

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

DATE: FRIDAY, SEPTEMBER 25, 2009  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:04 a.m. The following were in attendance:

**MEMBERS**

Laura Thielen  
Jerry Edlao  
John Morgan

Robert Pacheco  
Ron Agor  
Dr. Sam Gon

**STAFF**

Michael Constantinides/DOFAW  
Barry Cheung/LAND  
Eric Hirano/ ENG  
Emma Yuen/DOFAW  
Ed Underwood/DOBOR

Morris Atta/LAND  
Sam Lemmo/OCCL  
Ray Kennedy/DOFAW  
Pua Aiu/SHPD  
Tiger Mills/OCCL

**OTHERS**

Julie China, Deputy AG  
Kent Untermann, C-3  
Eric Bello, C-3  
George Kimura, D-4  
Steve Brock, D-7  
Andrea Anixt, D-12  
Brett Pruitt, D-12  
Barbara Miller, L-2

Linda Chow, Deputy AG  
Jim Quinn, C-3  
Jim Pappas, C-3  
Denise Toombs, D-7  
Greg Mooers, D-8  
Bruce Di Meo, D-12  
Rick Barrett, K-1  
Reverend Wayne Gau, L-2

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

**Item A-1 August 14, 2009 Minutes (TO BE DISTRIBUTED.)**

Board member Gon recused himself. Minutes were distributed to the Board.

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

**Item A-2 August 28, 2009 Minutes (TO BE DISTRIBUTED.)**

**Item A-3 September 11, 2009 Minutes (TO BE DISTRIBUTED.)**

Not ready.

**Deferred.**

**Item C-3 Amendment No. 2 of Timber Land License No. 2007-H-01 held by Hawaii Island Hardwoods, LLC**

Michael Constantinides representing Division of Forestry and Wildlife (DOFAW) presented background history on this timber license that was executed in September 2007 including the intent for issuing the license. Staff was trying to leverage a state timber resource to promote the timber processing industry to provide a revenue stream for the public trust and the Department which includes creating jobs for the Hawaii market and also locally processed material might be put into the Hawaii market as well. The license terms included stipulations for mill development by HIH and that is the reason we are here today as HIH has not met portions of the mill development schedule as stipulated in the license. The schedule was more ambitious than what could be met by the licensee for a variety of reasons. HIH came to staff asking for two principle amendments to the license that being 1) an extension for the mill development and 2) to reduce the bond requirement. The latter item was included in the license to provide some assurances as to the correct execution of HIH's field operations should there be a problem and provide the Department recourse in mitigating potential damage to the landscape and road infrastructure in the forest area. To date the results have been mixed as presented in the staff's submittal. There was an initial harvest in the Waiakea Timber Management Area which includes the licensed area, however, since that time there wasn't any significant harvesting done by the licensee in that area. The licensee has incrementally developed their saw mill - not to the scale and level that staff originally envisioned in the licensed document. It is important to note that HIH is operational today though at a smaller scale and are recording steady but slow growth. HIH is marketing product in the Hawaii market and elsewhere, they've created employment and this has all occurred during this economic downturn. Staff suggested the Board entertain an approval of an extension of their mill development milestones and staff is comfortable with the reduction in bond concept with the qualification that the forest area HIH is working in is confined to a fairly small acreage at any one time. This practice would reduce the Department's exposure to risk if HIH doesn't perform properly in the forest and enable staff to effectively monitor HIH's field operations.

The Board questioned whether other companies have come forward with proposals. Mr. Constantinides replied that staff has not received formal inquiries from other entities regarding timber resources in the Waiakea Timber Management Area.

Member Gon referred to recommendation 1.c. regarding the reduction of the performance bond and asked whether or not the terms should be revised to allow the bond amount to scale up should HIH field operations expand to a higher level.

Member Edlao referred to recommendation 1.d. asking why wait later for a decision rather than have the applicant do it. Mr. Constantinides said originally the clause compelled the Department to do the road maintenance work and the reason why that was put into place was when staff discussed with HIH license terms, HIH had offered 2 different stumpage prices for the timber associated with the stands accessed by that particular road – a lower price if HIH did the road work, and a higher price if the Department did the road work. Staff felt that the higher price HIH was offering for stumpage was desirable and preferred to do the road work at the Division's expense in order to realize a higher revenue from those particular timber sales. Now rather than compelling the Department to do the road work by a particular date staff proposes to do the work only if HIH is going into those 3 stands, otherwise, it's an isolated area that no one is going in to. Alternatively, the recommendation also keeps the option open for the Department to decline the road work in which case HIH would be responsible for road work but be compensated by paying a lower stumpage rate for timber harvested from adjacent stands.

Kent Untermann representing Hawaii Island Hardwoods testified that they are the only tropical hardwoods opportunity in the U.S. which is important economically to the State noting how other countries do not allow export of these resources. He introduced his partners Jim Quinn, Jim Pappas and Eric Bello who along with Mr. Untermann invested \$1.5 million. Jim Pappas was the former owner of Honsador Wood Products and he invested over a million dollars with a desire to see the wood industry grow in Hawaii. Eric Bello from Bellos Millwork is one of the premier millwork companies in Hawaii and he has several million dollars in equipment that they utilize these resources to develop and process the wood. Mr. Untermann's primary business is Pictures Plus and his interest is in marketing to get more value for the product given the challenges of infrastructure with the wood industry in Hawaii. Jim Quinn was a former CEO of Collins Pine, one of the larger west coast lumber milling outfits and came to Hawaii to golf, but his passion for wood outweighed golf working 50 hours a week with zero compensation and an incredible asset to the State with his knowledge. Mr. Quinn brought certified forest products to the United States 16 years ago.

Currently, HIH sales are over a million dollars with an annual payroll of \$300,000 and none of the partners are compensated. Products developed are engineered and solid flooring, beams, rails, cabinets, door parts, doors, and veneer and koa picture frame moldings. The partners are disappointed that they are not further along with the project which was more challenging than anticipated and the current economic conditions are not helping.

Site work – HIIH is not where they hoped they'd be in the contract. HIIH has developed a 5 acre site, it's graded and operational. They've experimented with a solar kiln to dry wood which was successful. Processing and selling wood is working well. The market is responding well even during this tough economy with sales over a 100%. Start up continues to be expensive and tougher than anticipated, but they are definitely learning.

HIIH needs to find ways to enhance their processing capabilities with respect to efficiency and cost that they can afford and justify. HIIH thought the market would grow quicker and then they would jump ahead, but then realized they would go broke if they tried to scale up. The challenge was how do they continue to scale up, be more efficient and increase kiln and milling capacity – HIIH needs to invest in at a rate the market can absorb with the sales growth. HIIH needs to recruit more investment with like minded individuals that add value.

The HIIH partners asked the State's continued patience and support because it's become a larger project than originally anticipated. On the positive side, the market potential is there. HIIH has been awarded a koa contract, but it hasn't been granted yet and HIIH encouraged staff and the Board to award that because they need the greater cash flow potential that koa processing provides. Chair Thielen asked whether this is before the Board today and it is not per Mr. Constantinides where the Chair said due to Sunshine Law we can only address what is before us which is the extension.

Mr. Untermann asked the Board to support an integrated wood industry. It is really tough with a lack of infrastructure.

Board member Gon asked whether HIIH's partners are ok with staff's recommendations and they are per Mr. Untermann.

Chair Thielen referred to the bond reduction and suggested an approach were the bond could scale up should the company grow and asked whether that was satisfactory with Mr. Untermann to which he acknowledged while reiterating the challenges. Chair Thielen suggested an amendment to temporarily reduce the amount of a performance bond on the terms as detailed above with the ability of the Department to scale the bond back up as operations increase in size. Mr. Untermann said 40 acres could be an adequate area to correlate the bond to because the larger the harvest area HIIH is impacting the greater the liability incurred. The Chair again suggested that the size of the bond be somehow correlated to the scale of HIIH operations.

The Board questioned whether an increase in mill size which the Chair replied saying also for the land to be returned at the end conditions which is also the improvements. The Board asked whether the bond size comes back to the Department and not the Board which the Chair acknowledged.

Mr. Constantinides raised a question leading to the Chair asking whether HIIH felt confident in its ability to meet the proposed amended mill development schedule in 1 year where Mr. Untermann answered in the negative. Chair Thielen said that this is one

of the things she recommended HIH and staff have some discussions about prior to the Board meeting. She would prefer HIH come to staff with a proposal that they can meet. It's understood that business plans need to be adjusted to today's economy in comparison to the situation 4 or 5 years ago. Mr. Untermann said he understood that they cannot meet the 1 year deadline and would have to defer to Jim Quinn on that one. Chair Thielen recommended that he meet with staff and defer this item for two weeks or a month with a revised plan because we don't want to say everything is fine in a year and it not be which Mr. Untermann agreed.

Chair Thielen explained the deadlines for the October or November meeting and how much time HIH had. She recommended deferring this item for one month to allow staff time to review the proposal and to make a recommendation or not. Member Pacheco suggested including some benchmarks for the ramp up of the performance bond which Mr. Untermann agreed to.

#### **Deferred (Edlao, Pacheco)**

#### **Item D-4 Forfeiture of General Lease No. S-4307, Geo' Co., Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key:3<sup>rd</sup>/2-2-58:03.**

Land Division Administrator, Morris Atta described that this lease has had a history of problems keeping up with payments and in all previous occasions the tenant has come forward and cured the default. At the time the submittal was prepared the default had not been cured and the cure period had expired that is the reason why it is before the Board. The Hawaii District staff requested, given the history of this lease, if a cure happened or be offered. At this point, the Board should chose to receive the cure, that a previously revoked performance bond requirement be resurrected to ensure or encourage timely compliance of the lease terms. Payment of the easement is one of them. As of this time, the lease does not have a performance bond requirement which normally they do.

Member Gon asked when the performance bond requirement was revoked where Mr. Atta said he wasn't sure that this goes far back and he wasn't sure why it was originally revoked citing the purpose for the performance bond is to comply with the lease terms as an incentive to encourage more timely compliance in the future which was the recommendation from the Hawaii District staff.

Upon Member Pacheco's questioning if there is no cure you are asking the Board to reinstate the performance bond. Mr. Atta acknowledged that saying if the Board chooses not to forfeit the lease and accept any proposed cure at a minimum to reactivate the performance bond requirement.

George Kimura, President of Geo' Co. the Lessee asked the Board not to forfeit his lease because he needs to stay in business explaining that it is hard to find light commercial public lease to rent. He knows he was behind on his payments but he is able to make his payments on time from now on. And, per the Chair's questioning he did cure the default that is before the Board today. His wife spoke saying a check was paid to Mr. Haight this

past Tuesday which Mr. Kimura confirmed that the check was cashed out the next day. Mr. Atta said he hadn't been updated and would confirm reiterating that Hawaii District said that the cure might happen and recommended putting in the performance bond. Chair Thielen explained to Mr. Kimura that even with him coming current with the rent he will be required to have the performance bond and asked whether it is something he can meet and what that timetable would be. Mr. Kimura acknowledged that he could, but wasn't sure about the timetable. Mr. Atta said if Mr. Kimura qualifies for the performance bond he suggested in a month or two which Mr. Kimura agreed to two months.

The Board referred to recommendation 4 and to delete everything else which Mr. Atta confirmed.

Member Morgan inquired whether Mr. Kimura is the original lessee, that the lease expires in less than 1 year (June 2010) and whether he plans to continue this lease. Mr. Kimura said he is not the original lessee, he has been on the property for 20 or so years and he intends to continue the lease. Right now he is getting everything together.

The Board asked about the procedure at the end of a lease. Mr. Atta explained this is a 40 year lease and staff normally puts it out to public auction where the tenant is notified and can participate in the auction.

Member Pacheco moved to amend staff's recommendation by deleting 1, 2, 3 and 5 and amending 4 by adding within 60 days. Member Gon seconded saying then for discussion asked whether 5 should stay in. Mr. Atta explained that 5 is in there had the Board gone for forfeiture of the lease determining the contractual costs you want to ensure that survived and any determination of the contract even if you are not terminating the lease. The authority is explicit in the contract. Chair Thielen concluded the motion stands to keep the amended number 4. All approved.

Chair Thielen summarized for Mr. Kimura that the Board is not going to move forward with the forfeiture he will keep the lease, but emphasized that he has to take action to get the performance bond within 60 days and if there are any questions to talk to Mr. Atta. If Mr. Kimura doesn't come up with the performance bond it will be a default and comes back before the Board.

**The Board:**

**Amended staff's recommendations by deleting all items except for Item 4, and amending that recommendation by requiring the Lessee to obtain the performance bond within 60 days from the date of the Board's approval this action. Otherwise, the Land Board approved staff's recommendations as submitted.**

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

**Item D-7 Grant of Perpetual, Non-Exclusive Easement to Office des postes et télécommunications de Polynésie française for Submarine Cable Purposes, Immediate Construction Right-of-Entry, Kawaihae 2nd, Waimea, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-2-02:08 por. and submerged land seaward of same.**

Mr. Atta reported that this is a request for an organization to connect their undersea cable system to the Big Island and to enhance the communication network in the Pacific where they seek to get this easement for connection to an existing easement cable connection box at Spencer Beach Park. Chair Thielen asked that this was brought before the Board a few months ago and Mr. Atta confirmed that this is another entity.

Denise Toombs for OPT was here for any questions where Member Gon asked whether she was ok with staff's recommendation and she was.

Steve Brock was here to answer any questions.

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

**Item D-8 Consent to Subdivision – Timothy McCullough, Karen McCullough, Corey McCullough, Jeff McCullough and Colleen McAluney, Land Patent Grant S-14,299, Land Office Deed S-22,518, Lot 25, Lalamilo Farm Lots, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-6-5:10.**

Mr. Atta explained that the subsequent lessee of the Lalamilo lot was the parents of the current applicants and upon the death of the parents the current applicants have possession and is operating the farm and seek to sub-divide the lot. When staff first created the sub-division there was authorization to sub-divide, but had never been done and now the current applicants want to follow through with that. And, it is staff's recommendation to allow the applicants to go forward with their plans.

Tim McCullough, the applicant and Greg Mooers of Mooers Enterprises were here to answer any questions.

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

**Item D-12 Withdrawal from General Lease No. S-5851, Windward Retreat Center, Lessee; Sale of Remnants to Bruce Di Meo Trust, Andrea C. Anixt Trust, and Kaaawa Beach Owners Association, Kaaawa, Koolaulua, Oahu, Tax Map Key: (1) 5-1-014:047 portion.**

Member Morgan recused himself.

Mr. Atta described the background of the lease referring to an adjacent trail and purchasing the properties adjacent to it. The proposal is to withdraw those portions staff

identified with perspective applicants for the purchase and offering it up for sale as remnants to these purchasers. Three of the sections involve one interested purchaser. The last portion has two interested and involves the adjacent landowners on either side of that remnant. Staff recommends a sealed bid process which is called for in the statute. The interested parties are here.

Member Edlao asked whether the potential buyers are aware of Office of Hawaiian Affairs (OHA) request with regards to access where Mr. Atta had Barry Cheung from Land Division come up to respond. Mr. Chueng explained that if the applicants have a problem with the recommendation for an archeological study they could come before the Board to ask to remove it.

Andrea Anixt, an applicant, was here to answer any questions where Member Gon asked whether or not she accepted the recommendations. Ms. Anixt asked about the OHA recommendation. Chair Thielen explained that under the recommendation the property would come with certain conditions that would be imposed upon people who are interested in purchasing the remnant parcels and the conditions are listed in the submittal. Some of those conditions include that there may be cultural gathering rights, some of it maybe archaeological monitoring plans that maybe required due to sites. The question is whether Ms. Anixt is familiar with the requirements placed there and understood what they mean. It is an understanding that the property would be subject to any gathering and access rights that are there if any.

Ms. Anixt related that she learned that the 5 feet is all on the neighbor's side that he had it surveyed where some of his lot is on her side and some on his side. The purpose of buying this easement would enable her to build a second floor on her existing house. This started in 1988 with a state appraisal. Chair Thielen asked whether this is the remnant that two adjacent property owners are interested in and Ms. Anixt confirmed that she is one of the two and she continued relating her history with the easement where the Chair said that staff received written testimony from her and we understand her reasons for the easement. Chair Thielen reiterated because there are competing interests to put this out to a bid process to purchase the easement and asked whether that was acceptable to Ms. Anixt where Ms. Anixt said she didn't like the idea of a sealed bid, but if that is what the statute says and all they can do then is agree to it.

Ms. Anixt asked why there was a date certain time of September 4, 2009 if staff didn't receive a response they will assume there was no interest. Then her competing neighbor expressed 50% interest, but he didn't put that in until September 10, 2009 where Ms. Anixt put her interest in on September 3, 2009 for the full interest. She wondered whether we are date certain or not. Chair Thielen said she thinks staff was setting a date to see if there were multiple interests in this property. In the areas where there was a single property owner interested, in those cases staff can do direct negotiation under the law, but if there are multiple parties interested staff follows this other process. That date is more to be notified if there are multiple parties interested or not. Ms. Anixt reiterated that her competing neighbor was not interested in the whole property until this came up asking whether there is any negotiating room or does it go straight to sealed bid. The



Chair suggested getting the rest of the testimony and staff will come up to answer any questions.

Bruce Di Meo, the neighbor interested in the other piece of property, distributed a diagram and documents. Chair Thielen asked that the Board wants to know whether he was interested in the whole piece of property. Mr. Di Meo said at the initial request he wasn't sure whether he was interested or not because he has a pending proposal to subdivide his property and the dissecting line of his property dissects the full apron by a couple feet. When he found out that Ms. Anxit was interested in the complete portion of the property he indicated that he was interested as well. He wants to try and work with Ms. Anxit in sharing the parcel because his sub-division requires a minimum of 10,000 square feet and its 10,513 sq. feet. If a Jim Thompson can move this property line over and doesn't encroach on his pool deck he has no problems yielding to Ms. Anxit and allowing her to purchase it, but he doesn't have that answer at this time. Mr. Di Meo has a compelling interest to share this with Ms. Anxit. As her letter says she is short 23 inches and he sub-dividing it she would end up with 30 inches and as she indicated she is going vertical 17 feet and she would need the full five feet as a set back. Chair Thielen said it sounds like neither owner needs 100% and both are willing to work with each other to get the sufficient amount of property for their purposes. Mr. Di Meo said Ms. Anxit is insistent on getting the full property because she needs it for her structure. When Ms. Anxit purchased her property, unbeknownst to her, was too close to the property line and now that she wants to do an addition she needs to conform to the current set-backs. He is reaching out to her to try to compromise and see what they can do in acquiring this remnant. The Chair noted the fall back is a sealed bid and asked does Mr. Di Meo understand that which he does.

Mr. Di Meo asked referring to the OHA issues, are conditions only if you construct on that land. Chair Thielen said she thinks what its saying is the land comes as is. Any cultural or access rights will continue to exist and applicants would take that with the understanding that those rights will continue to exist where Mr. Di Meo said he had no problem with that.

Brett Pruitt, a volunteer Executive Director for the Windward Retreat Center testified that they are the lessee of the land being discussed and they don't have a problem with the State cutting the remnant off because it is a liability. It has caused some delay with the City. It is a 60 year old abandoned trail which will help their neighbors and Mr. Pruitt requested that the State take the entire trail rather than pieces of it. Chair Thielen said we heard your request, but that is not before the Board today and can't be addressed per Sunshine Law which Mr. Pruitt acknowledged.

Chair Thielen questioned whether there are alternatives to a sealed bid, what are they and does the State certify a survey because of questions about boundaries. Mr. Atta said that there are alternatives, but only when you have multiple parties in agreement that they want to purchase the remnant suggesting the applicants could purchase it jointly, proceed and subdivide it to take whatever share each wants to take. That is one alternative to avoid a sealed bid process. In this situation, it didn't appear that we were anywhere near

that and an alternative was the sealed bid process. Member Gon queried because both parties are present and are willing to work something out can the Board proceed on this recommendation either as is or amend it in some way that allows for that continued association. Mr. Atta said if the Board wants to allow that possibility it should follow along the same lines as Sect. C being thrown in with recommendation 5. The buyer would be two parties for a single section.

Chair Thielen suggested a timetable for the two parties with the understanding that if they reach an agreement they can come in for direct negotiations and if they can't reach an agreement by a certain timetable the alternative is a sealed bid. Mr. Atta agreed that would work. The applicants of section 6 would be able to proceed with a sale under the terms of section 5 provided they come to agreement and are willing to purchase Section C jointly because section 5 calls for the requirement that the applicant take care of any sub-division consolidation issues and that's where the decisions regarding who is going to take what percentage or portion of the remnant will come to play. Staff will allow the applicant the option of proceeding with the Section 5 procedure if they come to an agreement based on the timetable. Chair Thielen asked for the timetable that the applicants come to agreement in a month. Then they have the option to proceed, or if not, go to a sealed bid. She suggested adding a new section where the parties would have the option to proceed with sale in accordance with Section 5 provided they can come to agreement with the terms of the sale for that parcel within 30 days. Mr. Di Meo said he is not opposed.

Member Gon moved to accept staff's recommendation as amended. Member Agor seconded it.

**The Board:**

**Amended staff's recommendations by amending the introductory paragraph for Item 6. to read: " Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of Section C to the successful bidder as mentioned above, or to both of the abutting adjacent owners provided they are able to agree on the manner in which Section C will be apportioned between the between themselves within 30 days from the date of the Board's approval this action, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:". Otherwise, the Land Board approved staff's recommendations as submitted.**

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

**Item D-1 Cancellation of Governor's Executive Order No. 4261 to Hawaii Housing Finance and Development Corporation for Future Housing and Housing-Related Development Purposes, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-009: 06, 07, 08, 09 and 1-9-010: 03.**

Mr. Atta reported that subsequent to the issuance of the executive order Hawaii Housing Finance and Development Corporation (HHFDC) went out to seek proposals and got a developer, Kauai Habitat Humanity, but afterwards the developer came back and said they didn't want to do this at this time because of the risk to their resources where the developer pulled out and asked the State to take back the property.

Beth Malvestiti was here to answer any questions.

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

**Item K-1 Conservation District Enforcement File OA 09-21 Regarding Alleged Unauthorized Shoreline Structure Within the Conservation District by Richard W. Barrett Located on Submerged Lands, Waimanalo, TMK: (1) 4-1-001:009**

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) informed the Board that staff brings this alleged violation before them because it appears that Richard Barrett placed tree remnants, boulders and fabric/netting along the shoreline portion of his property. He referred to page 2 on the history chronology regarding prior unauthorized actions, the attempt to resolve these actions. Eventually, there was a shoreline certification by the Department which indicates a clean slate, but things began to happen after that with complaints and on-going investigations where there was substantial amount of work done on the shore fronting Mr. Barrett's property without authorization noting the picture exhibits.

Mr. Lemmo also warned that staff will be bringing more of these cases to the Board in the future. The Department's jurisdiction is from the shoreline running seaward. Shoreline is defined as the upper reaches of the wash of the waves. If you are looking for the legal basis for re-zoning you would have to look at Land Use Commission rules and regulations HAR§151520 under standards for determining conservation district boundaries. They determine the boundaries of all the State land use districts. Under the rules it says that conservation lands shall include lands having elevation below the shoreline as stated by 205(a)1 which essentially provides for the definition of a shoreline. Our zoning authority, or at least the areas the Department is responsible for managing comes out of those LUC rules. In this case, staff is enforcing because someone has committed a land use in the conservation district. Our land use is defined in Chapter 13-5 which is our Administrative Rules as the placement or erection of any solid material on the land - grading, dredging or removal of any material or natural resource on land or the construction and construction demolition/alteration of any structure building facility on land. Placement of boulders and materials constitute a land use. Under our rules Mr. Lemmo referred to Section 13530(b) which states unless provided by the chapter no use shall be conducted in the conservation district. Essentially the rules say that the use has to be provided for in the chapter. Finally, in Section 13-2523(1)5, shore protection is an identified land use in the rules and you can apply for a permit for shore protection, but this was not done and that is why staff is before you today. Furthermore, we have policies in place. The Hawaii Coastal Management Plan approved by the Board under

prior leadership essentially sets up some of the objectives and policies for protecting our beaches. The Board adopted a no tolerance policy back in 1999 for unauthorized shoreline structures – namely referring to sea walls, rubble and revetments. Essentially, the policy position at that point was that if you install an unauthorized shoreline structure, a shoreline erosion structure, you will be asked to remove it. He would like the owner to come up and explain his situation. But, essentially, this is a violation and staff would like to assess a penalty and staff would like to see removal of the material. The penalty recommended is \$15,000 which is the maximum under the current conservation district laws. Staff is recommending administrative penalty of \$700 for a total penalty of \$15,700. Condition 4 seeks removal of the materials and then some follow up to see if there has been some compliance. If there isn't compliance, further penalties are possibly assessed.

Member Edlao asked whether Mr. Lemmo knew what the cost would be to cure and he explained assuming if you can get access to Mr. Barrett's land it would require some heavy equipment. Mr. Lemmo doesn't know how long it would take to do the work, but he does know hiring any kind of heavy equipment is expensive. Member Edlao wondered if they should go for the maximum fine and the hiring of heavy equipment could be substantial.

Member Pacheco asked whether the property owner is responsible for removing trees from a storm that was left there and would that be a violation. Mr. Lemmo said it didn't happen that way with the owner cutting the tree up and using it as part of the shoreline structure which makes the owner responsible. Member Pacheco asked about the big chunk of tree - is there nothing that requires removal. Mr. Lemmo said that is a liability issue. Chair Thielen recalled there is something when things go on to a public right-of-way, maybe a county level ordinance, but she didn't know on the state side for going on the property. But, there was a situation awhile back where there was a structure that was eroded and washed into the water that staff asked the owner to remove because of public safety concerns. There maybe something there, but this, the tree is one thing. Member Pacheco understood the tree situation.

Member Pacheco asked what aspects of this case made staff decide on the top fine. Mr. Lemmo reminded the Board that the statute was changed recently to increase the maximum allowable penalty from \$2,000 to \$15,000 and in the past staff always recommended under the old laws \$2,000 maximum penalty for these types of violations because the Department and the Board took a staunch position against unauthorized shoreline armory in the past which is considered a serious infraction of our State laws. The practice was to fine the maximum penalty in these situations. The maximum penalty now is \$15,000 and that is what staff is assessing and that is their recommendation to the Board. Staff is working on some penalty guidelines to provide more specific detail guidelines for assessing penalties in the future, but he didn't have a problem with recommending the maximum penalty in this case.

Member Gon asked whether the owner could have come before staff for a shoreline protection permit for the appropriate action and staff would approve it. Mr. Lemmo's

response was the owner could have applied, but what the staff's action would be, he couldn't say. Staff may recommend not giving a permit. Member Gon said or that the actions proposed would have been inappropriate and would have counter proposed some appropriate action which Mr. Lemmo agreed saying staff would always want to recommend providing alternatives in these situations and there are some.

Member Edlao asked whether there was a process if there was a safety issue with erosion, a homeowner could come in to stabilize his property with permits. Mr. Lemmo said that the Department has a practice in place that if a person's home is immediately threatened by erosion staff will give them an authorization for temporary protection to stabilize the situation. Temporary in nature by using large sandbags and now we've moved into biodegradable sandbags to make it temporary in nature until a permanent solution is found. Member Morgan asked and a permanent solution is usually granted in the case where there is significant property under threat. Mr. Lemmo said staff has issued authorizations for emergency protection. A lot of temporary structures that are still in place protecting peoples' structures and those haven't come up seeking permit resolution.

Chair Thielen noted in the owner's letters that there doesn't seem to be a danger to the house, but a tree fell and the owner needed to do some minor grading for public safety on the beach. The landowner's letter says all work was done within the shoreline survey on the private property, but she asked, looking at the pictures, whether all the work was done within that shoreline survey or was it encroaching into the public beach area. Mr. Lemmo's response was that staff didn't go out and do a legal survey of the place and he couldn't answer that question. There is no house on the property and the Board referred to photo 10a.

Member Agor asked regarding the history was there an initial violation where the owner was confronted with what he could or couldn't do. Mr. Lemmo said he couldn't recall the specific conversation at the initial violation aside from what is stated in the chronology history.

Rick Barrett, the landowner, distributed a packet with letters, photos and a drawing survey and testified that this property is his first residence in Hawaii that all his neighbors have some form of erosion control and his is the only one that doesn't. He moved here because of the beauty, that it is a privilege to live here and he considers himself a safe keeper of the beach cleaning up trash and plastics that wash up everyday. After he obtained a shoreline survey he was told to remove his two stairways gaining access to the beach which he removed promptly. At that time, he elected to remove the ironwood tree that had fallen over onto the beach during a winter storm before he purchased the property. Mr. Barrett relocated the toe of the slope and temporarily put mesh and sand to fill in the hole left from the removal of the tree. His motivation was to get rid of the dangerous nuisance on the beach, increase the public right-of-way and protect and beautify the slope from undercutting with native vegetation. It was never his motivation to increase his land or to make a permanent structure like many of his neighbors. All the work was done within his property and behind the vegetation line where he tried to be respectful and sensitive to the public land. By removing the tree he decreased the

vegetation line and increased the public beach. Mr. Barrett asked the Board to refer to the photos from before the work, the current conditions and shoreline survey. He realized his mistake and humbly apologized saying at the time he was unaware a permit was required which is no excuse, but he was comparing his neighbor's response to coastal erosion and thinking that he was making the right ecological and sensitive choice by not building a permanent structure. Mr. Barrett now understands why and what he did was wrong.

In regards to the violations, Mr. Barrett wanted to discuss each one. The tree, he removed the root ball and left the trunk of the tree at the toe of the bank. Because of its weight it was difficult to remove. He believes the tree gives the slope some protection and is natural to the beach. It can be removed, but not without difficulty requiring heavy equipment. The sand that he had deposited on the slope has since washed away. The netting was temporarily installed to help the landscape be established where Mr. Barrett has removed some of it and continue to do so. Because there are sea walls on either side of his property it makes his property vulnerable exacerbating the erosion of the slope. The netting and landscape has helped stabilize the slope. The rocks are buried in the sand and are natural to the beach. In the winter the sand is washed away and the rocks are exposed. He unburied some of the larger rocks and relocated them to where the stairs and tree was removed and encased them in sand so landscaping could grow noting the pictures with the rocks and the old stairway prove that the rocks were there. He did not bring foreign rocks to the beach. In the exhibit 4 photo it shows synthetic material at the toe of the slope which is not from his property, but from his neighbor's. In comparing the photos from the before to the current conditions we can agree that the beach is larger without obstacles and the slope looks better with native vegetation for protection. Mr. Barrett asked for the Board's understanding and to consider the impacts removal will have. He will comply and respect the Board's decision and hopes they can come to a reasonable solution reiterating that he humbly apologized.

Member Morgan asked why he thinks it's gotten to this point. Mr. Barrett explained when he first purchased the property his neighbor had cut down 30 trees while he wasn't there and because of that he went into a law suit situation with the neighbor which was an unpleasant situation and he had reported that his neighbor built a rocky revetment on the beach causing his slope to cut back while his neighbor's property is sticking out. Mr. Barrett had asked the neighbor to remove the revetment wall and because of that this is the neighbor's way to retaliate by bringing this before the Board. Mr. Barrett understands what he did was wrong that he is not making any excuses and he takes responsibility. That is why this is here and he doesn't think what he did was justifiable. He hasn't built any structures reiterating the removal of the tree, relocating the rocks and putting sand on the beach, but he understands the sand and netting is not cool for the landscaping that he didn't know about it at the time and is willing to take that out which is all he can offer and apologized. Mr. Barrett reiterated how he expanded the beach by 20 feet referring to the photos noting how kids were getting hurt playing on the tree and that the beach is cleaner. His work on the beach has been a benefit referring to his neighbor's letter and his letter to Dan Polhemus saying how he can protect Hawaii's reefs.

There was some discussion with the photos and the vegetation line. Mr. Barrett said the vegetation line is where the root ball was per the certified shoreline surveyor, Wes Tengan. There was more discussion about the current vegetation line which was not out 20 feet. Mr. Barrett explained prior to the 2003 storm the property extended out another 15 feet and with the new shoreline survey done in 2007 the property line was adjusted inward toward the mountain. There was some discussion about the dates of the photos – November 2007 and 2006. Mr. Barrett had purchased the property which stayed vacant for two years and reiterated his earlier testimony about taking the stairway and tree out.

Chair Thielen noted that Mr. Barrett said he had no knowledge about the permit, but he had prior discussion with the Department when they asked for the stairway removal, having to get the shoreline certified in January 2007 then several months later he is doing significant work with a backhoe and she asked how can he say now he was not in discussion with the Department about that. Mr. Barrett said he was never in discussion with anyone from DLNR that his architect handled all of this obtaining the shoreline survey. Chair Thielen asked but Mr. Barrett was aware that he was paying the architect fees that somebody he is hiring is in discussion with the Department to get a shoreline certification that he has been put on notice to remove structures from the shoreline. How is it that he is telling the Board today that in November 2007 after going through all that work and expense that he didn't have an understanding that going and placing rocks, bringing backhoes and shoving sand over along the property edge of the beach would not require some type of permitting when all these earlier work he had hired professionals and had gone through a permitting process. Mr. Barrett said his feeling was he was not building a sea wall or building a stairway he was relocating some rocks and landscaping and he didn't think that was necessary to have a permit. But, he understands that now. The Chair said her concern was that when you go through a process where you hire an architect to do a survey you would not go and do this type of activity on a property adjacent to another private property owner without being absolutely certain where that property line is and part of the purpose of getting a shoreline survey is to make sure that if you are doing improvements on that boundary of your property you are not going into the public beach area. And, because Mr. Barrett chose to go ahead to do that work without going through the permit process while he sitting here today that everything took place on his private property we have no certainty that is the case and he had just gone through that permitting process months prior of hiring an architect and a surveyor. The Chair finds it difficult to accept the fact he is bringing in a backhoe to move large boulders and placing things at the border of his property, possibly in the public lands or possibly not and to say he didn't think he needed some type of permit. Mr. Barrett explained that the backhoe was there to demolish the house at that time and because he had the equipment there he had the rocks moved apologizing for his mistake and accepts the responsibility.

Member Edlao asked whether Mr. Barrett is in acceptance of the recommendation where Mr. Barrett said that the recommendation says he brought in foreign rocks and that he encroached on to the public beach. Member Edlao said his question refers to the fines. Mr. Barrett said the fines are excessive and would be a burden for him compounded with whatever other actions that the Board may take and asked to reduce the fine. His biggest

request is for the landscaping to stay. Member Morgan asked in a hypothetical situation Mr. Barrett would pay the fine and leave the landscaping as is would he accept that which Mr. Barrett said he would referring back to the photo with the old stairway with the rocks behind it.

Mr. Lemmo said that his concern is if you look at the initial pictures from May 2009 it looks like the shoreline has kind of stabilized. The erosion event has passed for the time being that is why the vegetation is growing again things have been covered up to a certain extent. If you go back in time, yes, Mr. Barrett had a shoreline certification in 2007 and maybe there was an erosion event that happened after that causing Mr. Barrett to take action and put materials on the shoreline.

Mr. Lemmo's concern is the large rocks which were handled pretty seriously by the backhoe which is evidence of rocks being repositioned or brought in and placed on the shoreline. Mr. Lemmo doesn't know where the rocks came from or evidence whether they were trucked in, dropped or dragged in from some other place along the shoreline, but they have been placed in a manner of a revetment type structure. His concern is these are the rocks that will need to be removed. Mr. Lemmo's objective is not in hurting or penalizing people – his objective is compliance. A lot of times in these cases if you get compliance the fine is not a big thing - he wants compliance. Obviously, going in to remediate that is going to be a big expense for the landowner and that is huge already. If you make Mr. Barrett do that it sends out a message, if you do that you will have to remediate it and people will behave referring to the boulders in exhibit 6 which are buried and overgrown looking at exhibit 7.

There was some discussion about the log in exhibit 7 referring to exhibit 6.

Chair Thielen said that it sounds like Mr. Lemmo's preference is rather than waiving the removal and keeping the fine his preference would be to have these boulders removed and the fine is less than an issue and Mr. Lemmo agreed.

There was more discussion about moving the rocks where the Chairperson noted that the pictures of the rocks on the beach are all black rocks. The rocks in exhibit 6 do not match the rocks on the beach and again, this is the problem with going through and doing the work without a permit, without the discussion before the fact and we are left with what is available. Mr. Barrett pointed out the rocks in the photos and insisted they are the same rocks where the Chair said they do not match. Mr. Lemmo had the Board look at Exhibit A in the submittal and explained that this is an intentional, crude attempt to build a shoreline structure. The rocks were placed in a certain line and were placed away from the slope and the slope was backfilled. This is what Mr. Lemmo would like to see removed which is the violation. Mr. Barrett agreed that Mr. Lemmo is correct and said that everything has gone back to its natural state. There was more discussion about the rocks that it would be hard to determine if it is the same rocks because they have settled.

Member Edlao mentioned that shoreline hardening is an issue on Maui as well. Mr. Barrett said that this is a windward shore and last winter there were 90 mile an hour



winds where the waves came over the bank and into the yard and into the house making it inhabitable.

Member Edlao asked Mr. Lemmo if Mr. Barrett removes the rocks and tries to scale it as best he can because it would be a tremendous cost to get it back to where it was and Member Edlao agreed with Mr. Lemmo that he doesn't like the rocks there because they are not the same rocks and he presumed those rocks were brought in as an attempt to armor the shoreline whether Mr. Barrett knew to get permits or not. Member Edlao asked if we remove the rocks and the tree stumps how would Mr. Lemmo feel about that. Mr. Lemmo agreed those rocks and trees are a concern. Chair Thielen asked while the shoreline is stabilized now is the concern if there is a future erosion event this hardening is going to be a problem then that it is going to affect the shoreline. What is the concern that it's buried now? Mr. Lemmo answered saying since the shoreline is stabilized, apparently, removing stuff shouldn't be a direct cause or threat to the property. There maybe some initial bank loss by taking materials out, but in terms of the active erosion it appears not to be an issue now. Theoretically, there is no need for the structure Mr. Barrett put in. This is a matter of law. Mr. Barrett put the rocks in without an authorization - he apparently knew he should get some kind of approval or authorization but he didn't do it. The walls and rocks around his property are being investigated because they are non-conforming and have been put in place a long time ago. Mr. Barrett came along and needed to do something to protect his property, but he didn't comply with law and Mr. Lemmo's duty is to enforce on those matters establishing a system that we are not tolerant of this kind of thing. Now, if Mr. Barrett takes the rocks out he can come back. If there is a problem, staff can investigate alternatives for protecting Mr. Barrett.

Chair Thielen asked what the appropriate response to the violation is. Is it not because of a concern that this will cause an underlying problem - is that right? Mr. Lemmo noted that the whole shoreline has armoring on it. Mr. Morgan said it seems to him that removing the rocks would destabilize the shoreline more than leaving it there. Mr. Lemmo said there is no threat now and the rocks shouldn't destabilize the shoreline. Member Pacheco asked what he means by no threat now where Mr. Lemmo clarified that the erosion events are not a problem at this time in that beach area right now.

Chair Thielen asked it's a matter of what is the appropriate response for the violation of the law. Mr. Lemmo remarked that there maybe cases like a structure were placed by the property owner and he should be fined because it was willful. Mr. Lemmo emphasized, AND, you can't leave it in because it will damage the resource incredibly. The Board commented that this is not the case here. Mr. Lemmo commented that this resource is already damaged.

Member Edlao asked if the boulders are removed will it cause further problems where Mr. Lemmo said at this time it looks like it will not create further erosion on Mr. Barrett's property because the shoreline has stabilized. Member Edlao asked if Mr. Barrett leaves the rocks is it ok. Mr. Lemmo answered in the negative saying that as a matter of law, Mr. Barrett broke the law and the policy is no tolerance and he is saying

implement the policy which means removal. Member Edlao agreed reiterating it will take money to remove the rocks and the tree could stay since it was already there. He suggested reducing the fine to \$10,000 and have Mr. Barrett remove the boulders and leave everything else.

Member Pacheco said he is confused that the beach area is stabilized because the revetment is in place or are we talking about the whole area and what is going on with erosion in general with the whole area. Mr. Lemmo replied saying that beach area is not stable because of the structure. It appears the reason the structure was in place by Mr. Barrett was because there was an erosion threat in the past probably in 2007. Storm events are cyclical, areas erode, for some reason there was an erosion event. Mr. Barrett armored the shoreline and based on the photographs everything covered by the naupaka is going down and it looks like it's not suffering from erosion at this time. If it were suffering from erosion we would see more of the rocks, some of the vegetation torn out by the ocean, etc. It appears to be in a stabilized period rather than erosion like before. Taking the structure out of the bank may become a little less stable and erode a little bit. But, it won't result in Mr. Barrett suffering shoreline erosion any more, for the time being because the shoreline is not in an erosion phase. Chair Thielen summarized that this act is not creating further damage to the shoreline therefore what we have before us is a policy choice by the Board, the appropriate response for a violation of the law and removal is an option, fines is an option and a combination of the two is an option.

Member Morgan commented that it seems like the status quo is not threatened or anything. There was an opportunity for a bigger fine, but there is none since there will be less of an impact to the environment in general. Member Gon agreed saying that because the way this beach is depositing sand over the existing rocks part of the year and takes away during part of year depends on what year you would need to work to identify which rocks were the ones put in place in order to remove them. Assuming it's the sandy period right now, you couldn't go in digging through a whole mess of sand to find those boulders and where they've been placed. You would have to wait during the rough time of year when the boulders are exposed in order to move those boulders. And, he wasn't aware what those erosion consequences would be. If it were Member Gon he would impose the fine and would not try to remove the boulders.

Member Agor said the problem he finds with this is people will look at this saying I won't get fined \$15,000 and these people will do it and take the fine and if we set a precedence that type of thinking will continue which has happened. Member Pacheco said he thinks that was the case when the fine was \$2,000. The current fine is a significant amount.

Member Pacheco asked wanting to know whether the Board is making the beach better by removing all the rocks and stuff and some of the Board wanted to know that too. If we are not making it better then he would rather not remove the rocks. How does the Board do the best to the beach at this point in time? Are we improving the beach by taking that stuff out of there? A little bit was Mr. Lemmo's reply because anytime you have rocks and debris on the shoreline it's not to the benefit to the beach at all it's to the

benefit of the landowner. If we do go into an erosion phase this stuff will be exposed and cause the beach to narrow, pinch the beach out and its also locking up all the mauka sand which is no longer available for the beach. There is a small impact. Chair Thielen pointed out that we need to be fair on this that the property is between two armored areas and what Mr. Lemmo is saying is correct that it is to the advantage of the land owner to have that there, but what impact it will have to the broader beach you have to look at the circumstances around it. But, she is going to flip sides on that argument that what Member Agor said is true. You talk about a fine now of \$15,000 what if this pushed out two feet into the public beach, what if what Mr. Barrett has done is taken two more feet and privatized it and this is a 310 foot stretch of property times 2 feet, what is the property values in the State of Hawaii for 600 square feet of beach front property. As the Chairperson one of the biggest problems for doing this is you know if you were building a wall or doing whatever construction on your private property and you had a neighbor adjacent to you, you are not going to be dumping boulders unless you know the exact survey of where your property line is and we don't know whether if this was also a taking and encroachment on the public lands. For the Chair the \$15,000 is not serving as a deterrent for this type of beach front activity and that is why the Board in the past had taken a firm line on the removal because it is a cleaner step to say these are public trust areas and you cannot just go and put what you want here without going through that process.

Member Pacheco asked a certified shoreline is that what is going on with this property value where the Chair said we don't know because Mr. Barrett did the work without a permit. Looking at the pictures she can't tell where that shoreline is and we don't know if it went beyond the boundary line and into the beach area which is one of her bigger worries. How do you respond to these types of activities – unilaterally done along the beach line and then come in after the fact when there is no way to reconstruct where that boundary is?

Member Edlao changed his prior motion and moved to accept staff's recommendation and Member Agor seconded it.

Chair Thielen summarize that we have a different approach by different Board members and it may be a discomfort to open it up for discussion to do both the full fine and the removal and some Board members are more comfortable with a full fine and no removal and others with removal, but the motion includes the full fine for discussion purposes to see if there is a middle ground with the Board members. She is leaning more to the removal just to keep that point firm in people's minds that you cannot build along this beach area without going through the permitting process, but she would be open to some reduction in the fines which is not going to be a simple process to do. Member Edlao said he is open to a reduction in the fine including the removal of the rocks which Member Agor supports.

Member Pacheco asked if there was a possibility for an after-the-fact permit if Mr. Barrett were to leave the rocks in place. Chair Thielen said the action is for removal which Member Pacheco said his point is if we make him move this out he will come back

to try and get a permit to put something back in place that is already there. Member Agor said it wouldn't be similar. It would probably be a hardening or hardened wall not just placing boulders. Chair Thielen said it may have to be placed further back on its own property. Member Pacheco asked that when the tree fell over no one decided to remove that it would just be sitting there today, right? Member Edlao concluded as far as he was concerned the tree was there before and he wasn't worried about that. It's the boulders. Member Pacheco said that the sand will disappear when the winter swells come and the rocks are under the naupaka referring to Exhibit 7. Mr. Lemmo said it's deceiving because it could be 10 feet of naupaka, but if you look at Exhibit 10b you can see the base of the log in that photo where the naupaka is crawling over it.

Member Morgan agreed it may be worthwhile to consider leaving the rocks the way it is realizing it's not part of the suggested motion but to consider the after-the-fact reiterating taking it out and putting it all back in again if there is an erosion problem and asked in order to get that you would have to prove if its necessary. Chair Thielen asked what message would you be sending to landowners in that case. If you want to armor your shoreline – do it and come to the Department after-the-fact and pay a \$15,000 fine. In some cases people may extend their property boundaries and that's what is in front of us. There was action taken because we don't know what happened. Now you have the pleasure of deciding what the response of this group is. Do you do a fine? Do you do a removal? Granted this person might come back later.

Member Edlao suggested calling for the vote and see what happens and if that fails we move on to something else and the motion is to accept staff's recommendation as is with the \$15,000 fine. Chair Thielen asked for the vote.

Ayes – Members Edlao and Agor

Nays – Members Pacheco, Gon and Morgan

Motion fails.

Member Morgan moved to accept the recommendation for the fines, but not to remove the encroachment or material. The Chair summarized that it's a motion for a \$15,000 fine, \$700 administrative cost and not to do the removal. Is there a second? There was a motion and no second.

Member Pacheco moved to amend recommendation 1 for a fine total of \$9,500.00 and to amend recommendation 4 to read "...shall remove the boulders and geotextile fabric..." Member Agor seconded. Chair Thielen summarized that we have a motion for a \$9,500.00 fine, \$700 administrative cost and removal of the boulders and the fabric. All Board members voted in favor. Motion passes.

Chair Thielen explained to Mr. Barrett that under Hawaii Law if he wants to request a contested case hearing for the Board decision he will have to make a verbal request at today's meeting and file a written request within 10 days of this Board date. That would be an administrative appeal process that is set up under the administrative procedures act that you would go into a hearing with a hearings officer and he can contest the Board's decision and go through that hearing process and a recommendation would come back to

the Board and the Board would make its decision and subsequent appeals would be through the court system.

Mr. Barrett asked about taking away the boulders that were already there. The Chair referred to the boulders in Exhibit 6 suggesting that Mr. Barrett work with staff on the removal process and doing the payments.

**The Board:**

**Moved to amend staff's recommendation 3 by reducing the total fine amount of \$15,700.00 to \$9,500.00 and deleting [tree remnants] from recommendation 4.**

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

**Item L-2 Approval for Award of Construction Contract for: Job No. F61C626A, Waahila Ridge SRA Entry Road Improvements, Honolulu, Hawaii**

Eric Hirano for Engineering Division reported on the award background and that he had no changes to the recommendation.

Barbara C. Miller and Reverend Wayne W. Gau from St. Louis Heights Community Association spoke saying they were present to answer any questions.

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

**Item L-1 Approval for Award of Construction Contract for: Job No. 500BK54E, Stream Mouth Maintenance at Various Locations, Kauai, Hawaii**

Mr. Hirano said he had nothing to add.

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

**Item M-1 Issuance of a Massage Chair Concession Agreement to Smarte Carte, Inc. at Honolulu International Airport., Hilo International Airport, Kahului Airport, Kona International Airport at Keahole and Lihue Airport**

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

**Item M-2 Extension of Lease, Issuance of a Supplemental Lease Agreement No. 02 for the Extension of Lease No. DOT-A-03-0003 [GSA Lease No. GS-09B-10003 (LHI10003)] Honolulu International Airport**

**Item M-3 Issuance of a Hangar Facilities Lease to John F. O'Toole Kalaeloa Airport, Island of Oahu, State of Hawaii**

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

**Item C-1 Request to Conduct Public Hearings Regarding Designation into the Natural Area Reserve System Unencumbered State Lands at Ilio Point, Island of Molokai, and Kahaualea, Island of Hawaii**

Randy Kennedy representing Division of Forestry and Wildlife communicated the request background that staff recommends the Board grant permission to conduct a public hearing on Molokai and on the Big Island to authorize the Chairperson to set the dates and times for the respective public hearings and to appoint a hearings master to the respective public hearings. Emma Yuen from DOFAW and himself are available to answer any questions.

Member Gon commented that he enjoys the idea of the expansion of the natural area reserves system and hopes that as the State recovers that the funding for the necessary management for those places comes back on-line and the priorities they need to receive.

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

**Item C-2 Request for Approval of Expenditure of Funds and Authorization to Negotiate and Sign Contracts to Implement the Watershed Partnership ARRA Projects**

Member Gon recused himself.

Mr. Kennedy said staff requests approval and read staff's recommendation. Lisa Faritino, DOFAW's Watershed Planner and he are available for any questions.

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

**Item D-2 Issuance of Right-of-Entry to the United States Army Corps of Engineers for Survey and Investigation of the Former Popoki Bombing Range at Makuu, Puna, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 1-5-10: 03.**

Mr. Atta requested a withdrawal because the Army Corp wants to coordinate all the investigated ROEs and this one happens to be one of them.

**Withdrawn (Pacheco, Agor)**

**Item D-5 Consent to Mortgage with Estoppel Certificate, General Lease No. S-4610, Kamana, Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 2-4-056: 022.**

Mr. Atta requested to amend one of the recommendations. The AG review turned up a question - whether or not the language of the consent would conform with their standard consent language and concluded it needed some amendment. Staff wants to change Item A.2. to read "The terms and conditions of a consent to mortgage form approved by the Department of the Attorney General;"

**The Board:**

**Amended the staff's recommendations by amending Item A.2. to read: "Terms and conditions of a consent to mortgage form approved by the Department of the Attorney General;" Otherwise, the Land Board approved staff's recommendations as submitted.**

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

**Item D-3 Consent to Assign, General Lease No. S-4333, Hawaiian Fruit Flavors, Inc., Assignor, to Kawika Ohana, LLC, Assignee; Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-2-37:56.**

**Item D-6 Issuance of Right-of-Entry Permit to Kohala Watershed Partnership on Lands Encumbered by General Lease No. S-4474, Parker Ranch, Inc., Puu Kawawai, Panoluukia and Kapia, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-2-01:15.**

**Item D-9 Grant of Perpetual, Non-Exclusive Easement to Hilton Hawaiian Village LLC, for Maintenance Purposes, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portion of 021.**

**Item D-10 Approval of Lease with the City and County of Honolulu on behalf of the Hawaii State Public Library System for Access Purposes, Manoa, Honolulu, Oahu, Tax Map Key: (1) 2-9-023:024 portion.**

**Item D-11 Cancellation of Revocable Permit No. S-6973 to Richard Furtado, and Issuance of Revocable Permit to Cheryl McConnell and Wesley Furtado, Waimanalo, Koolaupoko, Oahu, Tax Map Key:(1) 4-1-013:022.**

**Item D-13 Issuance of Revocable Permit to Fireworks by Grucci, Inc. for Aerial Fireworks Display at Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-057:seaward of 017.**

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

**Item I-1 Request Approval to Authorize the Chairperson to Sign a Contract with Kauai County for their Certified Local Government Program to undertake Historic Preservation Projects on Kauai and to Delegate**

**Authority to the Chairperson to Sign All Future Certified Local Government Grant Contracts.**

State Historic Preservation Division (SHPD) Administrator, Pua Aiu communicated she had no changes and was here for any questions.

Member Agor asked for clarification whether everything to do with Kauai will be referred to a Kauai delegation. Ms. Aiu explained that SHPD gets a Federal grant from the National Park Service annually around more than \$500,000. Part of the requirement is SHPD passes 10% of that money to a certified local government which has to be a municipal government. We only have two in the State of Hawaii – Maui and Kauai. This year Kauai is getting the grant and the Board needs to approve it, the Chairperson to sign it and for all future CLG contracts approved by the Chairperson to sign it. Chair Thielen asked what does the County do with the funding. Ms. Aiu summarized they do inventory work, archaeological work, but mostly to upgrade their inventory. Member Agor asked whether the County takes over SHPD's decision making which they don't per Ms. Aiu and she said it allows SHPD to move some of what they do to the County so that staff is better able to handle it and allows the County to decide what is best for them. The Kauai Historical Preservation Council is the entity that oversees this. Chair Thielen said but the idea would be say Kauai as a CLG wanted to work on design guidelines for historic areas and they could start to build on that capacity and take more of that on.

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

**Item J-1 Approval for the Award of Contract IFB 09-004-06, Mooring Buoys and Mooring Hardware**

Ed Underwood, Division of Boating and Ocean Recreation (DOBOR) Administrator, reminded the Board had approved an award of contract for buoy maintenance and explained but when staff went to the AG's Office they noticed that staff had swapped it with the low bidders and staff needed to do housekeeping to swap it back the other way. CWR should have been the low bidder for the mooring components and Pacific Ocean Producers should have been the low bidder for the buoy components.

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

**Adjourned (Gon, Morgan)**



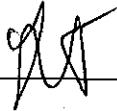
There being no further business, Chairperson Thielen adjourned the meeting at 11:35 a.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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Laura Thielen  
Chairperson  
Department of Land and Natural Resources