They should look at it as one total impact instead of bringing back new projects each time before the Board in a piece meal fashion. They feel that since wind is intermittent, the EIS should explore ways to change it to base load such as pump storage hydro in which water is pushed uphill during times when there is an abundance of wind and drop the water load where there is no wind. There is also the possibility of mixing wind with hydrogen. The last concern was that there was an alien species that came about because of the earlier project. This needs to be addressed in the EIS. He also stated that if the entity is planning on putting in the test towers before any flora or fauna studies, they would be highly against it.

Member Johns had a question about the intent of the already issued right of entry. The attorney for the entity stated it is for them to conduct archeological and botanical surveys, therefore a CDUP is not needed.

#### **The Board:**

**The Board approved Staff's recommendation as submitted but added the following conditions:**

**"C. Authorize the department to issue a Right of Entry to allow the applicant to conduct a flora and fauna study."<sup>1</sup>**

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<sup>1</sup> The department had already issued a Right of Entry allowing the applicant to conduct an archaeological study.

**"D. The applicant shall not be granted a Right of Entry to conduct any type of wind testing until it completes to the satisfaction of the department, the flora and fauna study and the archaeological study and, to the extent applicable, obtains a Conservation District Use Permit and any required Environmental Assessment or Environmental Impact Statement for the aforesaid wind testing."**

Unanimously approved as amended (Edlao, Johns)

**Item D-8: Issuance of Right-of-Entry Permit to the City and County of Honolulu, Department of Design and Construction on Lands Encumbered by General Leases, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24:14, 15, 31, 32 (ADMINISTRATION/Charlene)**

Mr. Tsuji stated that this right-of-entry is for Maunalaha Valley for the City to set up barriers before they begin work on Round Top Drive. This is so that there is no further erosion and to make sure that there are no tenants in danger.

Kapeka Moses, a resident of one of the lots that the city is asking for right-of-entry to on Round Top Drive, testified on behalf of her mother. Her mother had written a letter which stated that she has seen the changes of the natural landscape. She had noticed changes in the normal pattern and flow of the water and the community had tried to warn both the City and the State but the City responded that it was a State problem and the State said it was a City problem. There was a meeting after the flood and the community tried to push for long term rather than short time planning and to include the knowledge of the Kapuna in the process. There was a flurry of activity up at Round Top Drive and when work began 300 feet above them, they were concerned for their safety and the safety of others below. They firmly feel that the work should have stabilized the hillside, base up. They were presented with no long term plans and asked to relocate for 6 months. They understand the need for the safety and access of the roads and for them to be reopened as quickly as possible, but the construction should not start before hillside is stabilized. What they would like is to understand the plans for the project and whether or not there is a security of their land and family. They would like to know exactly what the City is planning to do, what equipment will be on their property, and what parts of their property will be protected. They need to know what the City is asking of their family and it needs to be clearly given in writing otherwise they cannot allow their consent. They would like to know why their neighbors, who are also most likely to be affected, not being asked to relocate. They would like a legal document that guarantees the protection of their home and land and a guarantee that they will be able to return home after the 6 months. They understand there is a time constraint, but there needs to be understanding and communication before the right-of-entry is granted.

Mr. Tsuji stated that his understanding from the County was that the County would work with the tenants directly to get their consent. This is the first objection to the right-of-entry that he has heard. He stated it was made clear to the County that they need the consent of the tenants.

Chairman Young stated that this is the second part of stage 1. The State did their part of phase 1 and now the City will finish it up. Then the State comes back in stage 2 for further slope stabilization by the Engineering division.

City and County representative and said they had initial contact with the tenant and had hired a contractor. He is agreeable in getting the written consent from the tenants.

**The Board:**

**The Board approved Staff's recommendation as submitted but added the following condition:**

**"3. The Right of Entry shall not be issued until such time as the County obtains the written consent/concurrence from the affected Maunalaha tenants."**

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

**Item D-7: Cancellation of Governor's Executive Order No. 3064 and Reset Aside to the Department of Transportation, Harbors Division for Commercial Harbor Purposes, Owa, Kahului Harbor, Kahului, Wailuku, Maui, TMK: (2) 3-7-01:21 (SUPPORT BRANCH/Gary)**

The 20.9 acres of land was originally set aside for a County park. It has never been used, therefore Staff is asking that the old executive order be canceled and a new executive order be put into place which would state that 17.3 acres be issued to DOT for the expansion of the Kahului Harbor launching ramp. This would leave 3.649 acres that would go to the Division of Boating and Ocean Recreation.

**The Board:**

**The Board approved Staff's recommendation as submitted but added the following condition:**

**"D. To the extent necessary, approve of and recommend to the Governor the issuance of an executive order setting aside 3.649 acres to DBOR for the expansion of the Kahului Boat Launching Ramp and/or for a haul-out facility, subject to the standard terms and conditions set by the Board for lands set aside by executive orders."**

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

**Item D-3: Permission to Hire Consultant for Land Division to Assist DLNR in the Review of Plans and Documents Submitted form Jacoby Development, Inc. for Master-Planned Project at Kealakeha, Hawaii (APPRAISER/Cyrus)**

Mr. Tsuji had a change to the Staff submittal to amend the Scope of Work and Recommendation sections of the Submittal to provide staff with the permission to hire any and all consultants it deems necessary or desirable, including, but not limited to an appraisal, real estate development consultant, engineering and marina consultants, etc., in order to help staff in its review of the upcoming Core Infrastructure Plan and Master Development Plan. Rather than being limited, they now wanted to expand it..

**The Board:**

**The Board accepted Staffs' recommendation to amend the Scope of Work and Recommendation sections of the Submittal to read:**

**“to provide staff with the permission to hire any and all consultants it deems necessary or desirable, including, but not limited to an appraisal, real estate development consultant, engineering and marina consultants, etc., in order to help staff in its review of the upcoming Core Infrastructure Plan and Master Development Plan.”**

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

**Item D-2: Issuance of Revocable Permit to Eric and Gracinda Ishida, Kapaa Homesteads 1st & 3rd Series, Kawaihau, Kauai, TMK: (4) 4-6-08:portion 30 which abuts parcel 67 (KDLO/Joanne)**

**Item D-4: Amend Prior Board Actions of February 28, 1986, Agenda Item F-13 and July 28, 2006, Agenda Item D-1, Direct Sale of Easement to Edward A.K. Lee and Lucia R. Lee for Access and Utility Purposes; Kaimu, Puna, Hawaii, TMK: (3) 1-2-08:08 (HDLO/Gordon)**

**Item D-6: Reconsideration of Rent under General Lease No. S-4544 to The Episcopal Church in Hawaii, Lessee, for Church and Allied Purposes, Waiohuli, Maui, TMK: (2) 3-9-1:12 (ADMINISTRATION/Charlene)**

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

**Item F-1: Request for Authorization to Issue one Northwestern Hawaiian Islands (NWHI) State Marine Refuge Research, Monitoring and Education Permit to Mr. Donald Palawski of the U.S. Fish and Wildlife Service, for Management Activities Within Certain State Waters, Valid from September 22, 2006 to December 31, 206.**

Mr. Dan Polhemus, Administrator of the Division of Aquatic Resources (DAR), stated that this permit is a request to allow the U.S. Fish and Wildlife Service to transit State waters with the vessel M/V Kahana for the purpose of providing logistical support to U.S. Fish and Wildlife Service operations of Nihoa, French Frigate Shoals, Laysan, Lisianski

Island, and Neva Shoal. This activity has received the endorsement of the other monument trustees, NOAA and the U.S. Fish and Wildlife Service.

Mr. Don Pollaki, U.S Aquatic Service and Refuge manager for the Hawaiian Islands, National Life Refuge (Nihoa to Pearl and Hermes and the reefs between), stated that all activities will be land based which includes helping the recovery of endangered species on Nihoa Island, which will take about 12 days, and there are year round field camps monitoring sea birds and restoring native habitats. People are stationed at these camps for long periods of time and need to be supplied by ship. The activity will take place between now and December 31st and Mr. Pollaki wanted to clarify that it is only a 1 ship transit in October. Also, black water/grey water protocol is conformed to monument standards, a cultural briefing is required for everyone who goes up to the islands, and invasive species transport to or transport between islands is taken very seriously.

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

**Item F-2: Request for Authorization to Issue one Northwestern Hawaiian Islands (NWHI) State Marine Refuge Research, Monitoring and Education Permit to Dr. Russell Brainard of the National Oceanic and Atmospheric Administration (NOAA), for Activities Under the Census of Coral Reef Ecosystems (CReefs) Project, Valid from Early October Through Early November in 2006.**

This is a request for a permit for to conduct research in the French Frigate Shoals in support of the Census of Marine Life Program. The purpose of this trip is to sample cryptic and micro faunal elements of the reef biota at the French Frigate Shoals in order to provide a more accurate assessment of total marine biodiversity in the Northwestern Hawaiian Islands (NWHI). The majority of the marine biota consisting of small species less than one inch in length are undocumented and in some cases, not even scientifically named. It is this knowledge gap that the research crew wishes to fill. Mr. Polhemus stated that their Native Hawaiian Advisory Group has reviewed this permit as well and while they have some concerns, they have remained relatively neutral (they have not recommended that it be denied). Many of the Conservation NGOs had serious issues with this project and many of these issues still exist. They feel that collection based research should not be allowed in the NWHI because it is a no take reserve. However, DAR felt that this project had merit and because of this difference in attitudes, they went through a series of consultations to try and reach a consensus. Through these meetings it was felt that there needed to be a change in the methodology and the proposed scope of sampling. The permit was revised and a draft submittal was supposed to be sent out to the NGOs. This did not happen and Mr. Polhemus felt that the submittal turned in, which the NGOs did get to review, did not reflect the consensus met at the meetings nor did it have the minimum scientific viability needed to make this trip worthwhile, therefore he submitted amendments to the original submittal on the day of the meeting. When modified, the submittal increased the number of samples, which many of the NGOs would have been against. If the original submittal is approved then the applicant will not go through with the activity because they feel it will be not be worth it scientifically. Mr. Polhemus

believes that this research is meaningful because we can't manage what we don't know exists.

Dr. Rusty Brainard, applicant, stated that at a meeting on the Census of Marine Life Program, there was a consensus that the NWHI is a unique site to understand biodiversity. For example, there are only 900 known invertebrate species, leaving many unknown. Also the small species are the base of the food chain and these species have not really been looked at. Due to this he feels that there is a need to establish these baseline areas. He states that there are some people who believe that this research is unnecessary due to amount of protection already in place. However these coral reef ecosystems are not protected from climate and global changes; they are only protected from human influences. He believes that without knowing about this particular ecosystem, it will be hard to make good management decisions. The samples taken for this research activity are so that they can figure out the taxonomy of the species found and even to do some molecular work (to barcode/identify) so in the future they can be known and documented.

There was a comment from Board member John in regards to other scientists who value scientific research, but are saying no to this type of research. They believe that the amounts of taking and high levels of disturbance are not worth the additional research/information added to the general knowledge pool. There was a letter from Dr. William Gillmartin who believes that there should be a prioritization that is decided before anything is done. There may be some instances where taking and disturbance that are appropriate, but everything should be laid out on the table only once and decide what is going to be the most important priorities and what can be left as is.

Mr. Pollaki stated that he had attended all of the meetings as a representative of the monument for the U.S. Fish and Wildlife Service. He was pleased that they agreed to take photographs of the affected areas before and after was very reassured that all species collected will be cataloged so that it can be used for the future. As a manager he feels that this is a project that can be used for future generations. For the Fish and Wildlife view, he believes that this would be a high priority because they need understanding of the natural character of the area that they are protecting, which for them, is the key purpose.

Randy Kosaki, from NOAA, stated that NOAA shares the same feelings as those shared by Mr. Pollaki.

Henry Curtis was concerned with the amounts of collection and believes that the amount being taken isn't as small as Dr. Brainard is making it seem. He is also concerned because Dr. Brainard stated that this research is going to be partially used for climate change, but the submittal states that species will be preserved in 95% ethanol and is wondering how an organism can be studied for climate change if it's dead. Also, DNA from the species will be used in bar coding studies which sounds a lot like bioprospecting.

Kat Brady, believes in the look and no touch. She is appalled at the prospect of 15 straight days of extraction and that project is taking place in the pupping grounds of the monk seal. Therefore she is asking for the denial of this permit.

Linda Paul, from the Hawaii Audubon Society and Vice Chair of the former NWHI Coral Ecosystem Reserve Council, stated that the council is very concerned with the spreading of invasive species and the publicity that this area is getting. However, as a zoologist, she recognizes the value of a baseline study and believes that we do need this data, but agrees that there needs to be a cut off point and a long term management plan should be created and submitted to the public for comments. In this instance, she believes that this permit makes sense because it fills in a large gap of the research that is missing and will help to show how the ecosystem works as a whole. Therefore, she supports this permit.

Steve Stanley, a research professor at the University of Hawaii, stated that this area is in no way pristine. He is concerned with the use of the term “high level of disturbance.” He believes that what is being taken is trivial. No one would ever know anything was taken. He states that there would be no impact on the ecosystem. This is one of the most detailed scientific proposals that he has ever seen and believes that there is too much fuss over this. Therefore he is in support of this permit.

Dave Rainey is asking for the Board to defer this item because of the many activities occurring in this area which is home to many of the endangered and native species in the area. The cultural working group is also wishing for more time to review this permit. He believes that there needs to be more time for the Board, the cultural group, and the community to review this permit.

Stephanie, from Environmental Defense, was concerned with the significant increase in the number of samples being collected and agrees that this decision should be delayed. In regards to needing a baseline study she believes that this will open the doors to full on invasive works in the NWHI. It was also revealed that during one of the meetings it was said that this study could possibly be done outside of the NWHI. There is also a concern that all people on the cruise don't need to sign the permit and commit to the conditions. However, Dr. Brainard responded that they were planning on having everyone sign the permit. She also has concerns about the bar coding. This area is protected through the no-take action regime and therefore feels that all action should follow suite. She believes that this is a prospecting expedition and is the first of many. She is asking for the permit to be denied.

Dave Gulko, a coral reef ecologist and a state aquatic biologist for DAR (here on his own accord and has taken vacation time to speak to the Board), was the one who primarily wrote the originally submittal. He is concerned with the revisions made and has strong concerns about this permit in general. He will okay with it going forth minding there are strong limits imposed. He is most concerned with the scale of taking being preformed and not the people doing the research. To limit the take he believes that the limit should be the taking of species 2 cm or less. He also notes that the methods overlap and the target organisms overlap therefore the cumulative impact is not being addressed very well. The

impact is actually much larger than what is being presented. For organisms that are small, the number of take is not that big of deal, but for macro organisms, it is very excessive. This type of research has never been proposed any where else and yet people are proposing for it in a highly protected area. Another issue is that the a-cropper area needs to be avoided because it is the most sensitive coral system. Also the collection of coralline algae also should be removed from the permit because it a part of the live rock; it is actually what makes that structure and forms the rock. The dredging is another big concern because it is a no-take area and the activity can be conducted outside of State waters. He also believes that they should require a fresh bleach solution daily to clean off all equipment as to avoid invasive species.

Dr. Charles Lipman, a monk seal foraging ecologist from the national Marine Fisheries Service stated that there will be no affects on the monk seals because there should be no pups there by the time the cruise goes up. There will be some impact on the critical habitat, but the species and organisms being proposed for collection are not the monk seals direct prey. There may be some temporary disturbance to their prey, but it will be short term.

Joanne Leong, the director of the Hawaii Institute of Marine Biology (HIMB), testified in favor of the permit, for the students going on this cruise as well as Dr. Brainard.

#### **The Board:**

**The Board accepted Staff's amendment (attached in back) with several changes to the amendment:**

#### **1. To delete the dredging condition**

**And to include in the recommendations:**

**“1. Allowed sample conditions applied to micro organisms less than 2 centimeters in length.**

**2. No sampling of live acropora**

**3. No take of any individual or colonial organism greater than 5 centimeters, which is already known for the French Frigate Shoals of the Northwest Hawaiian Islands, and can be readily identifiable in the field. For all organisms over 5 centimeters that do not conform to that condition, the maximum is 5 per habitat type.**

**4. Every scientist involved shall sign the permit and agree to abide by the permit conditions.**

**5. Before the specimens leave the State, or before they might be loaned onward from the possession of a researcher that might have them from out of State, they will basically have to talk to us.”**

**Approved as amended by Schuman, Johns, Agor, Pacheco (Johns, Agor)**

**Opposed by Edlao**

**Item L-1: Approval for Award of Construction Contract – Job No. F00CF64A Individual Wastewater System Improvements at Mauna Kea State Recreation Area Hilo, Hawaii.**

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

**Item D-1: Board Briefing by the Department of the Attorney General on the pending lawsuit filed by All Trees Services, Inc. and Terrence Rodrigues.**

**An executive meeting may be called to discuss legal issues such as, among other things, the Board's powers, and the Board's and State's potential liability in this case. These matters are confidential as provided by Chapter 92, Hawaii Revised Statutes and Title 13, Chapter 1, Hawaii Administrative Rules, and are further protected by the Attorney-Client privilege and the work-product doctrine.**

Motion made for the Board to be called into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Motion to go into executive session, unanimously approved (Johns, Edlao)

Board went into executive session at 1:20 p.m.

Meeting back in session at 1:40 p.m.

There being no further business, Chairperson Young adjourned the meeting at 1:50 p.m. Tapes 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,

Lauren Yasaka

Approved for submittal:

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PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, OCTOBER 13, 2006  
TIME: 9:00A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

MEMBERS

Mr. Peter Young  
Mr. Ron Agor  
Mr. Samuel Gon III

Mr. Tim Johns  
Mr. Jerry Edlao

STAFF

Ms. Charlene Unoki, Land  
Mr. Sam Lemmo, OCCL  
Mr. Paul Conry, DOFAW

Mr. Russell Tsuji, Land  
Ms. Karen Motosue, State Parks

OTHERS

Mr. Randy Ishikawa, Deputy Attorney General  
Mr. Ben Welborn, K-1  
Ms. Leona Alatini, D-15  
Mr. Randy Vitousek, K-2  
Ms. Lisa Ferentinos, K-4  
Ms. Mary Paty, E-2  
Mr. Brad Pruitt, D-12  
Mr. Guillermo Geldermann, D-12

Mr. John Sakaguchi, K-5  
Mr. John Carroll, D-15  
Ms. Katherine Browning, K-2  
Mr. Randy Paty, E-2  
Mr. Kirc Belsby, D-4  
Dr. Anthony, D-12  
Ms. Kimberly Uehara, C-2 and C-3

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

Item D-16    Reconsideration of Prior board Action of July 14, 2006, Item D-6, and Reinstatement of General Lease s-5705, and Consideration and Decision Making on Allowable uses under General Lease S-5707; All tree Services, Inc., Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:048 (ADMINISTRATION) Russell

Motion was made to go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Motion to go into executive session, unanimously approved (Johns, Gon)

Board went into executive session at 9:10am

Meeting back in session at 9:23 am

Item A-1: Minutes of September 22, 2006

Unanimously approved as submitted (Edlao, Johns)

Item D-15 Forfeiture of General Lease No. S-3856, Hemaloto Alatini and Leona Alatini, husband and wife, Lessee, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-024:023 (ODLO/Cecil).

Mr. Russell Tsuji, Administrator of the Land Division, stated that this submittal was to bring back to the Board the forfeiture on a lease to the Alatini's. At the last Board Meeting, the Board had approved Staff's recommendation for the forfeiture of the Alatini lease but delay the implementation of the forfeiture until this matter was brought back on October 13th. The Board had asked to lessee to completely clean up the property and also submit a diversified agricultural business plan. Staff has checked the property and found that the property is cleaned and they have also reviewed the business plan and believe it to be consistent with the terms and conditions of the lease. Therefore, Staff asked the Board to reconsider the prior Board action and to reinstate the lease.

Member Johns made a motion to accept Staff's Recommendation, Number 2.

Member Edlao second the motion.

Mr. Tsuji wished to make an amendment

Member Johns withdrew his motion

Member Edlao withdrew the second

Mr. Tsuji wished to amend recommendation 2 to clearly state that the Board is reconsidering their prior Board action of lease forfeiture, that the Board is reinstating the lease and that the agricultural plan submitted by the applicant is satisfactory.

The Board:

Based upon staffs' report and recommendation, the Land Board reconsidered its prior board action of September 8, 2006 and reinstated General Lease No. S-3856 issued to Hemaloto and Leona Alatini, Lessees, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-024:023.

Unanimously approved as amended (Johns, Edlao)

Item K-2 Time Extension Request for Conservation District Use Application (CDUA) HA-3269 for a Single Family Residence at Pao'o, North Kohala, Hawaii, TMK (3) 5-7-01:5.

Unanimously approved as submitted (Johns, Gon)

Item K-5: Conservation District Use Application (CDUA) OA-3358 for a State Civil Defense Warning and Communications Device Installation at Moanalua Valley Neighborhood Park, Moanalua, O'ahu, TMK (1) 1-1-12:35.

Member Johns recused himself.

Mr. Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL), stated that this project is for a siren to be installed at Moanalua Valley Neighborhood Park and Staff has no issues with this application. However, there is a request for a modification to one of the conditions. Condition 10 indicates that the applicant will prepare an archeological monitoring plan and submit it to SHPD. The plan should be coordinated from the beginning to the end of the field work and an archeological monitor must be present. Mr. Lemmo believes that this condition was carried over from when they did a similar project in Ha'ena, and may not be applicable for this site. Therefore Staff would like to replace it with their standard condition which states that should historical remains such as artifacts, burials, etc. encountered during construction activities, work shall cease immediately in the vicinity of the find and the find shall be protected from further damage. The contractor shall immediately contact SHPD which assess the significant of the fine and recommends appropriate mitigation measures necessary.

Mr. Lemmo stated that no comment was received from SHPD and OHA has indicated that this type of arrangement is okay with them. Ha'ena had a high probability of finding historical remains which is why they had a different condition. The standard condition in this case is fine and will protect any historical remains if found.

John Sakiguchi, from Wilson Okamoto, the consultants for the Department of Accounting and General Services (DAGS), stated that they have read the Staff report and concur with the conditions. Mr. Lemmo had spoken with them in regards to condition 10 and DAGS indicates that the condition to inform Historic Preservation in the event of any cultural remains is a standard provision for the general conditions of the construction documents; therefore, it is already covered.

The Board:

Amendment to Recommendations:

"10. The applicant will prepare an archaeological monitoring plan and submit it to SHPD, coordinate the beginning and end of the field work with SHPD, and should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact the State Historic Preservation Division (692-

8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary. ~~[Have an archaeological monitor present during all ground altering activities, and contact SHPD if any significant deposits or skeletal remains are discovered.]”~~

Unanimously approved as amended (Gon, Edlao)

Item K-4 Conservation District Use Application (CDUA) OA-3351 for a Portion of the Kalihi Valley Nature Park and Active Living Center Located at 3659 Kalihi Street, Kalihi Uka, Oahu, TMK: (1) 1-4-014:001.

Mr. Lemmo stated this is a State Park property and the applicant is Kokua Kalihi Valley. The property is currently under lease to the applicant from State Parks. It is located at the head of Kalihi Valley and stretches from the center of Kalihi Stream to the top of Kamaikai Ridge. Access to the area is at the Mauka end of the property, pass the last wooden bridge. Approximately 42 acres of the area is designated urban and 57%, upslope of that is designated conservation. In the conservation area, the applicant is proposing the creation of pedestrian pathways, hiking trails, a nature camp with bunk house, and tent camping areas. Existing structures will be renovated or repaired within their existing footprint, remnant nursery material, such as pipes and planters will be removed, and the existing tea house is beyond repair and will be torn down. Compost and toilet facilities will be installed along with shelter and picnic tables and tent paths.

OCCL received comments from other agencies such as the Department of Forestry and Wildlife, who were concerned with potential rock falls. The applicant had a geologist look at the area, who determined that the risk of a rock fall was low and as long as the structures were located 150 feet away from the bottom of the slope, it shouldn't be a problem. The Iliia Paio critical habitat was also an issue because of the trail building in the higher elevation portion of the area. The applicant indicated that only a triangular portion of the parcel is within the habitat therefore it shouldn't be an impact. Na Hele questioned why there was no mention of multi use of the trails and the applicant responded that they are going to try to include some mountain bike usage, but indicated that equestrian usage would not fit in with this particular project.

Kalihi Neighborhood Board was pleased with this project, as indicated in comments sent to the department. Staff feels that his project provides alternative park space for the public in urban Honolulu and the project fits into the objectives State Parks by creating access to more outdoor activities for individuals to be physically active and a part of nature.

Member Gon commented on recommendation 13 which included a statement on landscaping. It states that endemic and native plant species will be used. He mentioned, based on the background information provided in the submittal, that this particular area was extensively cultivated prior to western contact. Therefore, it might be appropriate

and provide more flexibility for the applicant, to not only include endemic or indigenous plants appropriate for the elevation, but also include Hawaiian cultivation species or appropriate Polynesian introductions.

Lisa Ferentino, project coordinator, expressed her gratitude to the department and individual divisions for their help. She mentioned that the geologist hired was Kevin Gooding and that they had agreed to the condition that he had recommended; that they keep all structures 150 feet away from the steep ridge. She also said that the high bench will not be used for camping and that they agreed to all of the conditions that Staff had put forth.

Amendment to Recommendations;

"13. All new landscaping [~~will~~] shall be endemic. [~~or~~] indigenous or appropriate Polynesian plant species;

Unanimously approved as amended (Johns, Edlao)

Item K-3 Request for 120-Day Time Extension to the ISO-day Processing Period for Conservation District Use Application (CDUA) OA-3266 to process Haseko request to utilize State-owned land for proposed drainage system improvements located in Ewa District, Island of Oahu, Subject Parcels TMKs: (1) 9-1-11:002 and 003.

Mr. Lemmo stated that this application is a contested case and the hearing will be held in December. Staff believes all interests are served by this extension, therefore, Staff is recommending approval for a 120-day time extension to complete this contested case, which would take it up to March 9, 2007.

Unanimously approved as submitted (Johns, Gon)

ItemK-1 Conservation District Use Application (CDUA) KA-3309 for the Proposed Browning Single Family Residence (SFR), Located in Haena District, Island of Kauai, Subject Parcel TMK: (4) 5-9-005:029.

Mr. Lemmo stated that the land owners and applicants are Kent and Katherine Browning. Project is located on a 30,000 sq. ft. parcel at Haena. They are proposing the construction of a 3,500 square foot, elevated, single family residence; elevated to comply with the flood zone restrictions. An environmental assessment was published, but Staff had 3 concerns.

1. The shoreline certification process not completed
2. There is an existing rock wall and are concerned with it extending into the shoreline set back area
3. They were concerned with the proposed set back of 61 feet which Staff felt was not sufficient for this area.

Mr. Lemmo revealed some background information, in which he said this property is in the Haena Hui partition. He stated that Staff normally encourages the building of a single family residence, however strongly feels that the setback is insufficient. This problem was addressed in a number of correspondences from 2005-2006. The well known facts for this shoreline are that it is subject to erosion, tsunami inundation, flooding, and high surf. Set back was determined through a shoreline analysis. On January 17, 2005, D, K, and A submitted a report in which they calculated 2 erosion rates, one determined by the vegetation line and the other by the toe of the beach. These were calculated based on aerial photos over 52 years. There are problems using the vegetation line for a shoreline reference because it can be easily manipulated and not give a complete picture of the historical shoreline change. Using the erosion rate measure from the toe of the beach, Staff came up with a set back of 106 feet for a 50 year structure lifetime. The calculated erosion rate was 1 foot per year therefore the set back was calculated by multiplying 50 years and the erosion rate of 1 ft/yr, 20% was added for error, 10% for sea level rise, and 40 feet for a buffer zone. They originally had come up with 132 feet set back using a 70 year structure lifetime, but felt that it was a bit extreme. Staff felt that this was a better set back because this area is located in a limited sub-zone, in a high, coastal hazard area. Staff's recommendation would be to allow the building of the single family residence with specific conditions including a building set back of 106 feet.

Randy Vitousek, attorney for the Brownings argued that there are detailed criteria for building a single family residence in the conservation district and one of those criteria are that the home should be in conformance to applicable building and grading code and shoreline set back provisions. Therefore DLNR regulations already adopt the County set back regulations which calls for a 40 foot set back from the vegetation line. The shoreline is defined as the upper reach of the wash of the waves as evidenced by the vegetation line, not the toe of the beach. The problem with the beach toe or water line is that it is subject to large seasonal changes in wave energy. Therefore it is better to take both the vegetation line and the toe of the beach into consideration. Elanie Tomaye, who calculated the erosion rate, tracked both the vegetation line and the toe of the beach. The beach toe line showed much more variation while the vegetation line remained mostly stable over the 52 year period of photos. Therefore the vegetation line was used as a better indicator of the erosion rate. She took a 70 year house lifetime, the erosion rate, and buffers to create the 61 foot set back. However, the applicants are okay with a 70 foot set back. In regards to the wall, they won't go 40 ft to the shoreline; rather they will withdraw that request. He also pointed out that if the set back is 100 feet, the house would have to be built up further due to a berm at the certified shoreline.

Member Gon and Member Johns agreed that in this case, the vegetation line looked stable over time therefore the use of vegetation line should be okay. Mr. Lemmo rebutted that the shoreline in this area has been manipulated and that over time it can be made to look stable in the photos.

Katherine Browning, applicant, stated that they had bought this property and had designed their home to the best of their ability, relying on people so that they could get

their dream house. She is confused because they had purposely bought beach front property, but with the 106 foot set back, it would place them on the road.

As an alternative, Mr. Lemmo suggested altering the plans for the house.

The Board:

Amended Staff Recommendation:

"18. That the proposed browning SFR will have a [~~106~~] 70 foot setback from the Certified Shoreline to protect and preserve the coastal resources. The setback may be established from the most seaward face of the building's foundation;

19. That the proposed dry stack lava rock wall should terminated [~~40~~] 70 feet from the certified Shoreline, and not terminated at the certified Shoreline.

The Board also approved a height variance of 5 feet from the Maximum Height Limit (MHL) of twenty-five (25) feet, pursuant to HAR, Section 13-5-41(a), SINGLE FAMILY RESIDENCES; STANDARDS.

Unanimously approved as amended (Agor, Johns).

Item D-16: Reconsideration of Prior Board Action of July 14, 2006, Item D-6, and Reinstatement of General Lease S-5707, and Consideration and Decision Making on Allowable Uses under General Lease S-5707; All Tree Services, Inc., Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:048 (ADMINISTRATIONIRusseU)

Mr. Tom Staton, Quality Turf Grass, Waimanalo, lives across the street from the property, stated that the Board had made its decision at the July 14<sup>th</sup> meeting and therefore should let the courts decide.

Attorney General stated that this case has been in litigation and recommended that the Board reconsider its prior action.

The Board:

Upon the advice of counsel, the Land Board: (i) reconsidered its prior board action of July 14, 2006 that had resulted in a lease forfeiture, and instead reinstated General Lease S-5707 to All Tree Services, Inc; (ii) authorized the Department of the Attorney General to work with counsel for All Tree Services, Inc. in drafting the appropriate settlement documents that would provide for, among other things and that the lawsuit would be dismissed with prejudice, with each party bearing their own attorneys' fees and costs; and (iii) authorized the Chairperson to approve and execute the settlement documents on behalf of the Land Board.

Approved as submitted (Johns, Agor).

Item E-1: Approval to enter a grain-in-aid agreement with various non-profit organizations

Member Johns recused himself

Ms. Karen Motosue, Assistant Administrator for State Parks, gave some background information and stated that they had received funding from the Legislature this pass session.

The funding is for the following:

Hawaii Nature Center: \$5,000 for a CIP project to build an environmental education center at Wailua Reservoir on Kauai.

Hawaii Maoli: Implementing repairs at the Royal Mausoleum; various structures

Hawaii Nature Center: \$50,000 grant in aid for operating funds for educational program

MO'okini/Luakini: \$20,000 for operating funds

The Friends of I'olani Palace: \$ 600,000 grant in aid, mainly to help them pay for their electricity bill.

Unanimously approved as submitted (Johns, Agor)

Item E-2: Permission to enter into a month to month revocable permit with North Shore Macadamia Nut Co., LLC, at Wailua River State Park, Marina in Commercial Building "A", Bay 1, Kapaa, Kauai.

The property is 800 square feet and it has been vacant for years. State Parks and the State would both benefit from a minimum guaranteed monthly rent of \$500 or 8% of the sales. The applicant will need to get approval from the division on what they will sell. They will be required to have liability and fire insurance, naming the State as additional insured and pay for utilities as well. The permit will also undergo the typical document review by the Attorney General.

Unanimously approved as submitted (Agor, Johns)

Item C-2: Request for the Amendment of the Habitat Conservation Plan for Hawaiian Stilt at Cyanotech Aquaculture Facility, Keahole Point, Hawaii and One-year Extension of the Accompanying Incidental Take License.

Item C-3: Request for the Release for Public Review the Draft Programmatic Safe Harbor Agreement Covering Hawaiian Goose, Duck, Moorhen, Coot, and Stilt for Participants of USDA Farm Bill Conservation Programs Accompanying Incidental Take License.

Paul Conry, Administrator for the Department of Forestry and Wildlife, stated that this is a first for the State. It would be a State wide effort and would provide for the restoration

of endangered water birds. A very significant element of this is that their Federal partner, the Natural Resources Conservation Services, has stepped forward to then become the permit holder.

Unanimously approved as submitted (Johns, Gon)

Item C-1: Request to Make Forest Stewardship Program Changes

Member Gon recused himself.

Mr. Conry stated that this is a request to make some changes to bring the program up to date. Also, there are some amendments to the proposal.

The first amendment is to the 1st item on page 2 under 1a, which is to increase the cost share rates to more closely match other landowner assistant program rates and inflation changes. They are requesting to add a new hold down/cost share rates are consistent with provisions of HRS section 195F-6.

They would also like to amend the recommendation section as provided in a handout and is reflected below in the Board's decision.

The Board:

Amendment to the Purpose of Request

"1. Revised FSP Handbook (Exhibit I, page 22). The suggested changes are:  
a. Increased hold down or cost share rates to more closely match numerous other landowner assistance program rates and inflation increases. The new hold down/cost share rates are consistent with provisions of HRS Sec 195F-6"

Amend the following recommendations:

1. Recommendation 1)

"1. Approve the Revised Forest Stewardship Handbook and authorize the Chairperson to approve future minor edits to the Handbook."

2. Recommendation 3)

"3. [Allow flexibility (<30 years) in length of some of the FSP contracts] Amend the Board action of May 24, 2002 to allow contract terms ranging from 10-30 years for applicants whose proposals do not include a commercial timber production component.

Unanimously approved as amended (Johns, Agor)

Item D-4: Collection of Deposit Regarding Shoreline Certification Application Located in Kailua, Oahu, TMK: (1) 4-3-4:76 (ODLO/Barry)

Unanimously approved as submitted (Edlao, Gon)

Item D-9: Amend General Lease No. 5748 for Private Noncommercial Pier Purposes and Grant of Term Non-exclusive Easement bearing General Lease No. 5833 for Boat Ramp Purposes, Stanley K. Kaneshiro, and Hilda K. Kaneshiro, Tenants, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-6-23:50 seaward (ODLO/Barry)

Mr. Tsuji stated that there was an error in the Staff submittal and are recommending it to be amended to delete the \$500 fine.

The Board:

The Land Board accepted staff's recommendation to amend the Recommendation Section of the Submittal by deleting the \$500 fine for an encroachment.

Amendment to Recommendation section

"IB-Impose a \$500 fine for illegal encroachment, under section 171 ~~6(12),~~"

Unanimously approved as amended (Agor, Gon).

Item D-14: Forfeiture of General Lease No. S-5848, David S. DeLuz, Sr., Trustee of the David S. DeLuz Trust, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:63 (HDLO/Gordon)

Staff wished to withdraw this item.

Unanimously approved as withdrawn (Gon, Edlao)

D-11: Cancellation of Revocable Permit Nos. S-7092 and S-5279, Charles S. Ota, Permittee, Waiohuli-Keokea, Kula, Makawao, Maui, tax Map Keys: (2) 2-2-4: 1, 2, 29, 66 and 75.

Unanimously approved as submitted (Edlao, Agor)

D-12: RESUBMITTAL - Amend Prior Board Action of June 9, 2005 (Item D-17), Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, TMK: (1) 5-1-14:por. 47 and 5-1-11:por. 55 (ADMINISTRATION/Charlene)

Ms. Charlene Unoki, Assistant Administrator for the Land Division, stated that this is a resubmittal to make some changes as suggested by the Attorney General. The community has concerns about the applicant. They would like to know what the applicant is planning to do, would like to have more community meetings with the respective boards, and basically they would just like to have more time. However, the applicant is saying that they have done some of these things and have addressed some of the concerns into the new lease.

Brad Pruitt, from the Windward Retreat Center, stated that on June 9, 2005, the Board approved a 35 year lease to the applicant for a property in Kaaawa. At that time, the Board had set a ceiling \$6,000 annually for the lease rent, but was also working on a policy for what a nominal land rent meant, so, they asked the applicant to come back before the Board when that definition was determined. The applicant was promised that they could move forward once that was complete. They are not ready to do so and the \$6,000 annually seemed reasonable to them, but if the Board would like to reaffirm the previous Land Board action in 1995, which set the rent at a nominal rent, this would assist them greatly. The applicant is aware that they will never have the support of Mr. Anthony nor Mr. Geldermann despite trying for 10 years. They have gotten support, twice from the Kaaawa Community Association and the Koolauloa Neighborhood Board has recommended support of this project twice. They are currently trying to schedule a community forum as a part of the DPP planning process and have always shaped this project with the community in mind.

Dr. Anthony would like to oppose the submittal and stated the applicant had never, in the last 10 years, have a conversation with him about this project. For the last 3 years, the community has been trying to get the applicant to provide for them their 990s that are supposed to be filed with the internal revenue service. He states that this is an organization with no track record for running retreats nor is there any evidence of the funds to develop this project. There is no need for another retreat center. There is already one in existence, 6 houses down the road which more than adequately addresses the needs of people wanting to hold retreats on the Windward coast. Also The United Methodist Church has land in which they have asked permission to build a multi-use retreat center.

Mr. Geldermann, who lives next door to this property, also is greatly opposed to this project. He states that Mr. Pruitt is a volunteer of the church and is doing this only so that he may build a caretakers cottage on the property and live there as the caretaker. Community has never been kept informed about this project; the only meeting they were informed of was the Koolauloa Neighborhood Board Meeting in which the applicant was turned down and told to go back to the Kaaawa Community Association and get their approval first. They went back to the Community Association in February where it was approved and there was no opposition because the community knew nothing about it. Numerous community members were not informed about this Board Meeting as well and therefore are asking for this action to be deferred.

In response to the comments made, Mr. Pruitt stated that in 2001 the Kaaawa Community Association unanimously voted to support the project. They asked for the applicant to re-present the project as they got closer to the lease date and they did so in August 2005. At that time, the Community Association set up a subcommittee of immediate neighbors to discuss the project and concerns. Mr. Gelderman chaired that committee so he must understand what has been happening. Also at one of the Community Association meetings, Dr. Anthony and Mr. Geldermann both testified against the project.

Member Johns and Edlao were concerned with the fact that the community seemed to be in the dark about this project. Therefore, Member Johns made a motion to accept Staffs report, but to add a recommendation B in which the applicant will get a statement of position from both the Kaaawa Community Association and the Koolauloa Neighborhood Board. It will then be placed on the next agenda as a report for the Board's further consideration.

The Board:

Approved As Amended. The Land Board added the following condition B to the recommendation section of staffs' Submittal:

liB. Staff shall write a letter to the Applicant requesting that it obtain official position statements from the Kaaawa Community Association and the Koolauloa Neighborhood Board on whether they support, or do not support the issuance of a direct lease to the Applicant; and within sixty (60) days of October 13, 2006, staff shall report back to the Land Board with the status and results of the Applicant's efforts to obtain the official position statements from the aforesaid two (2) organizations.

Unanimously approved as amended (Johns, Edlao)

- D-1: Grant of Perpetual, Non-Exclusive Easement to the State of Hawaii, Department of Transportation for Drainage Purposes, Waialae, Honolulu, Oahu, TMK: 3-5-22:01 seaward (ODLO/AI).
- D-2: Issuance of Direct Lease to Stevan M. Bailey for Private Noncommercial Pier Purposes, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-7-30:18 seaward (ODLOI Barry)

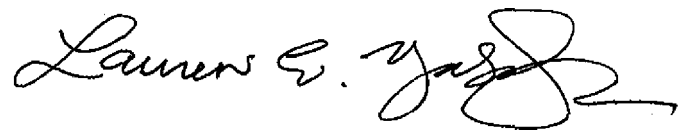
- D-3: Consent to Renewal of Revocable Permit No. 10 for Lands under Governor's Executive Order No. 1598 to Elizabeth Martinez dba Olomana Gardens, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:Portion of 69 (ODLO/Steve)
- D-5: Request to Write-Off Uncollectible Accounts on Oahu and Kauai (ADMINISTRATION/Charlene)
- D-6: Cancellation of Governor's Executive Order No. 2249 and Reset Aside to the Department of Accounting and General Services for Addition to the Hamakua Civic Center, Honokaa, Hamakua, Hawaii, TMK: (3) 4-5-006:071 (HDLOI Harry)
- D-7: Amend Prior Board Action of September 8, 2006 (Item D-2), Forfeiture of General Lease No. S-3960, Hitoshi Miyabara, Hatsue Miyabara, and Mark Kakimoto, Lessees, Hanapepe, Kauai, TMK: (4) 1-9-2:1 and 20 (KDLO/Tommy)
- D-8: Amend Prior Board Action of January 12, 1973 (Agenda Item F-8) Request for Grant of Easement to County of Hawaii (COH) for Water Pipeline Purposes at Kalukalu, South Kona, Hawaii, TMK: (3) 8-1-02:Por.38 (HDLOI Harry)
- D-10: Authorization to Execute Leases for Private Noncommercial Pier Purposes issued after June 30, 2006; Wailupe and Kaneohe, Oahu; TMK: (1) 3-6-1:34, 4-4-18:74, 4-4-37:35, 4-5-58:37, 4-7-10:40, 4-7-30:15 seaward (ODLOI Barry)

- D-13: Request to Extend the Cure Period for the Notice of Default on General Lease No. S-5874, Melodie R. Aduja and Peter Aquino Aduja, Lessees, Kahaluu, Koolaupoko, Oahu, TMK: 4-7-20:35 seaward (ODLOIAI)
- F-1: Request for Approval to Amend/Extend a DLNR/IRCUH Agreement (Contract No. 52850) to Provide \$432,353.00 for the Period of July 1, 2007 Through June 30, 2008 for a Division of Aquatic Resources' Aquatic Invasive species Project.
- F-2: Request for Final Approval to Amend Hawaii Administrative Rules, Chapter 13-64, Kokee Public Fishing Area, Kauai.
- H-1: Approval to Proceed with the Single Audit of the Department's Federal Aid Programs.
- L-1: Approval for Award of Construction Contract - Job No. 500-B-K54-C, Steam Mouth Maintenance at Various Locations, Kauai, Hawaii.

Unanimously approved as submitted (Johns, Edlao).

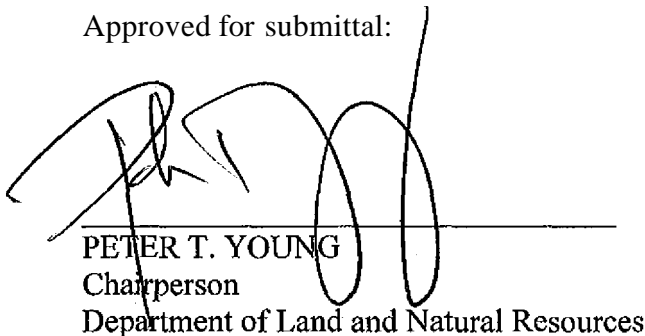
There being no further business, Chairperson Young adjourned the meeting at 12:00 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Lauren Yasaka

Approved for submittal:



PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, OCTOBER 27, 2006  
TIME: 9:00A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

MEMBERS

Mr. Peter Young  
Mr. Ron Agor  
Mr. Samuel Gon III

Mr. Tim Johns  
Mr. Jerry Edlao  
Mr. Robert Pacheco

STAFF

Ms. Charlene Unoki, Land  
Mr. Dan Quinn, State Parks

Mr. Sam Lemmo, OCCL

OTHERS

Ms. Linda Chow, Deputy Attorney General  
Mr. Russ Saito, D-8  
Ms. Sally Moses, D-5  
Ms. Chantel Dunlap, D-6  
Ms. Christina Vebelein, D-I

Ms. Christine Kinimaka, D-8  
Mr. Stan Fujimoto, D-4  
Ms. Annette Wong, D-I  
Ms. Debbien Gowensmith, B-1

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

Item A-I: Minutes of October 13, 2006

The Board:

Amend Board Action for C-I, page 9:

"The Board:

Amendment to the Purpose of Request

- "1. Revised FSP Handbook (exhibit I, page 22). The suggested changes are:
  - a. Increased hold down or cost share rates to more closely match numerous other landowner assistance program rates and inflation increases. The new

hold down/cost share rates are consistent with provisions of HRS Sec 195F-6."

["3....Therefore, some private landowners are choosing to utilize other programs that have shorter contract terms and often have lower cost share rates. The objectives do not include commercial timber production to enter into contracts with term lengths ranging from 10 30 years. The 30 year contract term requirement would remain in effect for landowners who will include a commercial timber production component in their scope of work."] ]

Amend the following recommendations:

1. Recommendation 1)

"1. Approve the Revised Forest Stewardship Handbook and authorize the Chairperson to approve future minor edits to the Handbook."

2. Recommendation 3)

"3. [Allow flexibility (<30 years) in length of some of the F"P contracts] Amend the Board action of May 24, 2002 to allow contract terms ranging from 10-30 years for applicants whose proposals do not include a commercial timber production component.

Amend page 1 to clearly state that the executive session held was in regards to Item D-16.

~~"Item D-16 Reconsideration of Prior Board Action of July 14, 2006, Item D-6, and Reinstatement of General Lease S-5707, and Consideration and Decision Making on Allowable Uses under General Lease S-5707; All Tree Services, Inc., Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:048 (ADMINISTRATIONIRussell)"~~

Amend Board Action for Item D-16, Page 7:

"The Board:

Upon the advice of counsel, the Land Board: (i) reconsidered its prior board action of July 14, 2006 that had resulted in a lease forfeiture, and instead reinstated General Lease S-5707 to All Tree Services, Inc; (ii) authorized the Department of the Attorney General to work with counsel for All Tree Services, Inc. in drafting the appropriate settlement documents that would provide for, among other things, [the legal appropriate uses Under General Lease" 5707], and that the lawsuit [~~shall~~] would be dismissed with prejudice, with each party bearing their own attorneys' fees and costs; and (iii) authorized the Chairperson to approve and execute the settlement documents on behalf of the Land Board."

Unanimously approved as amended (Johns, Gon)

Item B-1 Approval to enter a grant-in-aid agreement with the Community Conservation Network

Jennifer Bethel, Project Coordinator, on behalf of the Division of Conservation and Resource Enforcement (DOCARE) reported that the Community Conservation Network (CCN) is appropriated \$50,000 of general funds under Act 178 and Act 150 of the State. The Legislature in 2006 granted this money to help support the operating expenses of the organization.

Written testimony of support provided by Kern Lowry, Board Chair of CCN

Unanimously approved as submitted (Johns, Edlao)

Item D-5 Forfeiture of General Lease No. 8-4890, Millicent U. Crawford, Lessee, Maunalaha Homesites, Opu, Makiki, Oahu, TMK: (1) 2-5-24:07. (ODLO/AI)

Charlene Unoki, Assistant Administrator for the Land Division, reported that Ms. Crawford's liability insurance has expired and her rent is \$60 in arrears. Staff report originally asked for forfeiture but due to Ms. Crawford's age and lack of understanding the implications of losing this lease, Staff is now requesting to delay this item for 60 days to allow Staff to work with Ms. Crawford's family members.

Testimony was provided by Sally Moses on behalf of Ms. Crawford. Ms. Moses stated that communication between the various State and City agencies have been very confusing for Ms. Crawford. Upon attempting to record her assignment in March 2004 at the Bureau of Conveyances, she was told she owed \$100 rather than \$50 due to her brother's previous documents not being recorded. She was not given a satisfactory explanation as to why she owed more so she left without paying anything. Ms. Crawford was also confused about her land taxes because a neighbor informed her that the land she was on was not registered at the City and County tax office and nobody occupied the land. Based on this misinformation, Ms. Crawford stopped her insurance policy and did not pay the lease. Ms. Moses believes this is all misunderstandings and Ms. Crawford does not want her lease to be forfeited.

The Board:

Deferred for .60 days

Unanimously approved as deferred (Johns, Gon)

Item D-6:           **Consent** to Assign General Lease No. S-5713, Hui Ku Maoli Ola LLP, Assignor, to Burke Dunlap, Assignee, Waimanalo, Koolaupoko, Oahu, TMK: 4-1-10:026. (ODLO/Cecil)

Ms. Unoki reported that Mr. Dunlop is a qualified farmer and has another state lease under a different name, Progressive landscaping. He is requesting the Waimanalo property because he is in need of additional land. He does have to pay a sub-premium, but the lease assignment premium is to be paid by Hui Ku Maoli Ola LLP. Hui Ku Maoli OIa, LLP, was the second highest bidder behind All Trees, for a different property in Waimanalo, therefore, Member Gon asked if the premium could be waived. The attorney general, Linda Chow reported this was not possible because it is set in statute. Ms. Unoki reported that the applicants are doing very well right now and would like to get out of this lease as quickly as possible so they can focus on their other projects.

Unanimously approved as submitted (Johns, Edlao)

Item D-4       Amend Prior Board Action of October 12, 2001 (Item D-7), Set Aside to Housing and Community Development Corporation of Hawaii for Affordable Rental Housing Project; Authorize Hawaii Housing Finance and Development Corporation to Cancel, Create, or Relocate Any Easements Incidental To and Necessary for the Senior Residence at Iwilei Project; and Authorize Hawaii Housing Finance and Development Corporation Condominium Property Regime for the senior Residence at Iwilei Project, Honolulu, Oahu, TMK:(I) 1-5-7:portion 1 and 2. (ADMINISTRATION/Charlene)

Ms. Unoki reported that land was set aside to the Housing and Community Development Corporation of Hawaii at a site in Iwilei. The developer for this project ran into some problems. There were easements that need to be extinguished and other easements that needed to be relocated. Prior Board action only gave approval to only some of the easements. Staff is requesting for an expansion so the applicant can do everything and anything necessary to move this project forward. The applicant is also requesting a condominium property regime because of financing and the different uses that is going to be occurring on the property. Ms. Unoki emphasized that this is a very worthy project.

Unanimously approved as submitted (Johns, Edlao)

Item D-S       Request to Amend Prior Board Action of February 26, 1999 (Item D-14) Concerning **Acquisition** of Private Lands and Set Aside to the Hawaii State Judiciary for Development of the Kapolei Judiciary Complex in the City of Kapolei, Island of Oahu. TMK: 9-1-16: Por.1 (PROJECT DEVELOPMENT/Barbara)

Ms. Unoki gave some background information and stated that this started back in 1988 when Campbell Estates was reclassifying their agricultural zoned lands to urban. Part of the land use commission order was they provide 40 acres to the State. There was an

agreement letter brought before the Board and over the years, the State has received about 7 acres for the DAGS office building in Kapolei, 3 acres for the DOE library, and recently 15 acres for the judiciary site. The letter of agreement has been revised and Staff is asking the Board for approval of this new letter so the judiciary can go forward. The Attorney General's office has reviewed the agreement.

Unanimously approved as submitted (Johns, Gon)

Item D-I Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai, and Oahu (APPRAISER/Cyrus)

Member Johns recused himself

Ms. Unoki reported that there are 416 month-to-month revocable permits up for renewal. Staff's appraiser reviewed the commercial and industrial tenants and recommended a 3% increase in rent. The City is asking Staff to remove one tenant because of unpaid property tax. Therefore, Staff is asking for approval of everything, except revocable permit number 7108, issued to New Kapahulu Business Association, who owes over \$9,000 in real property tax.

The Board:

P No. S-7108 issued to New Kapahulu Business Association was removed from the list due to City and County of Honolulu concern this tenant owed delinquent real property taxes.

Unanimously approved as amended (Agor, Gon).

Item D-2: Consent to Sale of Leasehold by Agreement of Sale for General Lease NO. S-3875, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-50:93. (HDLO/Gordon)

Ms. Unoki reported that the applicant's/party's name is Alternative Energy Marketing Inc. A representative was present and agreed with Staff's recommendations.

Approved as submitted (Pacheco, Johns).

Item M-I: Amendment No.3 to Retail Concession Lease No. DOT-A-I-0003 DFS Group L.P., Honolulu International Airport.

Unanimously approved as submitted (Johns, Agor)

Item D-7: Sale of Reclaimed Land to Eddie D. Holmes and Lorraine M. Holmes, Kahului, Oahu, TMK: 4-7-10:13, seaward. (ODLO/AI)

Staff is asking for deferral until the November 17<sup>th</sup> meeting because Mr. Holmes would like to fly in from California to be present before the Board.

The Board:

Deferred to the November 17, 2006 Land Board meeting

Unanimously approved as deferred (Johns)

Item D-3: Amend Prior Board Action of June 23, 2006, Item D-I, Amend General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Covering Portions of Government Lands at Hamanamana, Kalaoa 1st-4th and Ooma 1st-2nd, North Kona, Hawaii, TMK: (3) 7-3-09: and 7-3-43 (HDLOI/Wesley)

Item D-9: After-the-Fact Grant of Term Easement to the United States of America, Department of the Navy for Chain Link Fence Purposes at Waikele, Ewa, Oahu, TMK: (I) 9-4-12: portions of 3 & 11. (ODLO/Steve)

Unanimously approved as submitted (Johns, Edlao)

Item E-I: Request Approval to Enter into a Memorandum of Agreement between State of Hawaii, Department of Land and Natural Resources, and Hawai'i Maoli to Undertake Repair and Renovation Projects at the Royal Mausoleum at Mauna'ala, Nu'uuanu, O'ahu (TMK: .2-2-021: 012).

Unanimously approved as submitted (Johns, Gon)

Item L-I: Request to Hire a Consultant for the National Flood Insurance Program (NFIP) Internet Map GIS Server Application Project - Job No. J33NS50A.

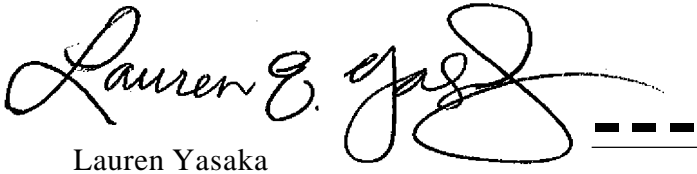
Unanimously approved as submitted (Johns, Edlao)

Item K-I: Request to Extend the Processing Period for an Additional 90-days for Conservation District Use Application HA-3250 for the Commercial Use of Hand Quarried Volcanic Ash on State Land Located at Pu'u Nene, Humu'ula, North Hilo, island of Hawai'i TMK: (3) 3-8-001:001

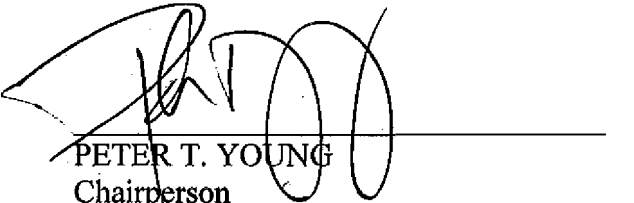
Unanimously approved as submitted (Johns, Gon)

There being no further business, Chairperson Young adjourned the meeting at 9:30 a.m. Tapes 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,

  
Lauren Yasaka

Approved for submittal:

  
PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, NOVEMBER 17, 2006  
TIME: 9:00A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Ron Agor  
Mr. Samuel Gon III  
Ms. Taryn Schuman

Mr. Tim Johns  
Mr. Jerry Edlao  
Mr. Robert Pacheco

**STAFF**

Ms. Charlene Unoki, Land  
Mr. Dan Quinn, State Parks  
Mr. Ed Underwood, DOBOR  
Mr. Francis Oishi, Aquatics

Mr. Sam Lemmo, OCCL  
Mr. Paul Comy, DOFAW  
Ms. Dawn Heggart, OCCL

**OTHERS**

Mr. Vince Kanemoto, Deputy Attorney General  
Marsha Erickson, E-1  
Karen Diamond, C-1  
Louis Watson, F-4  
Antoinette Lee, F-4  
Sue White, F-4  
Tony Costa, F-4  
Frank Farm, F-4  
Georgia Handle, F-4  
William Aila Jr., F-4  
Cha Smith, F-4  
Mac Poepoe, F-4  
Darrell Tanaka, F-4  
Luis Peloho, F-4  
Leimana DeMata, F-4  
Donna Kahalehui, F-4  
Hailey, F-4  
Pauline Sato, F-4

Dr. Anthony, F-4  
Tim Lui Kwan, K-2  
Michael Cheung, F-4  
Dede Harin, F-4  
KimHum, F-4  
Carl Jellings, F-4  
Mr. Apo, F-4  
Kelvin Ching, F-4  
Randy Kosaki, F-4  
Charles Burrows, F-4  
Judy Caparita, F-4  
Dale Bonar, F-4  
Haunani, F-4  
Leimomi Kang, F-4  
Shawn Bannell, F-4  
Bruce Anderson, F-4  
Heidi Guth, F-4

Terrence George, F-4  
Ellen Tong, F-4  
Linda Paul, F-4  
Jane Duncan, F-4

Minu Alson, F-4  
Shannon Cronen, F-4  
Correen Knudsen, F-4

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

Item A-I: Minutes of October 27, 2006

Member Schuman recused herself

Unanimously approved as submitted (Edlao, Johns)

Item E-I Request Approval to Enter Into a 20 Year Lease Through Direct Negotiations With **Hui 0** Laka, a Hawaii Eleemosynary Corporation for the Civilian Conservation Corps Camp and Kokee Museum Site in Kokee State Park, Waimea, Kauai.

Mr. Dan Quinn, Administrator of the Division of State Parks, reported that the Hui 0 Laka has been operating the Kokee Museum since 1954. This submittal is primarily requesting a lease that will include the Civilian Conservation Corps Camp (CCC Camp) and will remove from the lease the recreation, residential cabin. He is requesting to amend some of the conditions; one being to shorten condition #4, to highlight that the property is historic property and is subject to the State's Historic Preservation project review process. The rest of the conditions are general and the lease will include more specific conditions.

Marsha Erickson, Executive Director of Hui 0 Laka, testified in support of Staff's recommendations. She had some comments for consideration; one on the 2<sup>nd</sup> page of submittal dealing with the character of use. It reads that "the character of use would be solely for the operation and maintenance of cultural and educational programs and displays for the general public". She is encouraging to add "and park management," which would allow Hui 0 Laka to provide overnight housing for park volunteers and visiting researchers. She also disagrees about the use of the cabin because it is integral for their operations. The cabin is being used for onsite supervision and security purposes.

Mr. Quinn noted that the cabin is located in Puu Ka Pele which is rather far from the actual site. Rather he would like accommodations to be closer to the museum.

Dr. Anthony testified that if the Board approved the recommendations of Staff, they will be setting a precedent for other non-profits who might be interested in making similar arrangements with the State. He hopes that they will treat other applications in an even-handed manner such as this one.

Member Johns suggested adding a provision in the lease that would allow them to stay in present cabin but have the option to relocate.

The Board:

Amend Background section, page 2 of submittal to read:

"...The proposed lease area will ~~[not]~~ include the Hui o Laka recreation residence cabin that is currently the subject to GL-5126 that has it leased premises an area of .72 acres at Puu Ka Pele and the Kokee Museum but does not include the CCC camp. Previously, in 1985 the Board gave permission for the Hui o Laka Executive Director to maintain their principal residence at the Pnu Ka Pele cabin, whereas the other recreation residences leases do not allow full time residency. ~~If this lease is approved by the Board, the Puu Ka Pele Cabin and lot, currently under GL-5126 that expires December 31, 2006 [will be unbundled and the Kokee recreation residence will go to a revocable permit with the other 96 FeeFuation Fesillences]~~ and the Kokee museum and the CCC camp will be covered by this proposed lease.

Amend Staff recommendations:

~~“[3. All new constFlletion and renovation will require the approval of the Chairperson,~~

~~4. The lessee shall not at any time during the lease teFm construct, place or remove form said-premises any permanent stFlctllFe or improvements of any kind and description whatsoever except with the prior approval of the Board and upon slleh conditions and the Board may approve.]”~~

3. All construction and renovation will require the approval of the Chairperson, and, as the CCC camp is a significant historic property listed in the National and State Register of Historic Places, any new construction, alteration of the existing structures, or change in landscaping undertaken by the lessee that could affect this historic property shall be done in a manner that maintains the integrity and character of the property and in compliance with the State's historic preservation project review process mRS §6E-7 and 8; HAR §13-275).

4. Any permanent improvements constructed or erected by the lessee upon the demised premises shall become the property of the lessor upon expiration or termination of the lease.

10. Allow Hui o Laka to stay in the present cabin, but the State shall retain the option to withdraw land and buildings for the lease with 6 weeks notice to the lessee should a more appropriate location for the Executive Director become available."

Unanimously approved as amended (Johns, Agor)

Item J-1 Cancellation of Revocable Permit No. B-03-06, Magic Island Petroleum, Permittee, Ala Wai Small Boat Harbor, Honolulu, Hawaii, Tax Map Key: 2-3-37:30

Item J-2 Requesting Final Approval of Amendments to Chapter 13-242, Hawaii Administrative Rules, as They Relate to Cruise Ship Fee Increases and Requesting Authorization to Submit the Approved Rule to the Governor for Final Adoption.

Chairman Young reported that there were Sunshine Law concerns regarding both of these items due to typographical errors. Therefore, the Attorney General's Office has advised the Board to withdraw these items and it is anticipated that they will be acted upon in December.

Unanimously approved as withdrawn (Johns, Gon)

Item D-7: Resubmittal: Sale of Reclaimed Land to Eddie D. Holmes and Lorraine M. Holmes, Kahaluu, Oahu, TMK: 4-7-10:13, seaward. (ODLO/AL)

Ms. Charlene Unoki, Assistant Administrator for the Land Division, asked for an amendment. Staff would like to delete recommendation number 4, which is the requirement for the deposit. Rather, they will just go through the regular process in which they hire an appraiser to have a value determined.

Unanimously approved as amended (Johns, Schuman)

Item D-4 Reconsideration of Rent under General Lease No. S-5149 to Honolulu Academy of Arts, for Youth Education and Art Center Purposes, Honolulu, Oahu, TMK: (1) 2-4-2:20 (ADMINISTRATION/Charlene)

Unanimously approved as submitted (Johns, Pacheco)

Item C-2 Ka'u Preserve: Request for Enrollment in the Natural Area Partnership Program, Approval of the Long-Range Management Plan, Authorization of Funding, and Conservation District Use Approval for Activities Identified in the Long-Range Management Plan.

Member Gon recused himself.

Unanimously approved as submitted (Edlao, Agor)

Item C-1 Accept Dedication of a Perpetual Trail Easement by Landowner of an Existing Coastline Trail and to Include this Trail Easement as a Part of the Na Ala Hele trail and Access Program and Relinquishment of

Right to Re-establish Trail Along or Near the High Water Mark:  
Moloa'a, Kauai, Hawaii, Tax map Key, (4) 4-9-11:1.

Mr. Paul Coury, Administrator for the Division of Forestry and Wildlife (DOFAW), asked for an amendment on page 3; Remove [VI] box.

Karen Diamond, on behalf of the Sierra Club, wanted a deferral until the following agencies have an opportunity to review and comment on the proposed agreement and survey: Kaua'i Historic Preservation Review Commission, Kaua'i County Public Access, Open Space & Natural Resources Commission, and Sierra Club, Kaua'i Group of the Hawai'i Chapter. They believe that in the absence of a Na Ala Hele Citizen Advisory Group on Kauai, the public's interest would be better served with a third party review. They requested that a site visit be arranged to allow the public and the agencies noted above, to see the proposed trail easement because the correct delineation of this culturally significant asset is important to the public. Another concern was the request for "relinquishment of right to re-establish trail along or near the high water mark" and requested that acceptance of the certified shoreline wait until the end of winter. Finally, they were concerned with DOFAW's recommendations to Board on Page 4. They question the accuracy of Finding IB and have concerns about Finding ID that the State will quitclaim to the landowner all other remaining interests the State still has or may have.

Curt Cottrell, Na Ala Hele Program Manager, reported that attention was brought to this item due to a pending CDUAISMA process taking place for this area. For both of the processes, the public asked for the ability to restore shoreline access. He reiterated that Kauai does not have an active Trail and Access Citizen Advisory Group, [but] and reported that it was due to years of lack of quorum. The alignment of the easement was what the public was interested in so when they went out to do the survey, they assumed that the easement chosen would suit the public because it provided shoreline access roughly along the trail in use. There was some deviation along the alignment to connect it to next adjoining property owner's fence, where there was an existing gate. There is a contentious situation on claiming the trail in the next parcel so they are land banking the trail and putting it under the Na Ala Hele jurisdiction for regulatory purposes and the land owner offered to do a long term maintenance and management of the feature via a MqA. In absence of a Trail and Access Advisory Council, Staff went on, what they felt to be "a good faith effort" to service the community based on their comments during the SMA process. While they are unsure if the trail is in fact the historic trail, Staff feels that they have provided a line across the ground that they felt was safe and manageable over time to the next adjoining parcel and ultimately to get from Moloa'a Bay to Larson's Beach. Staff believes they are serving the public interest with this board action.

Mr. Coury reported that the trail did not have to be reestablished at the original location. Therefore, they are trying to reestablish something that is agreeable to the landowners.

Curt Cottrell reported that he was unsure if the trail alignment in use was the same historic trail because of a tsunami that took place in the 40s which altered the land. When

Staff went on site, they followed the alignment that everyone was walking. There is a slight deviation at the tenninus heading towards Larson's Beach at the next adjoining property to connect it to the gap where there is an old gate in the fence. The shoreline does not give them a lot of room to navigate because of cliffs and sloping hill, therefore, the trail is in the relative area that people have been walking for quite a while.

Member Agor wished for more exhibits before making a decision.

William Tam had photos at his office and asked if the Board would defer until the end of the meeting. He reported that it is a time sensitive issue because this has held up a number of other pennits and if it was to be delayed, they would need to ask for deferrals from the other agencies involved.

Dede Harin, resident of Kauai, reported that this is a prime lobster and diving area. Any shoreline must remain free access shorelines to Native Hawaiians.

Item deferred until later.

**Item K-2: Conservation District Enforcement File MA 07-15 Regarding Unauthorized Construction of a 100,000 Gallon Potable Water Tank; Unauthorized Construction of a Road/Utility Easement; Unauthorized Drainage Easement; Unauthorized Placement of Utility Poles; Multiple Unauthorized Tree Removal; Unauthorized Grubbing, Grading and Land Clearing; Unauthorized Accessory Fence Structure Located at Wailuku, Maui, TMK (2) 3-3-002:001**

Member Edlao was concerned with only the contractor being fined and questioned why the landowner and county did not bare the burden of some of the fines. Therefore, he would like to defer this item until Staff figures out how they are going to split the fine.

Mr. Lemmo reported that the developer is being fined because he was the one responsible for obtaining the pennits. They are trying to focus enforcement action on the actual violator and not just the landowner. He does not want a case against the Maui County because it would never be resolved. The developer was there and willing to resolve this today

Tim Lui Kwan, attorney for the developer, reported that the developer is willing to take responsibility for the violations. The developer was developing the adjoining parcel for a subdivision and the plans were approved for the water tanks. At the time, the engineers and planners believed, on the basis of the County zoning maps, that the property in question was in the agriculture district. They got a grading pennit for the tank site, a building pennit for the tank, pennits for the road way, and got a variance. It was inspected an approved, but as they were building the subdivision, the County learned that their maps weren't correct and the area was in conservation district. They are willing to take responsibility because they should have verified the zoning themselves. They feel the landowner should not be fined and neither should the County because they have been

marinating the site since it was turned back over to them almost 2 years ago. The developer wanted to resolve the issue today and is in agreement with the recommendation.

Approved as submitted (Edlao, Johns).

ItemK-4: Conservation District Use Application for an After-the-Fact Seawall and Drainage Outlet.

Unanimously approved as deferred (Johns, Edlao)

Item F-1: Request for Final Approval to Establish New Hawaii Administrative Rules, Chapter 13-65, Wailua Reservoir Public Fishing Area, Kauai.

Francis Oishi, from the Division of Aquatic Resources, reported that the Attorney General had reviewed the draft rule and the inclusion of definitions for certain terms along with some minor language changes for legal clarity.

Unanimously approved as submitted (Agor, Johns)

Item F-4: Request for Final Approval to Amend Hawaii Administrative Rules, Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, to Include Rule Amendments for the Use of Lay Nets.

Member Gon recused himself.

Mr. Oishi reported that 9 statewide public hearings were held in which more than 500 people attended and 192 of those people testified. 1047 people provided written testimony, 850 were in favor of the proposed rule changes. At the hearings, approximately half of those who testified were in favor and half were not. The division received petitions from:

Fair Catch and Fair Catch Youth: 286 signatures against the proposed changes.

Molokai: 400 signatures

Anahola, Kauai: 1300 signatures

Tamashiro Market: 1300 signatures

Based on the public comments and Staffs evaluation, the Department recommends the following changes:

- 1) Amend the definition of gill nets
- 2) Repeal of section 12 which is a general gill net section.
- 3) Allow a maximum of 250 feet of lay net use provided that one net, up to 125 feet is registered to one fisherman and the other net, up to 125 feet is registered to a different fisherman.
- 4) Allow the use of lay nets in streams, or mouths of streams provided that nets are not set beyond the half way point of the stream or the stream mouth at the location of the set.

- 5) Provide for immediate seizure by the Department of any lay net that is not in compliance with the lay net rules.
- 6) Lay net prohibited areas as described in tables and maps at the end of the Chapter shall Sunset in 5 years and provided that the Department may amend the Sunset provision or prohibited areas by Board action at a publicly noticed meeting.
- 7) Provide specific rules for Molokai.

At the advice of the Attorney General, a motion was made to go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Motion to go into executive session, unanimously approved (Edlao, ?)

Board went into executive session at 10:05 am

Meeting back in session at 10:32 am

Chairman Young reported that they had discussed the issue that because the proposed rules has now been amended and is different than what was specifically taken out to public hearing, can the Board can act on them today or do they need to go out for further public hearing. Based on consultation from the attorneys, non-substantial types of amendments can be acted on and based on testimony today, we can make further non-substantive types of amendments. There is one section of the proposed rules that deals specifically with Molokai and it is felt that that section is substantive. Therefore, based on testimony today, the advice of the Attorney General was that it should not be acted on today. However, if authorized by the Board, it could go out for further public hearing and then can come back to the Board for final hearing.

Louis Watson, resident of Kaneohe, testified that he believes it is wrong for BLNR to decide where people can fish. If you take fishing away there will be more homeless; fishing helps to sustain lives. One handful of people shouldn't be able to decide rules for everyone else. Must abide by common sense in order to live together.

Inaudible name, spoke in Hawaiian first and stated that he is from Hilo and spoke of the ineffectiveness of the Burial Council. Gave an example of a burial site being found and the distress the people have with the Government. He believes that Hawaiians have divine rights given to them by the Ali'i and the BLNR has no authority to create this rule.

Michael Cheung, comes from a fishing background, testified that he was brought up to fish, both commercially and recreationally. They catch fish to feed the general public. He feels people coming to Hawaii need to be educated on our laws and needs better enforcement. Asks BLNR to take a look at our rules and give DOCARE more money and manpower to enforce the rules. Believes DOCARE has enough rules to enforce.

Antoinette Lee, President of the Association of Hawaiian Civic Clubs, read written testimony in opposition. Asked for a deferral until DLNR can meet with the Native Hawaiian Community.

Dede Harin testified that her families are fisherman. She is total agreement on some of the regulations on the nets, especially the tagging. Does a lot of night lay net and to allow only 2 nets equaling 250 feet they would have to work their way along the shoreline. She believes that if they stop lay netting at night, they are going to create criminals because at night is when the menpachi and aweoweo run.

Sue White, Green Peace and Earth Trust, urged the BLNR to listen to the Hawaiian Civic Club and have them involved with the enforcement issues will be important to the future of the monk seals, turtles, and Hawaii fisheries. Strongly supports registration of the nets and asks the Board to consider allowing the transfer of nets. She also is asking the department to give fishermen instructions on how to release turtles and seals if caught in the nets.

Kim Hum, from the Nature Conservancy, read written testimony in support of rules. However, they are concerned with the Sunset provision, the inclusion of paipai, and nets should not be allowed in river mouths.

Tony Costa, Hawaii near shore fisherman, opposed to proposed rule amendments. Read written testimony and provided copies of a publication from the University of Florida Cooperative Extension Service on what happens after the ban. He also asked the Board to defer action.

Carl Jellings showed pictures of the fishing techniques that he uses. He showed a net that a seal got caught in. In all of his years of fishing, he has never killed a turtle or seal. His nets are normally in the water for 40 minutes. He showed the amount of money generated from catching menpache and u'u. He targets certain fish. He is in favor of having LD. nets and if LD. is not present, it will be confiscated. He also feels that the rules do not protect the seals because the seals are hungry and want the fish.

Frank Farm, read written testimony and feels the State is missing comments from the real stakeholders. He is disappointed with the process the Department used, i.e. amendments made and public not able to testify to these amendments. He asked for a deferral.

Mr. Apo, testified that people that make the law are putting them in poverty. These rules hurt the Hawaiians and spoke of the effects of cargo nets killing the turtles and seals. The Hawaiians will perish at the hand of BLNR. His issue is one of fairness. He asks BLNR not to ban gill nets for people who use it as a source of income.

Georgia Handle, told BLNR that the seals are returning from the North Western Hawaiian Islands and we need to give priority to protect them. She hopes that the State will not ban native Hawaiian cultural rights. She asks the State to create a statewide ban

on gill nets but allow exception for Hawaiians. She also submitted a petition to create statewide ban on gill nets.

Kelvin Ching, lifetime resident of Kahalu'u and representative of Kaneohe Regional Council Fishing, believes this issue was started by people blaming fishermen for depletion of resources. He wants science to show the cause of the decline in the fish population. He questions whether the Department really knows how many fish there are. In summary, he believes there should be no ban on gill nets until studies are done to back it up.

William Aila Jr. testified that as a Hawaiian he supports the submittal, but would love see it go back to the kapu system. Submitted written testimony.

Randy Kosaki, marine scientist and concerned fisherman, supported the proposed amendments and asks BLNR to look at banning gill nets statewide. However, he would like to eliminate the 5 year Sunset clause from the regulations.

Unidentified speaker feels that rules are against native Hawaiians and believe the Department is against their race. They ask that the BLNR to go and take to the community if they are making any changes to the rules.

Cha Smith, Executive Director of Kahea, noted her support of the original proposed rules. However, she doesn't believe the amendments will have the same support because it weakens provisions. She is concerned with the Sunset, 2 fishermen, paipai fishing, and fishing in river mouths. She asks the BLNR to approve the original rules.

Charles Burrows testified that his organization works to restore native ecosystems and habitats. He spoke of our responsibility to conserve and protect our resources. They support the original rules, but feel the amendments weaken the rules. They favor the Sunset provision if the fish stock increases with yearly reports to back this up.

Mac Poepoe testified that monk seals don't belong here, it was brought here. As for turtles, if it gets caught in the nets, he eats it; it's food. If the Department bans the gill nets in Molokai, people won't listen. They will continue to do what they're doing. He feels that Molokai is different and should have its own rules.

Judy Caparita testified that the provisions for Maui were set by its people. She was raised on fish, goat, deer, and wild pig. The people have to be pono to take care of their resources. They know how to take care of their resources. Molokai agrees with departments rules but asked for 3 provisions.

Ms. Caparita's sister testified that it is not pono for Hawaiians to fight Hawaiians.

Darrel Tanaka testified in favor of the ban. He feels that each island needs to speak for themselves. He spoke as a voice for Maui. He stated that since the meeting is on Oahu, not all opinions are being heard. He believes that irresponsible net fisherman caught three

times in violation should have their nets taken away. He is in support of the original rules and does not support the sunset provision.

Dale Bonar, marine biologist, testified in support of original rules. He spoke on the decline of fishes and at the meeting held on Maui, people have asked for an outright ban on gill nets. He believes that the sunset amendment would put the reefs back to the way it was. He stated that gill nets should be banned permanently.

Luis Peloho was concerned with coral reefs and fish depletions. He supports the original rules and is against any amendments to soften the rules. He believes that the sunset amendment and allowing nets to be strung together should not be allowed.

Haunani asked why the intelligence of the Hawaiian people is being questioned. They have been here for many years and know how to take care of their resources. The responsibility should be placed in the peoples' hands, not the government.

Leimana DeMata, resident of Hawaii, touched on the spiritual connection of the Hawaiians with the ocean and the land and asked that the decision be deferred as there are different conditions on each island.

Leimomi Kang, Association of the Hawaiian Civic Club incoming president, asked that the BLNR defer decision until Native Hawaiians can give their input. She believes that the value is in the malama of the ocean and the land. Their lifestyle is being impacted by western rules and policy and would like the Hawaiians to be empowered with the ability to make decisions on this land.

Donna Kahalehui stated that she privileged to be Hawaiian and that their responsibility is to the resource first. She is in support of the rules but requested that BLNR speak to the communities as each has its own needs (i.e. fishing for subsistence).

Shawn Banell spoke about the Hawaiian monk seal and stated that there are 80-100 seals left around the Hawaiian Islands. He feels that the seals need our protection and therefore is in support of the proposed rules.

Hailey felt that it is hard for the kapu system to continue. She spoke on the decline of the reefs and felt that the rules are something that must happen.

Bruce Anderson, representative from the SHORE and Oceanic Institute, stated that there is no single action except banning gill nets that would protect nearshore fisheries. He pointed out that undersized fish will not survive even if let go. He is in support of the original rules but not the amended rules. He believes that the paipai methods should be dealt with separately and asked BLNR to approve original rules. Written testimony provided.

Pauline Sato, resident of Oahu and on behalf of Malama Hawaii, testified in support of original rules and is concerned with the sunset rules and wanted the paipai rules looked at separately. Provided BLNR with testimony from other people.

Heidi Guth, representative from OHA, opposed a statewide ban on gill nets until staff has met with all of the communities. She spoke of the department's willingness to listen to the community and make necessary changes. They support the proposed amendments.

Terrence George, Vice President of the Castle Foundation, testified in support of the original rules and opposes the efforts to weaken them (i.e. sunset and 2 nets). He gave statistics on the large amount of people supported restrictions.

Minu Allison testified in support of the rules and read written testimony.

Ellen Tong, Hawaii Audubon and Hawaii Pacific Fisheries, testified that she grew up gill netting in Kaneohe Bay. She is in support of gill net regulations and a ban because her priority is the next generation. She is worried that fishing might end with the next generations and indiscriminate take of all ocean resources.

Jim Anthony testified in opposition to the rules. He believes that rules are premature and that the staff submittal is fatally flawed and selective. He said that Staff submittal is grounds for the BLNR to rethink this issue and defer action. Staff's approach was flawed and he believes that they should go to each section of an island and meet with them. He believes that if the design was not flawed, Staff would have presented a different set of recommendations. He pointed out that there is no scientific information to show that gill nets are the cause of the depletion of the fish stock. He asked that the BLNR defer action.

Shannon Cronen testified in support of the original rules and questioned the process that was used to conduct the poll.

Linda Paul stated that monofilament nets have destroyed fish populations and underwater environments. Provided written testimony and urged the BLNR to pass the rules.

Coreen Knudsen agreed with K. Hum's and S. Cronover's testimony. She spoke of the 75% decline of the fish population and that in the last 2 years, 4 monk seals have been killed.

Jane Duncan provided written testimony and is in support of the rules, but wishes to remove sunset amendment.

The Board:

**1. Approved the proposed rules with the following changes:**

- a) **Increased the commercial fishing depth allowance from 80 feet to 100 feet.**

b) Changed the time allowed to use lay net from between 1 hour before sunrise to 1 hour after sunset, to between 2 hours before sunrise and to 2 hours after sunset.

c) Include new definitions and updated maps (as proposed at the 11/17 Board meeting)

d) Include a change to the provision allowing the department to immediately seize any lay net not in compliance with any provision of the rule.

2. Send the Molokai rules and all other opposed amendments, including the 250' maximum length allowance for lay nets, an allowance for use of lay nets in rivers and streams, and 5-year sunset provision for lay net restricted areas, brought before the Board today, back out for public hearing

3. The department will continue to create and amend the existing lay net rules and come back to the Board with a new set of proposed amendments, taking into consideration native Hawaiian gathering rights and the ability for the Board to move forward on additional community based management plans. Also, to take into account methods used by responsible fishermen.

Unanimously approved as amended (Johns, Schuman)

Item F-2: Request for Approval to Hold Public Meetings and hearings to Repeal Hawaii Administrative Rules Chapter 13-92, Opihi, and Amend Hawaii Administrative Rules Chapter 13-95, Rules regulating the Taking and Selling of Certain Marine Resources, to Include Amended rules for the Take of Opihi and for the Take of Spiny Lobster, Kona and Samoan Crabs.

Chairman Young wanted to clarify that the catch and quart size included the shell and that the size limit is based on shell size at its narrowest point. He also raised some questions brought to him by some fisherman. One question dealt with whether there is a difference between opihi at the intertidal range versus in deep water, possibly due to reproductive activity. Mr. Oishi responded that those are just the opihi's habitat. Another question was whether these rules could be used across the board, for all species of opihi. Dan Pohemus, Administrator for the Division of Aquatic Resources (DAR), responded that it could, but there are size differences between the species.

Darell Tanaka is in favor of an increase in size and asks that DAR maintain the standard of measure. He highly recommends an across the board size limit (1 ½ inches at widest diameter/point) and a bag limit is needed before passed.

The Board:

Amend rules to change the size to 1 ½ inches for all species.

Unanimously approved as amended (Johns, Edlao)

Item F-3: Request for Approval to Hold a Public Hearing to Amend Hawaii Administrative Rules, Chapter 13-51, Kahului Harbor, Maui Fisheries Management Area.

Unanimously approved as submitted (Edlao, Johns)

Item C-1: Accept Dedication of a Perpetual Trail Easement by Landowner of an Existing Coastline Trail and to Include this Trail Easement as a Part of the Na Ala Hele trail and Access Program and Relinquishment of Right to Re-establish Trail Along or Near the High Water Mark: Moloa'a, Kauai, Hawaii, Tax map Key, (4) 4-9-11:1.

Mr. Cottrell reported that they had reached an agreement and that Ms. Diamond noted her agreement with the wording of the recommendation.

He proposed amending item 1d to read: Accepting the land owner's dedication of a perpetual easement will best facilitate management of trail by the State and in turn to perfect title, the State will quitclaim or grant to the land owner whatever remaining or inchoate interest the State still has or may have in the trail as provided in land patent No. 10095 as set forth in the attached survey description.

The Board:

Amendment to Staff Recommendation:

"1.

d. Accepting the land owner's dedication of a perpetual easement will best facilitate management of trail by the State and in turn to perfect title, the State will quitclaim or grant to the land owner whatever remaining or inchoate interest the State still has or may have in the trail as provided in land patent No. 10095 as set forth in the attached survey description."

Unanimously approved as amended (Agor, Johns)

Item D-1: Amend Prior Board Action of September 8, 2006 (Item D-3), Cancellation of Revocable Permit No. S-7309 to George B. Fernandes and Issuance of Revocable Permit to Michael J. Fernandes for Pasture Purposes; Wailua, Kawaihau, Kauai, TMK: (4) 4-1-9:08. (KDLO/Joanne)

Item D-2: Cancellation of Revocable Permit No. S-7255 to George Santos and Issuance of Month-to-Month Revocable Permit to Gwendolyn Naomi Santos for Pasture Purposes; Honomu Homesteads, Hawaii, TMK: (3) 2-8-10:03. (HDLO/Gordon)

- ItemD-3: Amend Prior Board Action of April 22, 2005, Item D-6, Termination of Revocable Permit No. S-7139 to Big Island Radio; Issuance of Revocable Permit to Skynet Hawaii, LLC, for Radio Tower Site at Kalaoa, North Kona, Hawaii, TMK: (3) 7-3-49:38 (HDLO/Wesley)
- ItemD-5: Consent to Assign General Lease No. S-5123, Floyd A. Miller, Jr., Trustee of the Floyd Miller Revocable Trust, dated January 16, 1998, Assignor, to Mark David Melen, Assignee, Fort Ruger, Diamond Head, Honolulu, Oahu, TMK: (1) 3-1-042:portion of 14. (ADMINISTRATION/Charlene)
- Item D-6: Amend Prior Board Action of October 13, 2006, Agenda Item D-10; Authorization to Execute Leases for Private Noncommercial Pier Purposes issued after June 30, 2006; Wailupe and Kaneohe, Oahu: TMK: (1) 3-6-1:34, 4-4-18:74, 4-4-37:35, 4-5-58:37, 4-7-10:40, 4-7-30:15 seaward. (ODLOIBarry)

Unanimously approved as submitted (Johns, Gon)

- Item K-1: Conservation District Enforcement File KA 06-72 Regarding Alleged Unauthorized Construction of Chain Link Fence Within the Conservation District Located at Wainiha, Hanalei, Kauai, TMK (4) 5-8-009:025.

Ms. Dawn Hegger, from the Office of Conservation and Coastal Lands, asked for a deferral.

Karen Diamond reported that the fence was constructed below the high wash of the waves and would like the fence removed in a timely manner before someone gets hurt. She feels that lateral access should not be blocked.

Unanimously approved as deferred (Agor, Johns)

- Item K-3: Conservation District Use Application (CDUA) HA-3370 for the After the Fact Radio Repeater Site Located at Pu'u Honuaula, Kaupulehu, North Kona, Island of Hawaii, TMK: (3) 7-2-001:001

Unanimously approved as submitted (Pacheco, Gon)

- Item L-1: Approval for Award of Construction Contract - Job No. B71D071B, Replace Floating Dock "F" at Ala Wai Small Boat Harbor, Oahu, Hawaii

- Item L-2: Certification of Election and Appointment of Soil and Water Conservation District Directors.

Unanimously approved as submitted (Johns, Pacheco)

ItemM-2: Issuance of a Direct Lease - Schuman Aviation Company, LTD.  
Honolulu International Airport

Member Schuman recused herself.

Unanimously approved as submitted (Johns, Agor)

ItemM-1: Amendment to Issuance of a Direct Lease Together with a  
Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers  
Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1)9-1-  
14:24 (Por) and (1)9-1-74:37 & 38

ItemM-3: Issuance of a Long-Term Lease U.S. Department of Agriculture,  
Animal, Plant and Health Inspection Services, Wildlife Services for  
Office Kahului Airport.

ItemM-4: Issuance of a Long-Term Lease U.S. Department of Agriculture,  
Animal, Plant and Health Inspection Services, Plant Protection and  
Quarantine for Office at Kahului Airport.

Unanimously approved as submitted (Johns, Edlao)

ItemM-5: Issuance of Direct Lease - Helicopter Consultants of Maui, DBA Blue  
Hawaiian Helicopters, Lihue Airport.

Member Pacheco recused himself.

Unanimously approved as submitted (Johns, Edlao)

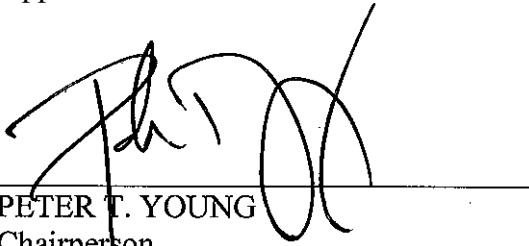
There being no further business, Chairperson Young adjourned the meeting at 2:30 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren Yasaka". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lauren Yasaka

Approved for submittal:

A handwritten signature in black ink, appearing to read "Peter T. Young". The signature is bold and cursive, with a long horizontal stroke extending to the right.

PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources

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

DATE: FRIDAY, DECEMBER 8, 2006  
TIME: 9:00A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

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

**MEMBERS**

Mr. Peter Young  
Mr. Ron Agor  
Mr. Samuel Gon III  
Ms. Taryn Schuman

Mr. Tim Johns  
Mr. Jerry Edlao  
Mr. Robert Pacheco

**STAFF**

Ms. Charlene Unoki, Land  
Mr. Dan Quinn, State Parks  
Mr. Ed Underwood, DOBOR

Mr. Sam Lemmo, OCCL  
Mr. Paul Conry, DOFAW

**OTHERS**

Mr. Bill Wynhoff, Deputy Attorney General  
Ms. Linda Chow, Deputy Attorney General, C-5  
Ms. Ronnie Grover, E-1  
Ms. Lea Wells, J-1  
Mr. Bill Yeargan, J-1  
Mr. Mark Emmons, J-1  
Mr. Max Graham, K-2  
Mr. Dann Perrin, 0-15  
Ms. Linda Collins, E-2  
Mr. Nick Dreher, 0-14  
Mr. Jim Sedill, C-5  
Mr. Paul Samarin, J-1  
Mr. Myron Thomson, 0-14  
Mr. Clancy Graft, E-1  
Ms. Jan Bell, 0-7  
Mr. James Speight, J-1  
Mr. Marc Ericksen, K-4  
Mr. Ed Misaki, C-3

Mr. Steve Dixon, J-1  
Mr. Russ Wells, J-1  
Mr. Joseph Shacat, J-1  
Mr. Mark Snyder, J-1  
Ms Karen Yamasato, 0-10  
Ms. Stephanie Iona, E-2  
Mr. Roland Sagum, E-2  
Mr. Boone Kauffman, C-5  
Mr. Allan Takase, 0-5  
Mr. Patrick Shaw, J-1  
Ms. Julian Kaawa, 0-12  
Ms. Jan Sam, 0-7  
Mr. Jim Nishimoto, 0-11  
Mr. Kevin King, 0-16  
Mr. Gary Hew, 0-2 & 4

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

Item A-1 Minutes of November 17, 2006

Unanimously approved as submitted (Agor, Schuman)

Item D-7 Grant of Perpetual, Non-Exclusive Easement to Kona Residence Trust for Access and Utility Purposes, Puuanahulu, North Kona, Hawaii, TMK: (3) 7-1-03: portion of 2 (HDLOI/Wesley)

Justice Robert Kline, representing Kona residents, agreed with Staffs recommendations.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-2 Amend Prior Board Action of December 9, 2005 Under Item D-3, Set Aside to County of Kauai for Developing Affordable Housing Purposes, Kekaha, Waimea, Kapaa, Anahola, Kauai, TMK: (4) 1-2-02:32, 1-2-06:18, 4-3-07:07, 08 & 11, 4-6-14:30 & 112 and 4-8-13:13. (KDLO/Thomas).

Gary Hew, representing the Mayor of Kauai, agreed with Staffs recommendations.

Unanimously approved as submitted (Agor, Gon)

Item D-4 Set Aside to County of Kauai for Fire Station Purposes and Issuance of Right-of-Entry Permit to the County of Kauai, Kapaa, Kawaihau, Kauai, TMK: (4) 4-6-14:26 (KDLO/Tommy)

Unanimously approved as submitted (Agor, Schuman)

Item K-2 Conservation District Use Application (CDUA) KA-3379 for a Single Family Residence & Related Improvements Located at Haena, Halelea, Kauai, TMK (4) 5-9-002:059

Applicant/representative agreed with Staffs recommendations.

Unanimously approved as submitted (Agor, Schuman)

Item K-1 Conservation District Enforcement File No. KA 06-72 Regarding Alleged Unauthorized Construction of Chain Link Fence Within the Conservation District Located Makai of 7380 Alealea Road, Wainiha, Hanalei, Kauai, TMK (4) 5-8-009:025

Mr. Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands, reported that the applicant is requesting a deferral because he was unable to attend the

meeting due to a Land Use Commission Hearing. There is a request from someone in Kauai for the Board to take action on this item and are asking for a contested case.

Unanimously approved as deferred (Edlao, Agor)

Item K-3 Conservation District Use Application (CDUA) OA-3305 for an After the Fact Seawall & Drainage Located at Keehi Lagoon, Honolulu, Oahu, Makai ofTMK (1) 1-1-003:004

Item K-4 Conservation District Use Application (CDUA) for Small-Scale Beach Nourishment (SSBN) Located at the Maui Lu, Kihei, Maui, Seaward ofTMK(s) (2) 3-9-001: 083 & 120

Unanimously approved as submitted (Edlao, Schuman)

ItemE-1 Annual Renewal of Revocable Permits (RP's) on the Island of Kauai and Oahu

Mr. Clancy Graft reported that he is not being allowed to run his boat tours up the North shore of Kauai. His CDUP states that he can and he was advised by his lawyers that the CDUP is good for life unless dissolved by the courts.

Chairman Young pointed out that the permits being brought before the Board are for landing and launching within the State park and has nothing to do with the CDUP

Mr. Graft continued to ask for the Board's intervention for his tour boat operation and to enforce the permit give to him 30 years ago.

Chairman Young again clarified that the agenda title was to address "the annula renewal of revocable permits (RP's) on the island of Kauai and Oahu", therefore, Mr. Graft may have to come back before the Board at a later time to address this particular issue.

Ted Myers, brother in-law of Mr. Graft, asked for the renewal of their landing permit.

Ronnie Grover, representing Kauai Sea Tours, stated that they are hoping to get their revocable permit renewed.

Unanimously approved as submitted (Agor, Edlao)

ItemE-3 Request for Permission to Hold the Aloha Council, Boy Scouts of America Makahiki at Sand Island State Recreation Area, Oahu.

Mr. Quinn reported that the Boy Scouts have been holding their Makahiki at the NBC Arena and now wants to move to an outdoor arena. For this event, they charge a fee via a booklet full of coupons with the ticket for the Makahiki inside. This event will be held at the very end of the park (ewa side) and will take place over several days. Staff is

recommending that they pay a \$100 a day for the pre-event setup and the post-event breakdown.

Unanimously approved as submitted (Schuman, Gon)

Item E-2 Request of a One-Year Holdover of Concession Lease No. Sp-0039 for the Kokee Concession, Kokee State Park, Kauai

Letters of testimony were provided from the Lodge at Kokee.

Mr. Quinn reported that the operation of the Kokee concession includes a restaurant, gift shop, and cabins, at the Kokee State Park. The Department issued a short term lease 3 years ago with the intention of putting all the lease properties out at once, including the recreation cabins. Because the Master Plan has not been completed and the final disposition of the recreation cabins has not been resolved, they were unable to put the leases out at the same time. The concession lease expires in December which is why Staff is requesting the one-year holdover. Lessee initial bid was \$226,101 per year, however, they have not been able to generate a profit. The lessee is requesting monthly rent of \$12,000, but Staffs recommendation was \$113,050. Mr. Quinn reported that they were able to agree on an amount of 3% of the concession's gross profit, which ranges from \$40,000 to \$60,000 a month. Based on this, Staffs recommendation is for an initial holdover for 6 months at a rate of 3% of their gross profit.

Chairman Young wished to clarify that the rate of 3% of the gross profits was the gross sales less the cost of goods sold before any other operating expenses. Mr. Quinn confirmed.

The Board:

Amendment to Staff Recommendation:

"That the Board approves a ~~[One year]~~ six-month holdover of the Kokee Lodge Concession Lease to the Lodge at Kokee, LCC at ~~[the annual reRt818mo]"Rt of \$113,050]~~ a rate of 3% of gross profits (gross sales less cost of goods sold). All other terms and conditions of the lease will remain unchanged.

Unanimously approved as amended (Agor, Edlao)

Item C-S Approval of a Cooperative Agreement between U.S. Forest Service and Department of Land and Natural Resources for the Establishment and Administration of the Hawaii Experimental tropical Forest at Laupahoehoe, Hamakua, Hawaii and Puu Waawaa, Kona, Hawaii; and Partial Delegation of Authority for Issuance of Research Permits.

Mr. Paul Conry, Administrator for the Division of Forestry and Wildlife reported that they have no amendments to the submittal. He mentions that the submittal does include the delegation of authority. He recognizes that this is a favorable relationship and is glad to be developing a good working relationship with the U.S. Forest Service. There were 2 representatives from the Forest Service, Boone Kouffman, the director of the Pacific Islands and Jim Sedill, director of the Pacific Southwest.

Board member Edlao inquired whether they were planning to extend the partnership to others, including the University and whether a Hawaiian practitioner would be involved due to culturally sensitive areas. Mr. Conry replied that the committee, for now, is mainly between the agencies, but they will be working with advisory councils, which is part of the agreement. Puu waa already has its advisory committee which has representation from the Hawaiian community and they will set up something similar for Laupahoehoe.

Board Member Pacheco asked about the status of NARS authority to delegate. Mr. Conry replied that currently NARS does not have delegation authority. However, once the NARS rules are approved and finalized, they will be given authority. Mr. Pacheco also questioned if this project was mainly research or resource management. Mr. Conry replied that the agreement is mainly dealing with research, but there might be some ties with resource management. However the department only retains its main land management responsibilities.

Unanimously approved as submitted (Paceho, Gon)

Item D-14 Approval in Principle of an Exchange between the State of Hawaii and Tiana Partners and Hawaiian Humane Society for State-Owned Springing Executory Interest in Land at Niu, Houolulu, Oahu, Tax Map Keys: (1) 3-7-04:01, 02 & 20 and Privately-Owned Land at Niu, Honolulu, Oahu, Tax Map Keys: (1) 3-7-04:02; and

Rescind Prior Board Action of October 28, 1994 Under Agenda Item F-13, Amendment to Prior Board Action of February 12, 1988 (Agenda Item F-24) Relating to an Agreement to Partition Land at Niu Valley, Honolulu, Oahu; Accept QUITclaim to a Portion of Property; Issue Quitclaims to the Remainder of Property; and Set Aside to the Division of Forestry and Wildlife, TMK 3-7-04: 01,02 & 20. (PROJECT DEVELOPMENT/Gavin)

Unanimously approved as submitted (Schuman, Gon)

Item D-10 Sale of Remnant to Hawaii Preparatory Academy, Auwaiolimu, Honolulu, Oahu, TMK: (1) 2-2-003:94 (ODLOIRobert)

Unanimously approved as submitted (Schuman, Edlao)

ItemD-15 Consent to Assign General Lease No. S-3764, Sugita Enterprises, Ltd. dba Hawaiian Floral Nursery, Assignor, to Coral Shores Enterprises Inc. dba Trade Winds Flower Farm, Assignee, Waimanalo, Koolaupoko, Ohau, TMK: (1) 4-1-010:08. (ODLO/Steve)

Unanimously approved as submitted (Schuman, Edlao)

Item D-5 Sale of Remnant State Lands, Abandoned Railroad Right-or-way to Alan S. Takase, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-57: portion of 01.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-1 Amendment to Issuance of a Direct Lease Together with a Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Hal'bor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1)9-1-14:24 (POI) and (1)9-1-74:37 & 38

Item D-3 Issuance of a Long-Term Lease U.S. Department of Agriculture, Animal, Plant and Health Inspection Services, Wildlife Services for Office Kahului Airport.

Item D-6 Issuance of a Long-Term Lease U.S. Department of Agriculture, Animal, Plant and Health Inspection Services, Plant Protection and Quarantine for Office at Kahului Airport.

Item D-8 Consent to Assign Grant of Easement No. S-27,540, Apollo Energy Corporation, Assignor, to Tawhiri Power LLC, Assignee, Pakini Iki, Ka'u, Hawaii, TMK: (3) 9-3-04: Old Government Road. (HDLO/Gordon)

Item D-9 Amend Prior Board Action of April 12, 2001, Agenda Item D-23, Issuance of Revocable Permits to S & S Dairy and Sydney Andrade; Waiohinu, Ka'u, Hawaii, TMK: (3) 9-5-05: portion of 03. (HDLO/Gordon)

Item D-11 Amend Prior Board Action of April 22, 2005, under Item D-11, as amended; After-the-Fact Consent to Sublease portions of General Lease No. S-4825, Waikiki Community Center, as Sublessor, to Waikiki Health Center, Waikiki Beach Chaplaincy, Inc., International Church of the Foursquare Gospel, Hawaii Services on Deafness, United Self Help, and Boys and Girls Club of Hawaii, Hawaii non-profit corporations, as Sublessees; Cancellation of General Lease S-4825; and Issuance of a Thirty-year Direct Lease to Waikiki Community Center for Community Center Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-6-025:008. (ODLO/Robert)

- ItemD-12 Consent to Assign General Lease No. S-4894, Jnlia Minerva Kaawa, Assignor, to BarbaraAnn Kehaunani Kaawa, Jonnett M. K. Kaawa and Minerva Lehua Aana, Assignees, Maunalaha Homesites, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24:10 (ODLO/AI)
  
- ItemD-13 Cancellation of Revocable Permit No. S-6903 to Kahala Hotel Associates Limited Partnership and Issuance of Revocable Permit to Kahala Hotel Investors, LLC, Kahala, Waialae, Oahu, TMK: (1) 3-5-023:041. (ODLO/Steve)
  
- Item D-16 Amend Prior Board Action of August 24, 2001, Item D-29; Issuance of Lease to Kevin Kinvig and Nora Fisher for Private Noncommercial Pier Purposes Pursuant to Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-047:079. (ODLO/Barry)
  
- ItemD-18 Consent to Lease of Lands under Governor's Executive Order Nos. 1763 and 4085 to the City and County of Honolulu, Wahiawa, Oahu, Tax Map Keys: 7-4-06:002 and 012. (ODLO/Cecil)

Unanimously approved as submitted (Gon, Pacheco)

- Item M-1 To Issue a Long-Term Master Lease for Various FAA Facilities at Kona International Airport at Keahole. This Will Replace the Current Individual Leases for Each Existing Facility and Include Future FAA Facilities at Kona International Airport at Keahole.
  
- Item M-2 Direct Issuance of a Revocable Permit for a Non-Exclusive Pipeline Easement at Kaunakakai, Molokai, Hawaii.
  
- Item M-3 Issuance of a Revocable Permit for Inconsistent Use Honolulu Freight Service Honolulu International Airport.
  
- ItemM-4 Issuance of Master Lease FAA Agreement No. DTFAWP-07-L-00046 United States of America (USA) Federal Aviation (FAA) Kahului Airport.
  
- Item M-5 Amendment No.1 to Lease No. DOT-A-92-0014 Restaurant and Lounge Concession Lease Host International Inc., Kahului Airport.
  
- ItemM-7 Direct Issuance of a Revocable Permit for a Non-Exclusive Pipeline Easement at Kawaihae Harbor, Hawaii.

Unanimously approved as submitted (Pacheco, Schuman)

**Item M-6 Direct Issuance of a Revocable Permit to Big Island Topsoil, LLC for the Parking and Storage of Trucks and trailers at Kawaihae Harbor, Hawaii.**

Member Schuman recused herself

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

**Item J-2 Requesting Final Approval of Amendments to Chapter 13-234, Hawaii Administrative Rules, as They Relate to Cruise Ship Fee Increases and Requesting Authorization to Submit the Approved Rule to the Governor for Final Adoption.**

Motion made to withdraw item.

**Unanimously approved as withdrawn (Agor, Schuman)**

**Item C-3 Request for Approval of Departmental Policies Relating to the use of Firearms for Natural Resource Management, Aerial Shooting of Feral Animals, and Helicopter Operations.**

Mr. Conry reported that this has gone through the consultation process with the districts, divisions, departments, and unions. It is now being submitted for implementation.

Chairman Young asked if any of our Federal partners conduct aerial shootings on feral animals. Mr. Conry replied that they do on Federal lands and that DOFAW follows their safety and operational guidelines. Chairman Young also wished to clarify that this is not a recreational hunting approach. Mr. Conry replied that this is strictly for control of feral animals. He reported that we are under a Federal court order to conduct aerial shootings Mauna Kea and they will perform such activities in NARS and watershed areas as well. This allows for the reduction of animals that would destroy the native ecosystems and it helps to preserve the shed and protected and endangered plants and animals such as the Palilia bird.

Mr. Wayne Johnston, from Animal Rights Hawaii, reported that in the last 2 months, a number of Shearwater chicks were killed by several feral dogs at Kaena Point. Mr. Johnston stated that instead of shooting the dogs, they could have been trapped or translocated; the death sentence was unfair. He is concerned that we teach our children not to kill, but its okay to go up in a helicopter and shoot these poor defenseless animals. It is not a humane thing to do. He believes that we should adopt ways that preserve the Aloha spirit, such as trapping and so on, but it is missing in this slaughter.

Mr. Ed Misaki, Molokai Program Director for the Nature Conservancy and Coordinator of the East Molokai Watershed Patnership, gave a brief history on the aerial shooting on Molokai. The conservation managers on Molokai have been waiting 3 years for this. They want it, have the funding for it, and have the trained shooters who are very

professional on how they do it. Their land owner partners also want it because they want to take care of their land. The lands in these areas are too steep and unsafe and it would be irresponsible to send hunters. The MOloakai community also wants it because they are tired of seeing the longest continuous fringing reef impacted by sedimentation caused by erosion. The reef crest and outer reef are fine, but the inner reef flats are being destroyed by land based pollution. Aerial shooting is the one tool that is effective and can safely remove these animals from cliffs and steep gulf areas

Board Member Gon, commented that Kahoolawe had problems with feral goats and aerial shooting removed the last of the goats from the island. Kahoolawe is now the only island in which people can engage in the restoration of native plants without worrying about their survival.

Unanimously approved as submitted (Agor, Schuman)

Item C-2 Request for Approval of a Memorandum of Agreement Between the State of Hawaii Department of Land and Natural Resources and the United State Fish and Wildlife Service.

Item C-4 Establishment of Kokua Partnership Agreement for Kaniakapupu, Nuuanu, Oahu.

Item C-6 Request for Approval to Enter into a Memorandum of Agreement Between Kona BB Property, LLC, d.b.a Kona Village Resort, the State of Hawaii Department of Education West Hawaii Area Complex and the State of Hawaii Department of Land and Natural resources, Division of Forestry and Wildlife, for a Traditional Hawaiian Canoe building Cultural and Educational Project.

Unanimously approved as submitted (Agor, Gon)

Item C-1 Adoption of Amendments to Hawaii Administrative Rules Chapter 13-209 (Rules Regulating Activities Within Natural Area Reserves).

Member Pacheco recused himself.

Unanimously approved as submitted (Agor, Gon)

Item F-1 Request for Final Approval of Revisions to Bottomfish Restricted Fishing Areas coordinates and maps for Hawaii Administrative Rules (HAR) Chapter 13-94, Bottomfish Management

Item F-2 Request for Approval to Hold Public Meetings and Hearing to Repeal Hawaii Administrative Rules Chapters 13-84, Samoan Crab and 13-92, Opihi and Amend Hawaii Administrative Rules Chapter 13-94, Rules Regulating the Taking and Selling of Certain Marine Resources to Include Amended Rules For the take of Opihi and for the Take of Spiny Lobster, Kona and Samoan Crabs.

There was added information in Board members packets and a letter from National Marine Fisheries Service in support of F-1.

Unanimously approved as submitted (Pacheco, Gon)

Item J-3 Request for Approval to Conduct a Public Hearing Regarding Proposed Amendments to Hawaii Administrative Rules Section 13-256-141 as it Relates to the Personal Watercraft Zone in Hilo bay of the East Hawaii Ocean Recreation Management Area (ORMA), Hawaii Island.

Item J-4 Request for Approval to Conduct a Public Hearing Regarding Draft Rule Changes to §13-256-63 and a Per-User Fee for Commercial use of Zone "C" of the Shark's Cove/Three Tables/Waimea Bay Marine Life Conservation District (MLCD) on Oahu.

Item L-1 Request for Authorization to Retain Various Consultants and Contactors for the Purpose of Conducting Studies & Assessments; Design and Construction of Slope Stabilization Measures and Other Improvements; as Directed by Act 118, SLH 2006, Relating to Emergency Relief for Natural Disasters.

Item L-2 Certification of Election and Appointment of Soil and Water Conservation District Directors.

Item L-3 Approval for Award of Construction Contract - Job No. F35B632B, Walkway & Railing Improvements for Akaka State Park Hilo, Hawaii.

Unanimously approved as submitted (Pacheco, Schuman)

Item A-I: Minutes of November 17, 2006

There are some changes being recommended by Forestry and Wildlife that weren't out in time.

Motion made to amend minutes as circulated.

The Board

Amend Col, page 4 & 5

"...He reiterated that Kauai does not have an active Trail and Access Citizen Advisory Group, ~~[but]~~ and reported that it was due to years of lack of quorum. The alignment of the easement was what the public was interested in so when they went out to do the survey, they assumed that the easement chosen would suit[e] the public because it provided shoreline access roughly along the trail in use. There was some deviation along the alignment ~~[trying]~~ to connect it to next adjoining property owner's fence, where there was an existing gate. There is a ~~[Jlretentiels]~~[contentious] situation on claiming the trail in the next parcel so they are land banking the trail and putting it under the Na Ala Hele jurisdiction for regulatory purposes and the land owner offered to do a long term maintenance and ~~[managing]~~ management of the feature via a MOA. In absence of a Trail and Access Advisory Council, Staff went on, what they felt to be "a good faith effort" to service the community based on their comments during the ~~SMA~~[C/DUA] process...

Curt Cottrell reported that he was unsure if the trail alignment in use was the same historic trail because of a tsunami that took place in the 40s which altered the land. When Staff went on site, they followed the alignment that everyone was walking. There is a slight deviation at the terminus heading towards Larson's Beach at the next adjoining property to connect it to the gap where there is an old gate in the fence...

[Max Graham] William Tam had photos at his office and asked if the Board would defer until the end of the meeting..."

Unanimously approved as amended (Agor, Gon)

Item J-1 Cancellation of Revocable Permit No. B-03-06, Magic Island Petroleum, Permittee, Upon Cancellation, Issuance of a New Revocable Permit for a Marine Service Station fueling Facility Only, With No Mooring Rental Authority, Ala Wai Small Boat Harbor, Honolulu, Hawaii, Tax Map Key:2-3-37:20.

Chairman Young gave some background information on the situation at the Ala Wai fuel dock. State law allows only 129 live-a-board permits within the Ala Wai harbor. According to Harbor Master Megan Statts, all 129 permits have been issued. Boaters moored at the fuel dock have been permitted to live-a-board which is a violation of the law. The existing permit for the fuel dock is primarily for a fuel dock and convenience store. Discussions are being held with the current permittee to reach an agreement.

Mr. Steve Dickson, executive director of the Hawaii Supreme Court Attorneys and Judges Assistance Program, testified as a private boater on the importance of the fuel dock and his objection to closing it.

Chairman Young excused himself

Lea Wells, teacher at Waianae High School and bookkeeper for Magic Island Petroleum stated it is common knowledge that the mooring income is critical to the operation and survival for store. She provided a financial summary which shows that removal of the mooring income will cause the closure of the store. She felt that DOBOR mischaracterized her efforts at working to compliance in the submittal and that she wasn't cooperative. She states that she was cooperative and that they have been trying to comply. The boats being moored at the fuel dock are 3 storage boats, 3 cruiser boats, the others are waiting for State slips. With the mooring income, they were able to clean up the store, fix the leaking roof, fix the broken gates, repair the broken pump out, allow store hours to be 365 days a year, and offer 24 hr emergency servic. She believes that a 30 day revocable permit is an insane business proposition. Right now the fuel dock is at its healthiest and most functioning point. She wishes them not to accept DOBORs recommendation and to allow them to continue working to the meet standards that are required.

Russell Wells, current manager of the fuel dock, stated that it is impossible for the store to survive without the mooring income. They would experience a \$101,000 loss (over 11 months) without the mooring income. This income is used to pay the basic expenses of the store and to keep it running. He also read a paragraph from a letter that the permittee wrote to Peter Young recently, "The bottom line here is that the loss of the mooring revenue will likely mean the liquidation of the business for Magic Island Petroleum." Without the income, they will be forced to sell or remove all the assets and equipment o the site, leaving no store, no propane, no head pump out, no fuel, no bathrooms, no laundry, and no security. If anyone was to accept the new permit, they would have to rebuild all of it at the cost of several hundred thousands of dollars. No one would make such an investment with only a 30 day permit. He also quoted another quote from the permittee in which he said "I don't think this will work without the slips. I just want to hold on to a permit with the State." He also quoted Tom Bashaw, the previous manager, in which he said "I had the unfortunate experience of managing the fuel dock for 5 months and there is no way to keep it going without the boats." He quoted a previous permittee, Mike Dickson, who said "this store could never make it without the slip revenue." He also mentioned that the current permittee has never been able to take away a profit, even with the slip fees. He believes that this is because within the harbor, the boats just don't move. He estimates barely 15% of all the boats in the Ala Wai ever go anywhere. If they don't go any where, they don't pass the dock because it is located right in front of the harbor channel. They are in the worst location for foot traffic and he believes that it fails all criteria for selecting an optimum store location. The employees of the fuel dock have had to barter for wages and until now, have not been able to afford a competent manager. There is not enough business for the fuel dock to stand on its own. In regards to the moorings, Mr. Wells reported that there are 19 boats and I catamaran (which stays only from 7pm-8am). The average length of time that a boat resides at the

fuel dock is 15.8 months. Right now there are 7 storage boats in which no one lives on them, 2 boats for sale with one live-a-board, 3 cruisers in transient waiting for the next weather window, 2 that belong to the store managers, and 5 stay-a-boards. He states that they have a regular turnover, almost 2 times the State rate. Mr. Wells acknowledges that they aren't in compliance with the terms of the permit, but feels that their timing of their response was mischaracterized in the submittal. He believes they have been upfront with all of their violations and with more time, they can come into compliance. The live-a-board moorings have been at the fuel dock for an excess of 20 years and Mr. Wells asks that the permit be rewritten or a sunset provision added to allow for the moorings. He asks the Board not to take away a healthy and functioning part of the Ala Wai and not to cancel the revocable permit and reissue without the slips.

When asked by the Board about the moorings fees, Mr. Wells responded that all of the boats pay a flat fee regardless of size and whether or not they're live-a-boards. Also, in response to a question about his knowledge of the fuel dock being in violation, Mr. Wells responded that he believes the permittee knew, but he only became aware when he had a visit from Mr. Underwood. The communication between him and the permittee was not present due to the absence of the permittee at the business.

Mr. Underwood responded to the Board's question about the last conversation he had with the permittee. He reported that a new revocable permit without the moorings was proposed and that there was a tentative agreement with the permittee.

In response to a question in regards for the need of the moorings, Mr. Wells reported that 30% of their gross profit comes from the selling of beer and sandwiches, 20% from fuel, and the rest comes from the slips.

The Board asked Mr. Underwood the reason for DOBOR needing to take over the fuel dock slips. Mr. Underwood stated that he feels that the slips should be under DOBORs management and it will increase the number of available berths. This is tied to the renovation of the harbor. Also, since recently being named Administrator, he was following up on all violations. The fuel dock was issued a violation notice on August 24<sup>th</sup> and no changes were noticed during a September visit, therefore, another notice was issued. His goal is to get as many berths as possible to accommodate the numerous boats on the waiting list.

Bill Yeargan, who works at the fuel dock and is one of the live-a-boards, reported that the permit moorings do allow for overnight stays, not just for fueling. He also noted that utility payments will become an issue if DOBOR takes over the moorings because there is only 1 meter. He wonders how the utilities will be separated and who will take over the security operations. He asked that the Board reconsider DOBORs recommendation and not cancel the permit.

Mark Snyder also moors at the fuel dock. He has been moved around between docks in the Ala Wai and is now moored at the fuel dock while he waits for a State slip. He stated that "if it ain't broke don't fix it."

Joseph Shacat stated that he isn't trying to "jump the line" as Chairman Young had suggested, rather he is just waiting for a State slip. He is on the waiting list at several other harbors and has been told it could be another 5 years till he gets a slip. He asks that the Board to deny DOBORs recommendation.

Mr. Underwood stated that the boats moored at the fuel dock would receive temporary 120 day slips, which would start as soon as the permit expired or is canceled. The boats would be moved to the 700 row and after the 120 days, they would need to be out of Ala Wai Harbor. He also reported that Keehi has 5 live-a-board slips available, there are numerous off shore moorings available, and there are II slips at Waianae.

Mr. Yeargan asked how they were to use the 700 row if it is condemned. Mr. Underwood responded that the finger piers were condemned, not the berths.

Bill Cruise stated he was the first boat in the harbor in 1967 and emphasized maintenance of the dock because it has been neglected for so long.

Michael Faust reported that he has seen the Ala Wai Harbor go down hill since the late 1970s. He is a member of the Motor Boat Association and stated that out of 50 states, Hawaii is number 50 in boats per capita, but we are number 2 in shoreline. He believes this is a travesty if the State doesn't invest in these piers right away. There is no reason why Hawaii can't be number 1..

James Speight stated that he believes the meeting is being operated under false assumptions; one of the assumptions being that no one would want to take over the dock without the moorings. He represents an interested investor that would like to take over the permit.

Paula Bundy stated that when she arrived 3 years ago, the previous managers were horrible and felt that she did not receive the Aloha spirit she was hoping for. She believes that the Wells are doing a wonderful job and that the State should stick with the winning team.

Susan Mickley, a cruiser, stated that it is interesting that Hawaii's biggest economy is tourism, but it is well known to boaters up and down the west coast and in Central America, you don't sail to Hawaii. It is hard to find someplace to moor and if you do find somewhere, the boats are holding up the dock. There is a lack of maintenance and the State will be continuing the problem if they shut down the fuel dock and the only sewage pump out. Many of these cruisers have money; they don't need to work, they can travel, and have a substantial amount of income, however, Hawaii does not welcome boaters so they lose this economic, income source.

Paul Samarin stated that he has seen the Ala Wai go from bad to worse, especially the store. He believes that we are the most unfriendly boating state in the nation. In the 12 years he has been here, he has seen the harbor deteriorate. He is unsure of where the

money goes from rent, but he knows that it does not go back into the docks. He believes that the store and fuel dock are a "stunning jewel" in the marina and that we are using a band-aid approach when it is in need of major surgery.

Member Pacheco questioned what the benefit of taking the moorings away from the fuel dock and giving them to DOBOR was. Chairman Young responded that the priority of the fuel dock is for fueling, but it has turned into primarily a place for mooring. The moorings were originally meant for the catamarans and boats in transient or for those rare-times when the harbor was full, but it was never meant for live-a-boards.

Bill Wynhoff made a motion to the Board

The Board:

Amendment to Staff Recommendation:

"1. Cancel the revocable and all rights of the Permittee and all obligation of the Lessor effective [JeeemlleF ~~17, 2006~~] 30 days after completion of successful negotiations with and for a successor revocable permit, provided that any and all obligations of the lessee which have accrued up to said effective date or which are stated in the permit to survive cancellation shall endure past such cancellation date until duly fulfilled, and further provided that the Lessor reserves the rights and claims allowed by law."

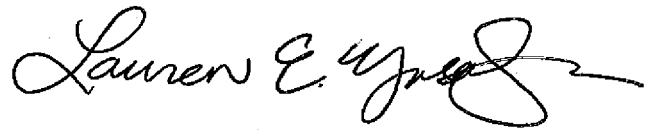
"3. Authorize Chairperson to negotiate and issue a Revocable Permit for a Marine Service Facility on such terms as deemed to be necessary by DOBOR to best service the active users of the Harbor."

"4. Authorize, but not require, DOBOR to retain management of all submerged land surrounding the pier area of Mole B, and Fuel Dock site.

Unanimously approved as amended (Edlao, Schuman)

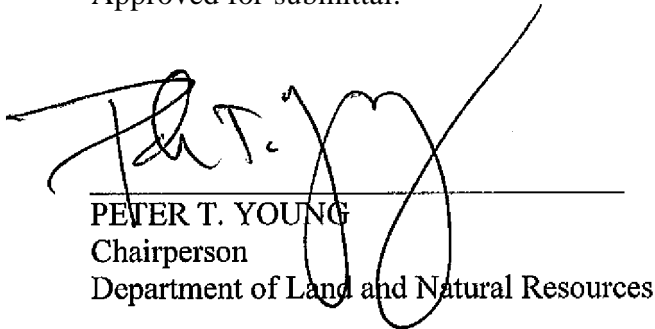
There being no further business, Chairperson Young adjourned the meeting at 12:45 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Lauren Yasaka

Approved for submittal:



PETER T. YOUNG  
Chairperson  
Department of Land and Natural Resources