STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawaii 96813

January 27, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawai'i

PSF: SP1101001

O'ahu

Cancellation of the 2004 Request for Qualifications/Request for Proposal (RFQ/RFP) and request for authority to take action – including eviction if necessary - against present occupant at public recreational facilities at Mālaekahana State Recreation Area, Kahuku Section. Request for Approval to Issue a Revocable Permit for Operation of Public Recreational Facilities at the Mālaekahana State Recreation Area. Approval to Issue a Request for Qualifications/Request for Proposal (RFQ/RFP) for the Development and Operation of Public Recreational Facilities at the Kahuku Section, Mālaekahana State Recreation Area, Lā'ie (Ko'olauloa), O'ahu, TMK: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65.

REQUEST:

1. Cancellation of the 2004 Request for Qualifications/Request for Proposal (RFQ/RFP).
2. Request for authority to take action – including eviction if necessary - against present occupant.
3. Request for Approval to Issue a Revocable Permit (RP) for Operation of Public Recreational Facilities at the Malaekahana State Recreational Area,
4. Approval to Issue a Request for Qualifications/Request for Proposal (RFQ/RFP) for the Development and Operation of Public Recreational Facilities at the Kahuku Section, Mālaekahana State Recreation Area, (MSRA) Lā'ie (Ko'olauloa), O'ahu, TMK: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65 (the "Property").

LEGAL REFERENCE:

Sections 171-16, 17, 35, 36, 41, 55, 59(a), 184-3(6) and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Kahuku Section, Mālaekahana State Recreation Area (MSRA), Lā'ie, Ko'olauloa, O'ahu, identified by Tax Map Key: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65, as shown on the attached map labeled Exhibit A.

ITEM E-2

AREA:

36.288 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban
County of Honolulu CZO: R-5

TRUST LAND STATUS:

The land was acquired after 1959. It is not ceded land.

CURRENT USE STATUS:

This Property is encumbered by Executive Order 3928 setting aside for control and management of the Department of Land and Natural Resources, Division of State Parks. The last entity with approval from the Board to occupy the Property was Lanihuli Community Development Corporation (LCDC). Its revocable permit expired in 2006.

CHARACTER OF USE:

Short term use of public recreational facilities including cabin rental, campground rentals and public day use beach park.

LEASE TERM:

With respect to a lease pursuant to an award with the selected bidder under the RFP/RFQ process, the lease term will be determined through negotiation with the selected bidder, subject to the review and approval of the Chairperson.

COMMENCEMENT DATE:

With respect to a lease as negotiated pursuant to the RFQ/RFP process, the date shall be determined by the Chairperson, through negotiation with the selected bidder. With respect to the issuance of a revocable permit, the commencement date would be determined by the Chairperson.

MINIMUM ANNUAL RENT:

To be determined by staff or independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

PERCENTAGE ANNUAL RENT:

Percentage of gross revenue from all sources within the leased premises, excluding State excise tax. Percentage to be determined by staff or independent appraisal establishing fair market rent, subject to approval by the Chairperson.

EFFECTIVE RENTAL:

The amount negotiated between the State and the selected bidder as determined by staff or independent appraisal, subject to the review and approval of the Chairperson.

METHOD OF PAYMENT:

Monthly payments, in advance.

RENTAL REOPENINGS:

At the end of every 10th year, as applicable to the term of the lease, the annual rent shall be reopened and redetermined subject to the review and approval of the Chairperson.

PERFORMANCE BOND:

Twice the annual rental amount.

MINIMUM IMPROVEMENTS:

To be negotiated with the selected bidder based on the investment required and duration of the lease, subject to the review and approval of the Chairperson.

IMPROVEMENT BOND:

An amount equal to the cost of the improvements.

RENT WAIVER:

The lease rental for up to one year may be waived based on negotiation and assessment of need for repair and improvements to existing state owned facilities, subject to the review and approval of the Chairperson.

PROPERTY CHARACTERISTICS:

Utilities – The Property is served by an existing water line which serves the entire Kahuku section. The awarded

	permittee or lessee will pay sixty (60%) percent of the water charges billed to the State Parks. Electrical service is separately metered and billed directly to the operator.
Existing Authorized Improvements-	Cabins, residences, office space and day use area restrooms.
Legal access to property –	Staff has verified that there is legal access to the property off of Kamehameha Highway.
Encumbrances –	Encumbered by Executive Order 3928 setting aside for control and management of the Department of Land and Natural Resources, Division of State Parks.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board pursuant to the RFQ/RFP process is merely for the authorization to issue a Request for Qualifications/Request for Proposals to select a lessee. This action does not, in and of itself, constitute a use of State lands or funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. The issuance of a lease pursuant to the RFP process will be conditioned upon the proposed lessee's compliance with all Chapter 343 environmental requirements regarding the lessee's proposed use of the property.

State Parks believes the request to enter into a Revocable Permit in the interim, prior to the negotiation of a lease, will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2 and 6 of the State Parks Exemption List which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].

REMARKS:

Summary:

The Kahuku Section of the MSRA, which is the subject of this submittal, includes 36.288 acres of beachfront land and was acquired through condemnation in October of 1980. It includes seven (7) cabin structures, a comfort station and other various structures used for the operation of a campground and is currently operated by LCDC dba Friends of Mālaekahana and is headed by Mr. Craig Chapman. The current MSRA management situation is the result of a complicated 15 year relationship involving both the management of the property and an

attempt to reach a long term lease agreement with Māleakahana Partners, a company also headed by Mr. Chapman. LCDC has been operating the Property for cabin rentals and tent camping for the last several years under a series of expired revocable permits. The result of a comprehensive review of the management situation includes the following;

1. The documentation of numerous unauthorized improvements and non-compliant waste management strategies;
2. Multiple Environmental Protection Agency and Department of Health violations;
3. The loss of state-owned property; and,
4. Delinquent payment of a portion of water charges.

State Parks is requesting a series of actions to bring the situation to a close and to prepare for an improved, long-term management plan. State Park's goals include compliant recreational development and stewardship, a more appropriate sense of place for the MSRA's public recreational resources and a more sustainable use of these important public resources.

1. Background of Management of the Property - Starting from 1994

In a June 9, 1994 Board meeting (Agenda Item E-4), a direct issuance lease was authorized to the Ko'olauloa Hawaiian Civic Club, a Hawai'i eleemosynary organization (KHCC), beginning June 1, 1994 with a scheduled termination date of April 30, 1997. On November 15, 1994, KHCC entered in to a management agreement with Friends of Malaekahana, (the "Friends") a subsidiary corporation of KHCC, to operate the Kahuku Section of the park.

In an August 23, 1996 Board meeting (Agenda Item E-4), the Division of State Parks (State Parks) sought approval to terminate the then existing lease with KHCC and issue a new lease to Friends. The Board deferred the matter. In a September 17, 1996 letter from Chairman Michael D. Wilson to the KHCC President, Ms. Gladys K. Pualoa, Chairperson Wilson explained the reason for the deferral was due to confusion as to whether or not it was KHCC's true decision to terminate the lease due to some apparent conflicts in testimony and a question about a missing signature on the letter requesting the termination.

In a November 8, 1996 Board meeting, State Parks sought approval of a request by Friends to terminate the lease to KHCC and issue a new 10 year lease to Friends. The Board approved the request with the amendment that in lieu of a 10 year lease, Friends was allowed to fill the remaining term of the KHCC lease.

In a December 12, 1997 Board meeting, a 3 year lease to Friends was approved subject to the Board's review of the lease conditions at a future meeting. However, no such lease was ever executed and information from the Department of Commerce and Consumer Affairs indicates Friends changed its name to Lanihuli Community Development Corporation.

In a December 14, 2001 Board meeting (agenda Item E-2), State Parks sought approval for a revocable permit for Lanihuli Community Development Corporation (LCDC), formerly known as Friends of Malaekahana, on a month to month basis under similar terms and conditions as the KHCC lease. As described in the minutes of the meeting by Ms. Ipolani Tano, LCDC's Chairperson, the purpose of the name change was to, "... broaden the scope of what their management team focuses on.". The matter was approved by the Board.

On August 8, 2002, RP02-01 was issued to LCDC at the rate of gratis. The RP required LCDC to conduct a Level One Hazardous Waste Evaluation and complete abatement/disposal work as necessary. The RP also required LCDC to provide a monthly activity report.

No record of either the evaluation or the report was received. Nonetheless, the RP was subsequently renewed by the Board at its meetings of 1/09/04, and 1/13/06

In September of 2003, a plan offering various development alternatives was completed by Wesley R.Segawa & Associates. The plan envisioned a mix of camping, picnicking and recreational structures as options for the park at an estimated cost of approximately 4.4 million dollars. The recommended alternative use included a mixture of tent and cabin uses with an anticipated 440 overnight users per day and indicated the requirement for an Environmental Assessment or EIS.

On December 12, 2003, Item E-2, the Board approved staff's request to "Issue, Evaluate, Accept and Select a Request for Qualifications/Request for Proposals to Develop, Operate, and Maintain Public Recreational Facilities at Mālaekahana State Recreational Area, Lā'ie, O'ahu through a public process.

In a January 9, 2004 Board meeting (agenda Item E-2) the Board approved State Park request to extend RP 02-01 to LCDC.

On February 6, 2004, RP0201 was signed by LCDC at the rate of gratis. The new document reflected changes to the agreement and among them was a payment plan for past due water charges.

On July 30, 2004, Item E-3, the Board approved staff's request to "Amend previous Board Submittal of December 12, 2003, (Agenda Item E-2)" by using expanded statutory authority under section 184-3(6)H.R.S. that grants powers to "Construct, and operate suitable public services, enter into contracts, leases or licenses for the construction or operation of any services, facilities, or conveniences... upon such terms and conditions as are deemed by it to be in the public interest" relating to the RFQ/RFP process.

On August 24, 2004, the RFQ/RFP process began with packages being made available to the public. In all, some 13 bid packages were issued in physical form. In addition, packages were available through the Internet. The RFQ resulted in 4 bidders being qualified to submit an

RFP. At the deadline for RFP submittals, there was only one applicant, Malaekahana Partners, LLC (MP), headed by Mr. Craig Chapman. Staff and the evaluation committee worked with the principals of MP on the RFP in an effort to have a park that will benefit the public interest and also satisfy the investment criteria of MP.

On January 26, 2005, State Parks sent LCDC a letter outlining deficiencies as a result of an inspection by staff regarding unauthorized improvements.

On March 21, 2005, then State Parks Property Manager, Jim Springer received an email letter from MP's Managing Partner, Craig Chapman indicating MP has not received confirmation of the Partnership as the selected qualified bidder.

On April 1, 2005, Property Manager, Jim Springer replied to Mr. Chapman's email and stated MP's proposal was inadequate, incomplete and otherwise fails to comply with the requirements of the solicitation, and further stated, "The Land Board will ultimately decide whether to approve or reject a bidder's proposal. If a bidder's proposal is approved by the Land Board, then that bidder is "selected" to proceed to the next phase of this solicitation—which is a six (6) month period to negotiate all of the terms and conditions of the Development Agreement and Lease. Unless an agreement is reached within this six (6) month period, and approved by the Land Board, all rights the bidder may have had to negotiate the Development Agreement and Lease will cease and terminate - effectively ending this solicitation. We hope this capsule summary helps you better understand the process for this solicitation. We would appreciate your informing us as soon as possible on whether your firm intends to supplement its current proposal (as suggested by the evaluation committee), or not. Upon receipt of this information, our staff will then be able evaluate the situation, and decide on an appropriate course of action."

On May 13, 2005, the Board considered staff's proposal for "Approval of Selected Bidder per Request for Qualifications/Proposal (RFQ/RFP) for Development, Operation and Maintenance of area" and revised the recommendation as follows:

1. Staff shall develop the assignment criteria for a third party appraisal with MP bearing the cost of the appraisal, staff to choose the appraiser. This appraisal will be used for the Development Agreement and negotiation of the lease terms and conditions.
2. Staff shall negotiate the terms and condition of the development agreement and lease by incorporating the community's recommendations obtained through the public process. The final recommendation of the development agreement and lease shall be brought to the Board for approval.

On June 21, 2005, the State Parks received a letter from MP, dated June 17, 2005 which concluded that MP could not proceed with "any discussions on the RFP Appraisal" until the community presentations were completed and the process approved by the Board.

On December 9, 2005, Agenda Item E-2, the Board considered the cancellation of the RFQ/RFP and Rejection of Responses in accordance with Request for Qualifications/Proposal for Development, Operation and Maintenance of the MSRA dated August 24, 2004 and authorization for re-issuance of a revised RFQ/RFP. After vocal opposition to staff's recommendations from various parties, the Board voted to defer the matter until the first meeting in February.

January 13, 2006. Parks Administrator Quinn submitted a request to approve the continuation of the RP on a month to month basis through 12/31/2006 provided if there were rental payment or non monetary defaults; the RP shall not be renewed. The Board approved the submittal (Agenda Item E-2). **This was the last RP renewal for LCDC.**

On a January 26, 2007, Board meeting, staff again sought approval of MP as the selected bidder. The Board approved staff's recommendations with two additional requirements. The Board directed that the matter be brought back for approval:

1. Once a development agreement was reached; and,
2. That the development agreement be made prior to lease execution subject to community and agency input through the EIS process.

On December 12, 2007, State Parks issued a letter to Craig Chapman, Friends of Malaekahana and MP to cease and desist all ground disturbing activities. The letter was in response to un-permitted construction of new park rental units, including grading and excavation within sand dunes.

January 31, 2008, letter from SHPD expressing concerns regarding possible Chapter 6E violations.

On March 1, 2008, MP produced a "Proposed Master Plan" delivered to State Parks . The plan included the Kalanai section as well and had an investment amount of $1.5 Million. It indicated the present capacity of the Kahuku section was 445 users per day.

On March 4, 2008 State Parks issued a letter to Mr. Chapman appending and referencing the above letter from SHPD. This letter requested a response from Mr. Chapman regarding the issues raised by SHPD, expressed concern that Mr. Chapman was implementing improvements without authorization and non-conforming to any plans, directed Mr. Chapman to cease all further development until such time as Board approval could be obtained, and requested an updated proposal/development plan.

February 13, 2009. The EPA inquired with State Parks staff on Mr. Chapman's contact information. Mr. Chapman had contacted EPA on an innovative integrated wastewater system to address the closure of the large capacity cesspools (LCCs) in MSRA.

February 23, 2009. Staff from State Parks and Engineering met with DOH – Wastewater

Branch staff regarding compliance issues raised by Mr. Chapman's disclosure of innovative wastewater systems to address LCC closure compliance.

March 18, 2009. Staff from State Parks and Engineering attended an inspection with DOH-Wastewater Branch and EPA staff to identify LCC and Individual Wastewater Systems (IWS) in the area managed by LCDC.

April 8, 2009. DOH issued its findings and notified State Parks that activity at MSRA is in violation of ten (10) unpermitted IWS and five (5) LCCs still in operation. DOH required DLNR to comply within 90 days. Subsequent meetings between DOH and DLNR staff were held and an affirmative action plan was proposed for compliance.

April 8, 2009. EPA issued its notice of noncompliance of the five (5) LCCs still in operation and required DLNR to comply with closure improvements.

April 22 and 27, 2009, DLNR submitted an affirmative action plan and subsequent revisions to correct and comply with the non-compliance issues raised by DOH. The plan identified various milestone dates where construction of stated improvements was to start in April 2012 and completed within six month to a year. This plan was also submitted to EPA to address the LCC closure issues.

May 27, 2009. LCDC registered the trade name, "Friends of Malaekahana", (hereinafter "FOM").

January 24, 2011. State Parks received a City and County of Honolulu Notice of Violation for grubbing and grading within the Shoreline Setback without a variance. The items pursuant to the notice were to be cured by February 21, 2011.

February 10, 2011. State Parks receives a written notice from Mr. Chapman that he was submitting a permit request to make landscaping improvements.

July 20, 2011. State Parks received an additional City and County of Honolulu Notice of Violation for grading on the property without a permit.

November 11, 2011. State Parks received a faxed copy of an approved grading permit and the Notice of Violation was cured shortly thereafter.

2. General Summary of Non-Compliance Issues

As stated, there are numerous Federal and State environmental violations that have been noted including non-permitted individual wastewater systems and improper use of existing cesspools.

There are numerous unauthorized "temporary' structures throughout the subject property that

have been erected for public use without State Parks' approval, Many were completed following a memorandum from Parks Administrator Quinn to Mr. Chapman, dated 3/4/08, which stated, in part:

> "...no further development should be undertaken without an accepted development plan approved by the Board. This includes, but is not limited to: road construction, cabin construction, new campsite/shelter development, comfort stations and sewage systems. The only approved activity which should be presently undertaken is maintenance of existing facilities. To reiterate the concerns expressed in my memorandum of December 12, 2007, absolutely no ground-disturbing activities of any kind shall be undertaken in the park until further notice."

To date, FOM has not complied with this request.

Additionally, it is clear, both from observations and statements made by Mr. Chapman, that a number of the unpermitted structures are being used as permanent or temporary housing for FOM staff, as well as persons whose employment appears to be unrelated to operations of the park. During a site visit on 11/15/11, an individual was observed inhabiting a structure within the park. When questioned about this situation, Mr. Chapman indicated that he was letting this individual live in the park until he could acquire a plane ticket to return to the mainland.

State Park staff inspections have noted that a portion of the property has been utilized for storage of items, including vehicles, boats and other watercraft, commercial tree-trimming vehicles and equipment, construction equipment and materials which appear to have no relationship to park operations.

As of January 5th 2012, past due water charges totaled $16,399 and the outstanding balance has never been lower than $8,000 for the past two years.

There is no evidence of fire insurance as required under the terms of the now expired RP. The 2004 RP which was continued through 2006 requires the Permittee to keep, "...government-owned improvements located on the Premises insured against loss by fire or other hazards, casualties and contingencies for the full insurable value of those improvements...."

3. <u>Property Loss and Status of Remaining Pre- Existing Cabins, Compilation of Unpermitted Structures</u>

Property Loss

Cabin 1. (Exhibit B) This structure, known as the Kawananakoa House, burned down on March 2nd, 2009. Of the houses that were on the property when the state acquired the land, this one was arguably the most historically significant. The suspected cause of the fire was an

electrical problem[1]. Although the expired RP required the permittee to insure all existing improvements against loss from fire, the occupant was carrying no such insurance at the time of the fire, and the State remains uncompensated for this significant loss to this date.

On March 16, 2009, State Parks Administrator Quinn directed Mr. Chapman not to build any temporary or permanent structures in the former Kawananakoa House location.

However, since the loss of this structure, LCDC then imported fill, covered the former concrete house foundation with approximately several feet of soil and rubble, constructed retaining walls, and erected five yurts within the former house footprint. Adjacent to the former house site is a pavilion built over the former lanai of the structure. Several facilities, incorporating metal containers, were erected at the site, including several which serve as new bathroom/ shower facilities and another serving as a makeshift kitchen. Wastewater and sewage from these facilities are disposed of in the existing cesspool in violation of EPA regulations. That bathroom/shower facility serves the 5 yurts located on the house slab as well as the 11 "grass shacks" in the vicinity. With the loss of the former single family dwelling, so was the loss of the grandfathered use of a cesspool to treat sewage at the site – which now illegally serves the multiple users via unauthorized restrooms and showers. This now constitutes a large-capacity cesspool. All new facilities, fill and retaining walls installed and constructed (est. 9) since the fire are not authorized by State Parks.

Status of Remaining Pre- Existing Cabins

The remaining pre-existing State cabins 2, 3, 4, 5 and 6/7 (a duplex) as shown in Exhibit B, have sustained a high level of decay. While temporary makeshift attempts by LCDC to prevent water leaking from the roofs occurred, the cabins are subject to neglect , lack of sustained upkeep, and a few specifc cabins are no longer in a condition suitable for public use. There have been complaints by the public regarding the condition of some of the cabins.

In addition, there are 4 other existing residences; the office, the caretaker's residence, (currently occupied at the rate of gratis by Mr. Chapman) and the FOM security house. One of the other cabins on the property – but separate from and adjacent to the area utilized for public overnight use, is occupied by a Division of Conservation and Resources Enforcement Officer in order to provide an enforcement presence in this area for additional nighttime security at both the Kahuku Section and the near by Division of State Park Managed camping area: Malaekahana – Kalanai Point Section.

Unpermitted Structures

There are several yurts and a variety of modified trailers that serve as temporary camping structures placed and rented without State Parks written approval, and in some areas the grades were also modified without State Parks or City and County pre approval. While these

1 Per site visit and discussion with Mr. Craig Chapman on May 5, 2011.

structures have appeal to various campers visiting from the Mainland and resident campers perhaps interested in a unique low-budget individual or group experience, these structures are not historically or culturally appropriate for MSRA. As an example, yurts are features with origins in Central Asia that have no connection to local Hawaiian culture or sense of place.

Unpermitted "Grass Shacks"

The 11 grass shacks were built and installed circa 2009 to the present without State Parks authorization. Soil fill with rubble was deposited within and atop near shore dune system, large boulders, and retaining walls were constructed without State Parks approval or DPP permits. One grass shack was in the County Shoreline Setback but has since been relocated. A county Notice Of Violation was issued for a portion of the deposited soil and rubble, and has subsequently been removed and relocated elsewhere on the property.

Unpermitted "Eco cabins"

There are 2 eco cabins and related infrastructure, constructed in 2007-8 without State Parks authorization, non-conforming with any designs previously submitted; and built without either a County building permit or State Parks review; septic system built without certification; grading and septic system excavated without Chapter 6E HRS compliance and appurtenant archaeological monitoring, subsurface leach field subsequently excavated and installed in direct defiance of a memorandum from administrator Quinn dated 12/12/07 which stated, in part, "...We hereby order you to cease and desist all ground disturbing activities until further notice. These activities have the potential to destabilize the dune system, undermine established trees and disturb archaeological deposits and/or burials. The mission of State Parks includes preserving and protecting our natural and cultural resources. There are significant compliance procedures which must be adhered to before undertaking the types of activities presently occurring at the property."

4. <u>Wastewater System violations</u>

The following cesspools are listed in the Environmental Protection Agency (EPA) letter as unauthorized large capacity cesspools:

CP4 (Associated with a Yurt)
CP7 (Associated with Cabin 5)
CP9 (Associated with Cabin 6 and 7)
CP 10 (Associated with various buildings shown as guest houses)
CP 14 (Associated with the LCDC staff housing)

In addition to the cesspools listed above, a cesspool on the site formerly occupied by the Kawananakoa House and currently serving as "Tutu's Hale" is also not in compliance.

The following are IWS's that have not been approved by DOH in regards to design and/or operation:
IWS 1 - IWS 2 (Associated with camping area)
IWS 3 (Larger system associated with Eco Cabins)

5. Water Charges

Under the terms and conditions of the 2004 RP, LCDC is responsible for its share of the water costs supplied by the Board of Water Supply Account #1162097-1027768 paid monthly on a pro-rata basis, 60% paid by the Permittee and 40% paid by the Board. As of January 5, 2012, the outstanding balance for these charges was $16,399. The account has carried an outstanding balance since August of 2008. On July 24, 2009, a credit was given to the State of $502.31 for a water leak from inside the State's side of the water meter by the Board of Water Supply. On August 3rd, the prorata share of that rebate was creditied to LCDC in the amount of $301.38.

6. Discussion

The Board on two separate occasions made an attempt to reach a long term agreement with Malaekahana Partners (MP). In the first instance in May of 2005, the Board approved the request to designate MP as the selected bidder provided it paid for an appraisal of the Property and obtained community input on its plans. **MP refused to proceed with the appraisal**.

On the second occasion in January of 2007, the Board approved MP as the selected bidder provided staff return to the Board with an executed development agreement, among other requirements. **No such agreement was reached.**

In a January 12, 2009 letter to State Parks, Mr. Chapman, on behalf of LCDC, advised State Parks that the MSRA Kahuku section generated over $400,000 in revenue in 2008. A significant portion of these revenues were derived from improvements that were either not authorized by State Parks or used in such a manner that violate State and Federal environmental regulations and standards. Because of this non-compliance, the State is in violation of these requirements and must regain operational control of the property to comply. In addition, because of the history of non-compliance, State Parks is not confident a long term disposition can be reached and a reasonable time period for MP to reach an agreement has long since passed.

Therefore, in light of the expired RP and the non-compliance history, State Parks believes there is no practical alternative but to regain operational control of the property, preserve the authorized existing improvements (cabins) and comply with EPA and DOH mandates to upgrade wastewater systems. State Parks intends, using the previous input from community outreach, to restore property to smaller scale camping experience (similar to how it was used in the 1990's) as outlined in the proposed action plan below.

In the interim, State Parks will seek to enter into a Revocable Permit with a to be determined organization to manage a more modest camping operation on a month to month basis and arrest the

decay of the cabins until a new management plan and an agreement is completed pursuant to a new RFQ/RFP.

2012 Proposed Action Plan

1. Regain operational control of the MSRA and ensure the removal of unauthorized improvements and closure of the LCC's pursuant to EPA and DOH regulations. The timeframe for this depends on the condition of the property based upon FOM compliance on aforementioned improvements.
2. Construct a single comfort station and IWS to allow for existing tent camping. This facility will provide bathroom and shower facilities existing uses only. There are now Capital Improvement Program funds that have been appropriated to State Parks for this purpose.
3. Asses the condition of the existing cabins and determine if and how they can be renovated or restored. Make repairs either with contractors or via a new permittee as required to bring the cabins in to acceptable rentable condition.
4. Enter in to a Revocable Permit with an operator who will offer tent camping and cabin rentals under conditions acceptable to State Parks.
5. Request assistance from the Department of Attorney General to pursue claims, if any, against the current operator for compensation for the loss of the Kawananakoa House.
6. Issue a new RFQ/RFP after evaluating the condition of the property and soliciting input from the various stakeholders.

RECOMMENDATION: That the Board:

1. With respect to the issuance of a revocable permit herein described, declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200 HAR, the project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment and that with respect to the issuance of a lease pursuant to the RFP/RFQ process, direct that the award of a lease be conditioned upon the proposed lessee's compliance with all Chapter 343 environmental requirements regarding lessee's proposed use of the property.

2. Authorize the cancellation of the 2004 Request for Qualifications/ Request for Proposal (RFP/RFQ) process.

3. Require that the current operator, LCDC dba Friends of Malaekahana, provide the Division of State Parks with a current list of any and all future reservations and deposits, including the names and addresses for each reservation, remove all un-permitted structures, vacate the park and refund any prepaid camping reservations fees, subject to a timeframe established by the Board;

4. Authorize the Chair to take whatever action is necessary to compel action by LCDC and if necessary work with the Department of Attorney General to enforce and collect, including filing suit as needed.

5. Find that it is in the public's interest to negotiate to find an offeror to develop, operate and maintain public recreational facilities for Malaekahana State Recreation Area through a RFQ/RFP process.

6. Authorize the Chairperson to do the following:
   a. Appoint members to an evaluation committee that will establish the criteria to evaluate the proposals and select an offeror;
   b. Issue a Request for Qualifications/Request for Proposals (RFP/RFQ) pursuant to Section 171-59(a), HRS for the selection of an offeror;
   c. Accept and evaluate proposals submitted by prospective offerors; and
   d. Select the best offeror.

7. Authorize the Chairperson to negotiate and execute the new lease the subject area for recreational business and commercial purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

   a. The standard terms and conditions of the most current business or commercial general lease form, as may be amended from time to time;

   b. Review and approval by the Department of the Attorney General; and

   c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

DANIEL S. QUINN, Administrator
Division of State Parks

APPROVED FOR SUBMITTAL:

William J. Aila, Jr., Chairperson

Exhibit A Tax Map Key

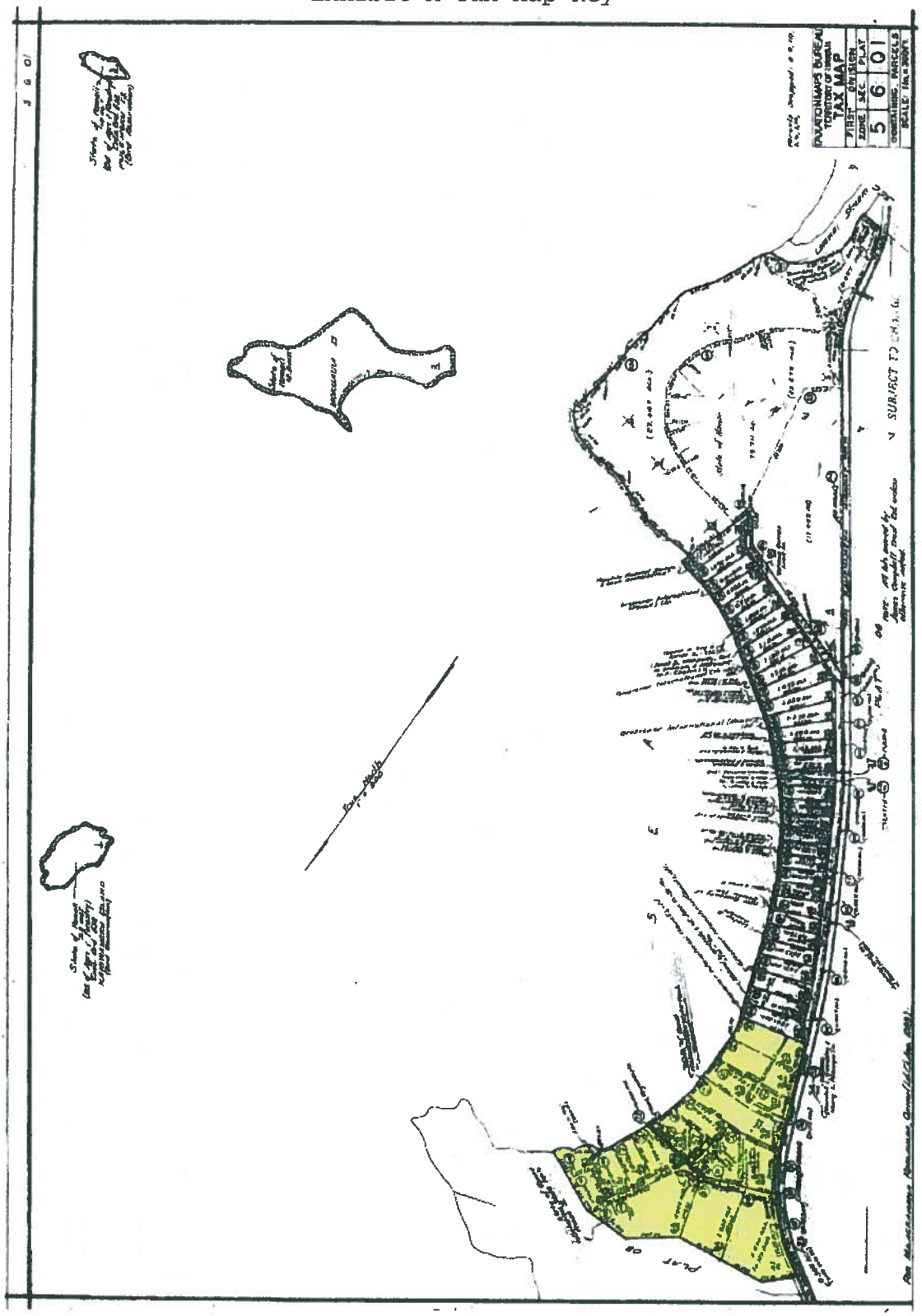
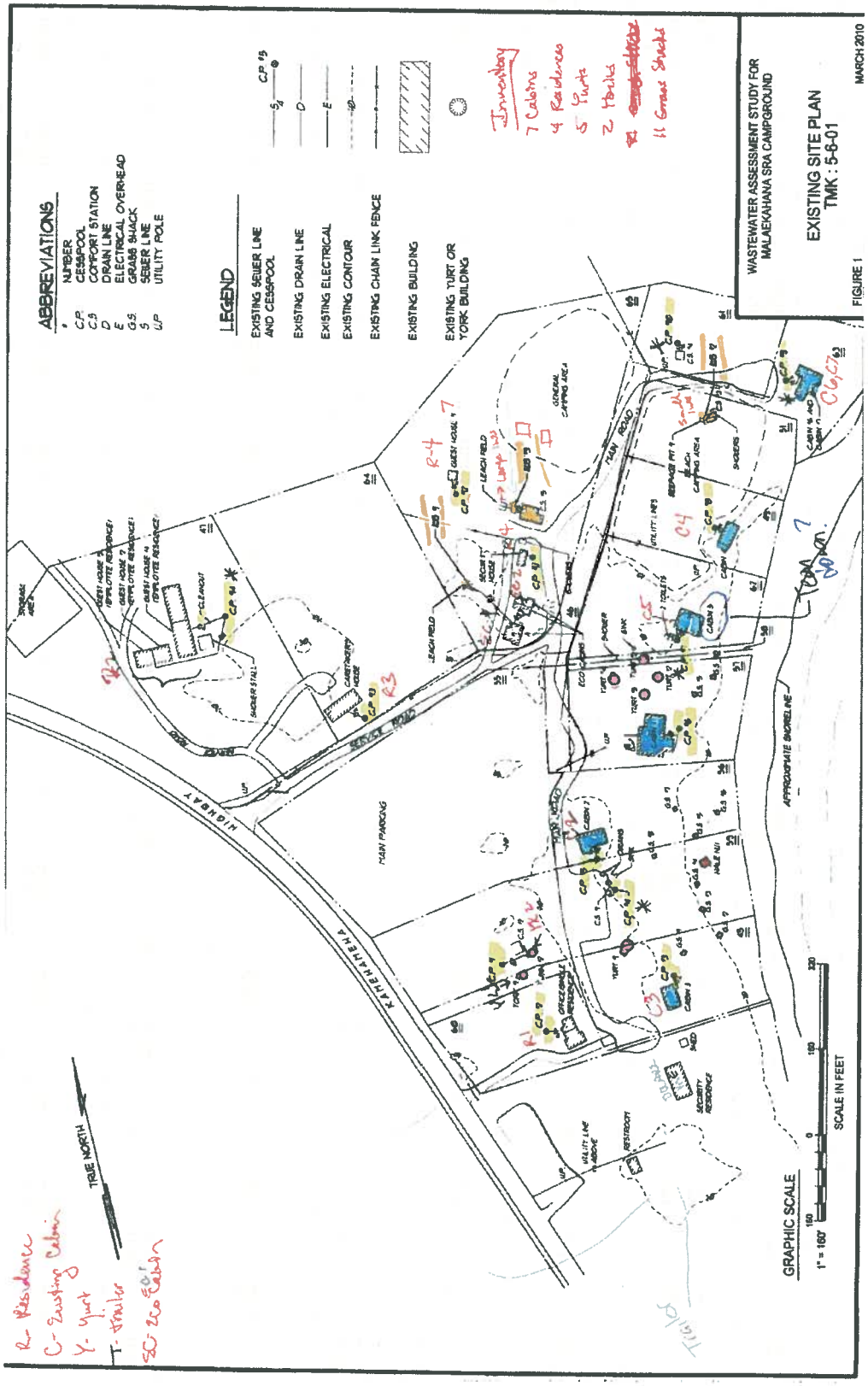


Exhibit B - Improvements Map



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

DATE:	FRIDAY, JANUARY 27, 2012
TIME:	9:00 A.M.
PLACE:	KALANIMOKU BUILDING LAND BOARD CONFERENCE ROOM 132 1151 PUNCHBOWL STREET HONOLULU, HI 96813

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

MEMBERS

William Aila, Jr.
David Goode
Jerry Edlao
Rob Pacheco
Ron Agor
John Morgan
Dr. Sam Gon

STAFF

Sam Lemmo/OCCL
Dan Quinn/PARKS
Ian Hirokawa/LAND
Carty Chang/ENG
Russell Tsuji/LAND
Russell Kumabe/PARKS
Barry Cheung/LAND

OTHERS

Linda Chow, Deputy Attorney General
Tom Welch, K-2
Sandra Gillis, M-2
Gary, Kerwood, D-3
Greg Kugle, D-10
Donne Dawson, D-9
Anthony Alto, E-2
Roger Babcock, E-2
Kela Miller, E-2
Ahi Logan, E-2
Dr. Jim Anthony, E-2
Alex Zak, E-2
Bill Wynhoff, Deputy Attorney General
Abbey Lareau, M-1
Jean Campbell, D-3
Del Wong, D-6
Tom McConnell, D-10
Ipolani Tano, E-2
Zane Buvet, E-2
Ipolani Hiram-Thompson, E-2
Gladys Ahuna, E-2
Uilani Pualoa, E-2
Hi'ilani, E-2
Eric Ishiki, E-2

Mike Hiche, E-2
Verla Moore, E-2

Dawn Watson, E-2
Rochelle Flagston, E-2

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

Item A-1 January 13, 2012 Minutes

Chair Aila said Item A-1 was not ready.

Item K-2 Enforcement Action for Unauthorized Sand Nourishment on Conservation District Lands Adjacent to Sugar Cove Condominium Complex by Sugar Cove Association of Apartment Owners, Spreckelsville Beach Lots, Wailuku, Maui, TMK: Seaward of TMK (2) 3-8-002:003.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) briefed the Board that this is an alleged violation where dune sand was placed seaward side of the scarp within the conservation district on the active beach and referred to a DOCARE (Division of Conservation and Resource Enforcement) report with photographs and exhibits. He related some background history from staff's submittal that a CDUA permit was issued in 2002 that was good for five years and the applicant did not reapply. The sand nourishment continued. Staff received complaints about the sand nourishment and was told it was authorized by a County minor SMA permit to place sand landward of the shoreline within the shoreline set back area. A letter was sent to Sugar Cove about the complaints with staff's concerns. There was no response and the sand nourishment continued so staff issued a cease and desist order. Sugar Cove's attorney, Mr. Welch, corresponded with Mr. Lemmo arguing that the sand nourishment was authorized by the County permit and Mr. Lemmo disagreed. The County minor SMA permit considered the shoreline to be located at the toe of the revetment (called the Hayashi Seawall which he described) and he referred to Exhibit 8. The County took the 1992 certified shoreline and staff respectfully disagreed. Shorelines are only valid for 12 months. There are circumstances in which a shoreline certification can be valid for a longer period when you have a fixed structure with engineering drawings and is intact. Staff included language showing when you can have a shoreline extended when you have a fixed structure. There is a qualification in that definition that says the Chairperson has to be involved in the process agreeing to have a shoreline set at that location. At the end of that section it says that is fine to fix your shoreline at the face of a sea wall, but the Chairperson may confirm the availability of the shoreline pursuant to the section. It is our view that they should have come to the Department and applied for a certification or applied for a confirmation of the shoreline and that wasn't done. If they had come in to do that with our agency we would have said no. We think the shoreline is located at the face of the vertical part of the seawall. It involves our shoreline certification administrative rules, it involves the County authorization that staff felt was issued in error, it involves people doing good faith effort at beach restoration, it involves staff

issuing a notice, but the County didn't listen to us. What Mr. Lemmo wants to get out of this case is compliance. Mr. Lemmo felt that if the Association would just agree to come in and get a permit from us for sand nourishment within the conservation district that we would be fine with that. At the end of the report is the agreement that says "In the future Sugar Cove will get a shoreline certification and will comply with all applicable laws, statutes, and ordinances including receiving a CDUA for the sand nourishment." The compliance agreement is another tool to consider. It doesn't bind you to do one thing or another. You can totally reject it, you can fine them or you can make them remove the sand. Or you can consider the elements of the settlement agreement and agree to them. Mr. Lemmo thinks that the attorney also doesn't believe the agreement that Mr. Lemmo signed is binding. It is a good faith effort to get the parties to the table to get compliance. Staff has included a recommendation with a number of conditions. We would be looking at a $16,000 fine and getting compliance from the parties. Condition 6 says as an alternative to the fine the Board may wish to agree to this compliance agreement with Sugar Cove which waives the fine, but requires them to file a CDUA for future sand nourishment.

It was asked by Member Morgan whether Mr. Lemmo would give Sugar Cove the permit if they had come in prior and applied for the CDUA. Mr. Lemmo said it depends on whether the sand they plan to put on the beach is consistent with the native beach sand - staff would evaluate their sand source and make a recommendation based on the sand. Member Morgan asked if it was all good when Sugar Cove conducted beach replenishment on the old permit. Mr. Lemmo said staff said it was ok, but a lot of the fishermen are saying the sand is a little dirty and it fills up their tako (octopus) holes. It is inland dune sand. He had the coastal geologist from Maui look at it and they are telling him it's not a big problem at this time. It is something they need to watch and monitor.

It was asked by Member Edlao whether the initial certified shoreline expired and had the Association come to you would you have required a re-certification of the shoreline for this project. Mr. Lemmo said it's not necessary and he didn't think a certification process would serve any purpose in this case. If he could waive it he would. Member Edlao asked had Sugar Cove come saying they wanted to do this would you have done this and now you are saying it's not a requirement, but you're saying it was suppose to been done. It's what you would have done. If it was a big deal then why was it a big deal? Mr. Lemmo explained Sugar Cove didn't get a certification from them on the original sand nourishment project. Staff knows where the shoreline is based on the fact that it is evident where the shoreline is. You can have them do a shoreline certification to have a clear delineation point although we know where it is, but for the purposes of sand nourishment a shoreline certification is not a major thing. Member Edlao said he is confused now with the agreement of the shoreline certification. Mr. Lemmo said he understands.

Member Goode asked you said you know where it is and he assumes it's the vertical face of the Hayashi wall. Mr. Lemmo said there is the vertical part of the Hayashi wall, some sort of naupaka edge there, the grass from the Condo Association and that is the interface of the shoreline and the fast land. Member Goode asked you don't necessarily agree then the portion of the Hayashi wall going seaward is part of this contention of the

homeowners association is the toe of that should be the certified shoreline. Mr. Lemmo said it can't be because clearly the waves wash over it during normal tide cycles. If you look at the definition of shoreline it's very clear that apron is seaward of the affected shoreline within the conservation area. The conservation area is defined as those lands that are seaward of the shoreline under the 205(a) Statute.

Member Goode asked do we have that type of designed seawall elsewhere in the State. Mr. Lemmo said he is not aware of one. There might be another one on Maui. Member Goode asked if this one functions well in his opinion. Mr. Lemmo said it seems alright. They seem to be nourishing the beach with sand and it appears to be a nice beach there. He didn't know if the apron is affecting that process or not.

Member Edlao asked in your recommendation administrative cost is $1,000. Is that your administrative cost or is it from the time you got involved with this up to now or is there more costs incurred since this thing has started. Mr. Lemmo said the DOCARE site visit, the work put into the report; the various interactions...the $1,000 is the intent. It's not exact.

Member Morgan asked whether Mr. Lemmo has a rough estimate of what the replenishment project cost to the applicant or the association. Mr. Lemmo said he didn't know the exact cost. Mr. Welch said he didn't know either. It's thousands of dollars.

Member Edlao queried if there were any other impacts on the shoreline other than putting sand on State conservation land. Mr. Lemmo said no, not that he is aware of. Member Edlao recalled that Sugar Cove has done it before and it has always been good that he was surprised when this came up.

Tom Welch representing Sugar Cove Association testified that there was a disagreement. Sugar Cove always appreciated OCCL and their work on beach replenishment that they've done a great job on Maui. They think they may be totally right on this issue, but being right isn't as important as having a good relationship with OCCL and this Department because Sugar Cove intends to continue this work as long as they're permitted to do it want to do it in a cooperative way. They think it's been a success thus far as long as the association keeps ponying up the money which is a lot every year to do this and would like to continue to do it. In the spirit of that, Sam and I worked out this agreement that is in your package. I don't know whether Sam was authorized to sign it or not, but the understanding between us was this was a proposal that we made as a resolution for going forward. In a sense we are saying we may be right, but it's not as important as working together and the agreement commits us before doing anything else to go through the process in going forward for the future.

Member Agor asked whether Mr. Welch is saying you are just going to do it. Mr. Welch said the question is where is the shoreline and Sugar Cove believes the shoreline is at the toe of the revetment which he described being put in the early 1990s and was certified by the engineers as being 100% behind that certified shoreline. He doesn't think anybody disputes that. The 205(a)(42) which is the rule relating to the determination of the

shoreline says that no determination of shoreline should be valid for longer than 12 months except where the shoreline is fixed by an artificial structures that have been approved by appropriate government agencies for which engineering drawings exists to locate the interface between the shoreline and the structure. We think that means the toe is the toe that's it. The Statute says that is where it is. The rule that Sam cites which is Section 13-22-11 reflects the same principal and has the same language in it, but it goes on to say in which case the shoreline certification shall be valid so long as the artificial structure remains intact and unaltered. That's the rule and the case here and no one has said the structure has changed. It says upon written request accompanied by a statement by a licensed surveyor that in the surveyor's expert opinion the artificial shore remains intact and unaltered since the shoreline was certified ...this Chairperson may confirm the validity of the certified shoreline pursuant to this section. In other words that's an optional thing that authorizes the Chairman if the question comes up as to whether it or not it was intact and unaltered it authorizes the Chairperson based on the engineer's reports to confirm the earlier certification. It isn't a mandate to go recertify and is the legal environment which Sugar Cove has been plugging away and the County authorized.

Mr. Welch agreed with Mr. Lemmo that the waves do come up and we have a definition of the shoreline of the highest wash of the waves. There could be a discrepancy or conflict of the laws, but the reason why this sand is half way up this slope and is moving inward is because of the successful sand replenishment efforts of Sugar Cove. One could say it's our sand. I think the Association was ill advised to not respond to Mr. Lemmo's rather gentle letter in November saying we think there might be a problem here because the plan was on its way. The people were engaged and should have responded involving Mr. Lemmo and they apologized for that. We hope the Board would see that in this light and understand that the proposed agreement that he and Mr. Lemmo worked out is a good way of going forward in the future and please don't fine us.

Member Morgan asked whether they would agree to #6 with the compliance agreement rather than the fine. Mr. Welch acknowledged that saying we would rather cooperate than fight.

Member Goode asked whether the AOAO Board agreed to sign it. Mr. Welch said they've signed it already.

Member Edlao asked Mr. Lemmo that they issued a cease and desist order, but he didn't see it here. Mr. Lemmo said it is the second page after the wall diagram that is dated April 15th. Mr. Welch said the work had already been done by that time.
Member Pacheco said for me the benefits of the public and the beach replenishment is positive work that the Department overall supports and a weird sea wall issue and shoreline. I'm inclined to go with the compliance agreement. Member Morgan agreed.
Member Edlao said for me the shoreline certification was an issue, but it turns out it wasn't really an issue because even if they came to you Sam (Mr. Lemmo) you probably wouldn't ask them for certification and there was some misunderstanding. Like what Member Pacheco said there is benefit for the people. I could live with the compliance, but there are administrative costs because there was a lot of work. A $1,000

administrative cost as for me it's got to be part of this as far as the fine. Sugar Cove has been pretty good in the past and to maintain that relationship is very important to us. I could go with the compliance, but I would not forgo the administrative costs of a $1,000 and that is my motion. Member Agor seconded it.

Member Pacheco asked Mr. Lemmo this wall they said there is a shoreline certification and then the certification says it's at the vertical edge of the wall so we have this "o" in the shoreline will that trigger because we have this structure inside the conservation district that I assume doesn't have any kind of permit from this Department. Would that require an after-the-fact CDUP? Or easements or anything like that? Mr. Lemmo said I'm dealing with a conservation district issue here – zoning, permitting and if they were to come to us and say they wanted to do sand nourishment on the beach, file for an application we would have happily done it without a certification, but the compliance agreement does say they are going to address the certification issue. I don't know where that will go when we get to that road. Member Edlao said whatever they need to do they are going to do it.

Unanimously approved as amended (Edlao, Agor)

Item M-1 Consent to Sublease of State Lease No. DOT-A-90-0026 Gate Gourmet, Inc. to Duty Free World, Inc. Honolulu International Airport, Honolulu, Island of Oahu, TMK: (1) 1-1-72:56

Abby Lareau representing Department of Transportation (DOT) – Airports Division presented item M-1 which is to lease a 330 square foot storage space.

Unanimously approved as submitted (Morgan, Gon)

Item M-2 Amendment No. 4 to Concession Agreement No. DOT-A-07-0001 In-Bond (Duty Free) Concession, Honolulu International Airport, Island of Oahu, Hawaii Terminal Complex, (1) 1-1-03: Portion of 1.

Sandra Gillis, Property Manager with DOT – Airports briefed the Board on item M-2 that DOT will receive a percentage of the gross receipts.

Member Edlao queried whether the fees go straight to DOT and Ms. Gillis confirmed that.

Unanimously approved as submitted (Morgan, Gon)

Item D-3 Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of The Whale's Tail for Landscaping Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-002: portion of 009 & 010.

Russell Tsuji representing Land Division related some background item D-3 and had nothing to add to the submittal.

Member Pacheco reminded the Board members there was an issue with the church to work on the section of the ROA and the Chair will go there to mediate. He asked whether this interplays with that or not. Mr. Tsuji said he hasn't heard anything from Ms. Wille. Chair Aila said he hasn't been able to get there yet.

Jean Campbell representing Hawaii Conference Church testified that this property is on the other side of what they talked about the last time. The Church expressed their appreciation to the State and to incorporate the comments they gave them that they support this. Chair Aila acknowledged that this is not the area of contention, but on the opposite side.

It was asked by Member Gon whether the applicant was fine with all the recommendations.

Gary Kerwood from Schneider Tanaka Radovich Andrew & Tanaka representing the AOAO Whale's Tail testified that the conditions are ok.

Unanimously approved as submitted (Pacheco, Edlao)

Chair Aila said he would get to Kawaihae as soon as he can.

Chair Aila said they have to wait for the Deputy Attorney General on D-10 to arrive. Also on items D-1, D-2, D-6 and D-13 Deputy Attorney General Linda Chow wants to make a statement on these that might impact them here. It was her recommendation to go into executive session. Ms. Chow told the Board it's to talk about the agenda titles and the Board's liabilities with these.

Item D-1 **Amend Prior Board Action of August 24, 2007, Item D-2, Sale of Remnant to Lynette Emi Umetsu, Calvin Sunao Umestu, Carol Yoshie Aceret, Gail Marie Umetsu-Lee and Lisa Naomi Kimura, Wailua Homesteads, First Series, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-2-06:through parcel 19.**

Item D-2 **Amend Prior Board Action of April 25, 2008, Item D-9, Approval in Principle of Direct Lease to United States of America, Department of Agriculture for Research, Educational and Housing Facilities Purposes; Amend Extensions of Approval Granted by Board Actions of April 24, 2009, Item D-2, January 8, 2010, Item D-10, and December 9, 2010, Item D-8; Confirm Issuance of Direct Lease to United States of America, Department of Agriculture, for Research and Educational Purposes, Laupahoehoe, Hawaii, TMK: (3) 3-6-6: portion of 46.**

Item D-6 **Amend Prior Board Action dated April 28, 2006, Item D-18; Cancellation of Easement 12 and Grant of Perpetual, Non-Exclusive Easement to 300 Corporation and Hawaii Housing Finance and Development Corporation for Access and Utility Purposes and Issuance of a Construction Right-of-Entry; Honolulu, Oahu; Tax Map Key (1) 1-5-007:portions of 001 and 002.**

Item D-13 **Amend Prior Board Actions of November 18, 1994, (Item F-9), October 22, 1999, (Item D-5), March 10, 2000, (Item D-5), July 8, 2010, (Item D-17); Perpetual, Non-Exclusive Easement to Hawaiian Telcom, Inc. for Utility Purposes; Keawaula, Waianae, Kuaokala, Kaena, Mokuleia, and Waialua, Oahu, TMK (1) 6-9-003:por.002 and 005, 6-9-001:004, 6-9-005:001, and 8-1-001:007.**

Board member Gon made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Pacheco seconded it. All voted in favor.

9:45 AM EXECUTIVE SESSION

10:06 AM RECONVENDED

Item D-6 **Amend Prior Board Action dated April 28, 2006, Item D-18; Cancellation of Easement 12 and Grant of Perpetual, Non-Exclusive Easement to 300 Corporation and Hawaii Housing Finance and Development Corporation for Access and Utility Purposes and Issuance of a Construction Right-of-Entry; Honolulu, Oahu; Tax Map Key (1) 1-5-007:portions of 001 and 002.**

Mr. Tsuji related some background on item D-6 that there were no changes and noted that counsel was here.

Del Wong representing Weinberg Foundation said he was here for any questions.

Member Gon inquired whether he was fine with the conditions and Mr. Wong acknowledged saying yes.

Unanimously approved as submitted (Morgan, Pacheco)

Item D-10 **Resubmittal – Request to Cancel Grant of Term, Non-Exclusive Easement to TLM Partners Ltd. for Seawall, Lanai and Landscaping Purposes, and Request for Refund of Consideration Paid, situated at Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:seaward of 009.**

Written testimony from Greg Kugle was distributed to the Board members.

Mr. Tsuji reminded the Board of the history of item D-10 which was withdrawn from the agenda of November 10, 2011 by the applicant, but was heard by the Board on June 9, 2011. Part of the building permit process requires a current shoreline certification referring to the exhibits and described the process, but before signing the applicant had a change of heart, wanted to cancel the application, and wanted their money back. Staff did not believe it was appropriate because they need an easement or there is a violation of an encroachment which is the sea wall and filled lands. Mr. Tsuji explained there was a split vote with only five Board members present at the June 9th meeting. The Board asked to bring it back at a later date to allow time for staff and TLM to work something out which they did, but was unable to come to a mutually agreeable solution. Plus the Mr. McConnell lives on the mainland. Staff gave an option to deny their request where the easement goes forward and they closed the transaction. Staff did modify the submittal to give the Board an opportunity that if Mr. McConnell's financial situation was dire was inclined to return the money for the best interest of the State and to protect itself still require the easement document to be executed – the full insurance, the full indemnity and as to the payment allow Mr. McConnell to get his money back to require a real estate lien recorded on the property for the value of the easement, whatever consideration he takes out of the full value, but counsel did not find that acceptable because they want all of their money back and they don't want an easement. Mr. Tsuji said he did see Mr. Lemmo's points and if the Board wants to discuss he will, but Mr. Tsuji is still firm on staff's recommendation.

Member Agor asked if this still doesn't go through and the property owner is found to be not compliant then the assets will be removed, the wall. Mr. Tsuji said that would be an enforcement type of action where you have removal or an easement. Removal in this case might have impacts to neighboring properties. They had the shoreline people look at this and said a shoreline easement is appropriate here and removal is not necessary for this area. The last time Mr. McConnell came he wanted all his money back, but staff's position is it's an encroachment, it needs an easement, and he paid it, but provided this other alternative if this Board feels he should get his money back. For the protection of the State that we require the easement which requires insurance and indemnity and to secure the payment like a real estate lien someone is going to pay us for it. Because of the split vote that is how I came up with that solution.

Member Morgan asked for clarification they bought the property with the encroachment on it and Mr. Tsuji said that is what they say. Member Morgan said he understands they weren't allowed to look at the encroachment agreement until after they had paid the money. Mr. Tsuji said they mentioned that at the meeting. Since that time he had discussions with counsel and wanted to modify some of the provisions because it was in there that it was thought to have been previously built within the submerged land area. There were a lot of conservation district provisions built in that easement, but we since determined that it was not in the conservation district and not in the water. It might have been outside his property line. I don't think there were conservation district provisions that they were complaining about. If he wanted it out I don't think we were offering to take it out. At the end it wasn't good enough.

Member Morgan referred to Exhibit A, June 9, 2011 submittal end of the page where he pointed out the staff and Department of the Attorney General considered the easement a completed transaction, but his understanding of a completed transaction is as long as both parties agreed to it. Mr. Tsuji said the only thing missing is the signature. Member Morgan explained if you go into escrow and don't sign the deal you don't have a....Mr. Tsuji said except on contract law you can have specific performance ordered to post the transaction if certain elements of a contract are there. Member Morgan said he is not an attorney, but from the lay person's point of view it doesn't look like a completed transaction if you don't have both parties agreeing to the deal. Mr. Tsuji explained a DROA if someone bails you can't unilaterally bail. If they want they file a lawsuit to enforce the contract. Member Morgan said the applicant wanted this, but then changed his mind and withdrew and let's see what he says. Mr. Tsuji said we discussed various ways to remedy that but it wasn't good enough and staff is willing to accommodate those concerns on the document itself. At the end of the day it wasn't the document any more. It was the money.

Member Edlao asked how come pay the money first before reading the document. Mr. Tsuji explained it is a standard form document for the AG's that they fight any lawyer trying to change and he has to get dragged into that. Member Edlao said he understands that but how come you took the money first. Mr. Tsuji described the process – once staff gets Board approval we retain an appraiser who gives staff a bid, they pay for the appraiser, the appraiser report comes in and that's when they ask for the deposit for the money. When they get the money staff does a document request for the AG's because it is a standard easement document. If they wanted they could have asked for a blank standard form provision to look at earlier and that never occurred, but we didn't think that was going to be an issue. If they wanted changes we could work with the AG's on that.

Member Morgan said his biggest concern is this Board sees encroachment issues all the time and we do it a lot. Those property owners that don't have something and there maybe an encroachment but you don't know about it. The issue is there a valid contract and it's not right in my mind to go out and start searching for people to owe us money. Is that what this Department and this Board does? Mr. Tsuji said they acquired this property to the extent their predecessor and interest did it and they take it. Member Morgan said yes, but they triggered the process. So are we going to the neighbor who has the exact same situation who didn't trigger the process and say we want easements from you? Deputy Attorney General Bill Wynhoff explained the way this started was they wrote us a letter and they said we built a wall on your property. We're encroaching and we want an easement. As you know there are a lot of encroachments and violations across the State and we don't have the resources to fine them all, but when someone writes to us and says we're in violation and we want to make it right I don't see how the staff could do something than deal with it. They wrote to us and said it's an encroachment and now they don't think it is, but at the time the staff couldn't just ignore it. It would be a difficulty position for this Board to say you told us it was an encroachment and now since you said forget it. We are not going to deal with it. You have to remember this was initiated by them writing to us and said we built this on fill. Mr. Tsuji said we appreciate that referring to the last Board meeting where the applicant

showed it was clearly a revetment outside their boundary on the shoreline. There was no dispute because DOT and DLNR said it's ok to put the rocks there, but no one mentioned an easement was required.

Member Agor pointed out that this situation could set a precedence for the applicant to have it their way and pass agenda items where people could come back saying I don't want to pay anything and want their money back. Mr. Tsuji said that would be a wasted time and effort on staff. When would do we move stuff along? At the end of the day we might not be able to move it along.

Member Edlao asked if removal is not an option and he refuses to do the easement what happens, a violation. Mr. Tsuji said we are not going to return the money unless the Board decides to. Member Edlao said forget the money and asked what happens. It's an encroachment does it become a violation. Mr. Tsuji said probably, yes. Member Edlao said it could be worst. Mr. Tsuji said in enforcement it may be removal because either you or your predecessor put it there without the approval and it may impact neighboring properties. You or the predecessors are maybe liable because you put it on our land that we didn't say you could. Either you sign an agreement that makes you insure it and liable for it or you take it off.

Member Pacheco said the client is now arguing an easement is not required and we're saying it is. And, second whether to give them back their money. If they don't sign the easement the easement is not going to be in place. Is that correct? Mr. Tsuji said yes. There will be no executed easement. Member Pacheco said as Member Edlao pointed out we got a property owner in violation and the Department would go after him and tell him to tear it down or buy an easement. He asked the easement put in place tell me how legally because the money they paid us is for the value of an easement. I want to know legally how we are able to keep money for an easement that is not going to be administered. Mr. Tsuji said not to sound harsh, but as a lawyer we got possession. I say that because in UCC transactions possession of the cash could be recorded as secured liens. It's a fight in bankruptcy court which he explained.

Greg Kugle testified he is representing TLM Partners and Mr. McConnell who is here today. Mrs. McConnell couldn't make today's meeting due to health reasons. Mr. Kugle reiterated the split vote in the June 9th Board meeting that they appreciated having a full Board today. Both sides met, but couldn't come to an agreement and that is why they are back now to accommodate everyone's schedules. Mr. Kugle clarified that this is a sea wall along the Niu beach area that fronts a number of homes and not just Mr. McConnell's. The best evidence was this wall was built in 1949, pre-Statehood, pre-DLNR, pre-any laws that govern the conservation district or any laws that require a permit to build any sea wall. Mr. McConnell brought this property in 2002. Mr. Kugle described shorelines and shoreline boundaries. It is always at risk to the property owner who owns ocean front land. As it accretes it belongs to the adjacent property owner, but people didn't register back then. In 1949 this was legal and we take offense that we did something wrong. The letter Mr. Wynhoff described from 2008 was true, but we didn't say we built it because nobody knows who built it. The Board addressed the issue of

people coming in for these completed transactions and say I changed my mind. This is not that case because this is not completed and it does not set precedent agreeing that you cannot undo a completed transaction assuring the Board that their decision today would have no impact on those completed transactions. Mr. Kugle described shoreline cases and the process where people come in voluntarily to get an easement which is what the McConnell's did. He referred to OCCL case of beach nourishment and is self reporting. Mr. McConnell was told by a consultant on what to do and was not represented by a lawyer and if he was he wasn't sure whether he would tell Mr. McConnell to do things differently which is irrelevant.

Tom McConnell, the home owner testified that they talked about the issues at great length at the last Board meeting (June 9th). He gave some background about the house wanting to rebuild it to make it wheelchair assessable for his son and reiterated the history that was mentioned earlier and in the submittal. When he did get to look at the easement document which was different than what the preamble of the easement ran which was the right to rebuild a sea wall, but the body of the easement took away all those rights originally granted in the preamble and he questioned what he was getting. It required he put up signage that this area is open to the public and he asked if he could change this. He was told these easement documents cannot be changed. That was when the recession hit and his wife was hit by health problems and he asked for his money back. They were told to remove the encroachment which was a tiled lanai that they proposed for the easement and they removed that. Then they were told to remove the sea wall and landscaping and obviously you cannot remove the sea wall and that wasn't feasible. The coconut trees were there since Statehood. He never signed the document and it was never a done deal. It's not a consummated contract. Mr. McConnell doesn't believe it sets a precedence describing another property in the area that no lien was put on their property, no fines. His financial and personal circumstances have changed and they are not going to rebuild the house, but would like to have the money back.

Member Pacheco asked you are not arguing that an easement isn't necessary for the land. Eventually somebody will have to go get an easement from the State for this property. Mr. Kugle said in all likelihood they will with experience with other buyers. People are not going to buy a property and buy a lawsuit. They don't want that. Because of the economic reality people will tend to say they want certainty and most new buyers will go that route where there is no problem of a law suit.

Member Pacheco empathize with the situation, but you are not only asking us to give back the money to let you back out of this process, but you are also asking us to ignore the fact that we have an encroachment and your client is using State land and that is the way the current law reads and that is what we're advised with. We know now you got this piece of property that is State land and has value to it. You are asking to give back the money, but if you don't get this easement what is going to happen? What are you going to do? What is the Department going to do? You want this Board to let this lie until something happens in the future. I don't think we can do that. You are going to have to deal with this easement one way or the other. That value is on the table. I am not inclined to give back the value of the money which is the State's which I am charged here

with. Mr. Kugle said if this land belongs to the State and I think that is an "if" because the reported boundary in dispute is somewhere between where the sea wall is and the existing structure. But, there is case law that says even if you have recorded leaps and bound on shoreline property as the shoreline moves that so moves the property line. It is not fixed. Member Pacheco said we understand that and we're not here to determine the shoreline that we have our Department to give us advice. Mr. Kugle said that as long as the State views this land as State land the public is not excluded from it. You could have members of the public come back there for camping, fishing within arms reach of his house that he doesn't think Mr. McConnell has use of the property any different from anybody else has, that hasn't changed. He thinks owing some compensation of rent for all these years for the use of this that just hasn't been and in fact if the Department gets its easement the public still gets to go back there and the public has never been hurt. Mr. Kugle realizes that is what the Board is charged with – preserving, conserving and administering public resources, public access and other things, but we're the status quo. Nobody has been excluded from there. There is nothing the property owner needs to compensate the State for. There is a huge question about how that sea wall got there and maybe that is your point – maybe somebody built it and had the benefit of it. There is no evidence before you as to who built it and we don't know after searching.

It was mentioned by Member Edlao that because we're an island state that someone would have researched the shoreline for any encroachment. Mr. McConnell said he had no idea that he came from California and didn't know. Member Edlao said that you should be doing your due diligence. Mr. McConnell said he did that he saw on the survey this lanai was an encroachment and was the only thing noted as an encroachment. He didn't know anything about a seawall or landscaping being an encroachment. Member Edlao noted that maybe if the lanai is an encroachment maybe I should check to what extent if there is anything further than this and you didn't do that. Mr. McConnell said no, I guess I didn't that I'm not an expert in this and this is the first time he has dealt with a State Board.

Member Edlao said he appreciated the fact that he came out that here we have a guy who is trying to be compliant and we're going to slam him. He asked what will happen that that removal is not an option and you do not accept the easement then it becomes a violation and it could get worst for you. And, you will have a problem trying to sell the property because of the encroachment. Either you accept it that there is value to this easement. Most people in Hawaii will not camp there and will respect you privacy. The value of the money he put in will be added on when he does sell. Mr. McConnell said he wasn't sure if that will happen. Member Edlao said if you don't the violation could get worst and if you tried to dump the property, it's not going to happen because of the easement encroachment.

Member Goode said the lien suggestion brought up by staff you get your money back, puts a lien on the property and solves the problem for a future sale I think is a good suggestion. Mr. McConnell said the only problem with that is if he tried to refinance it, mortgages are tough to get nowadays and if a bank should see a lien against the property they will make that lien be satisfied before they even think about loaning money on the

property. Member Goode said maybe. Depends how much the loan, how the lien is versus the value of the property. There are some ifs in there. Mr. McConnell said he would prefer the return of the money. The house was built in 1934 and is not in good shape having to put in a new roof. He imagines the next owner will tear this house down and will be back in front of you requesting the easement. He agreed that there is an easement probably that needs to be done on this property and imagines the next person who builds a house there will apply for an easement.

Member Pacheco said say if I'm buying the property from you and haggling over the price and ask what this is all about that it will cost you close to a $150,000 to get this easement and as the buyer that's taken off the value of the property. The value is there, but unfortunately for you the value has been laid out before a public process with Statute and Rule that guides us on how to deal with this. If the Board decides to give you back your money and I have a question whether we can keep the money. I want to be comfortable with that if we actually can do that if you decide you don't want this easement. We decide we aren't going to give back the money, but if it goes away I don't' see how this Department can ignore the fact that you have this encroachment especially with the lanai structure gone. There is still the sea wall encroachment. The way the Statute is written we don't look at who built the sea walls it's the fact the sea walls are there whether it's accredited land, filled land there are all those issues and I have concerns and can't walk away from that. Mr. McConnell reiterated previous testimonies about when the sea wall was built and how far it extends which Member Pacheco understands. A legal encroachment is a legal encroachment. It doesn't matter where the wall is.

Mr. Kugle said there are many situations where structures were put in the ocean, groins and other things, at some unknown time by unknown people and I've seen the Department take a position that belongs to the State and not to a private owner. They have a time set. You want them to remove it and they don't because of these questions that are not too dissimilar to this sea wall situation. I don't think it's a forgone conclusion yet should this money be returned Mr. Lemmo will be out there writing a violation and I will be back in front of you. But, that is a different process and if we have to go through that we will. There are certain issues that I think would be the State's burden to prove who built that before they could do that. The State would have to prove it wasn't a Territory of Hawaii project that was put in there to benefit this whole shoreline. I don't know that. At some point they might say it's our sea wall and either we'll keep it, or let it deteriote, or we'll let it go, but I don't know how that will play out. I think it is a different issue than what we have today.

Member Edlao said that if we go that route it will cost you more money than now. Mr. Kugle said that is all true and it would raise some serious problems for the Department on selective enforcement because they are not doing ...Member Edlao said he didn't think it was selective that you guys came forward. It's not like the Department is going out and hitting everybody else. Mr. Kugle said he thinks the Department might have to do something like that to have this constitutional because you cannot treat similar situation people differently. Member Edlao said the Department may or may not and his concern

is if we go that route it's going to cost your client a lot more financially, emotionally and everything else. Mr. Kugle said he appreciates the input of all the Board members that they've considered that despite all the factors, the suggestion of the lien, we went around and around with Land Division and we are where we are today. We are still before you asking for the return of the money that the State has had it two or three years interest fee. The State issued a bond for it I don't' know what they are paying for that money, but they've had $10,000 to $12,000 worth of interest use from us for the past few years and that is where we are today.

Board member Pacheco made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it. All voted in favor.

10:59 AM EXECUTIVE SESSION

11:25 AM RECONVENDED

Member Agor asked whether they would accept a lien that would be subordinate to any first mortgage. Mr. McConnell said that sounds more attractive than a straight lien.

Member Morgan commented that the issue for him was there a contract and everything he has seen he doesn't think there was a contract. With the whole process of putting the money in escrow, but there wasn't a DROA. I'm comfortable that there wasn't a contract, but feel uncomfortable holding money when we don't have an agreement.

Mr. Tsuji pointed out on the document itself, it may be earlier on that the response can't be changed primarily it is an AG approved document where he and Mr. Wynhoff weren't involved. Once they started taking this matter to the Board and he learned of the concerns on the document side he tried to work that out with counsel, but it was clear to Mr. Tsuji and discussed a disposition in the form of an exclusive use and it may require a reappraisal and costing more referring to the shoreline and non-exclusive easements which is done that way because it is really like the shoreline referring to photographs he described the wall and fill area. But, they still wanted their money back. After hearing testimonies when you purchase property do you know about the encroachment and it seems Mr. McConnell was not advised as so. My guess is every single transaction to buy a house if you require financing the bank will require a survey and those encroachments will come up. He didn't know if Mr. McConnell was an all cash deal. If you can cash deal this out that is quite substantial assets on Mr. McConnell's side. This is in an area that is similar to private property and been used by Mr. McConnell and that is unfairness of this thing to say you don't need the easement to get your money back.

Member Agor asked if he would go with a lien that is subordinate to a first mortgage. Mr. Tsuji asked if someone coming in and buying it. Then that someone would buy it and not pay it off. Member Agor explained Mr. McConnell apply for a first mortgage. Mr. Tsuji said the only time they would be paid off would be on a sale. Member Agor

said that is what the lien is all about anyway. Mr. Tsuji said he assumed he did not have a mortgage right now. Member Agor said he just doesn't want to deal with a potential encroachment problem and if we can't give back his money with this stipulation then we move on.

Member Goode agreed with Member Agor. If we can support a clause in that lien that would subordinate to a first mortgage of Mr. McConnell has one. Or if the property is sold and the lien is paid off everything is done.

Member Pacheco questioned whether that makes sense for us. What the value of that lien will be to us in the future? None of us will no what that will be assuming it will go up over time. That would be a really good deal on a valuation that is many years old. Member Goode said something (I couldn't hear) that Member Pacheco agreed with.

Member Pacheco agrees with Member Morgan on whether we have a deal or not and if not he doesn't see how they can keep the money. If we do then we keep the money and they are going to do what they need to do to come after us to get the money back. It's questionable on how they come out on that. If they don't want to sign the easement then demand their money back then it's not the end of it for them. They got an encroachment and we know about it and do something about it. That would be a different case.

Member Agor said he knows the encroachment is a separate issue, but he is trying to avoid that because it will cost more than $130,000.

Chair Aila asked whether counsel and Mr. McConnell wanted to discuss it. Mr. Kugle said they will and stepped out.

Item D-10 continued later in the meeting.

Item D-9 Consent to Revocable Permit of Lands under Governor's Executive Order No. 4097 to the Department of Business, Economic Development and Tourism, Honolulu, Oahu, Tax Map Key (1) 3-1-042:portion of 009.

Mr. Tsuji introduced Donne Dawson who represents the Hawaii Film office and said he had nothing to add to the submittal.

Donne Dawson related the status of some of the projects – "The River" is on hiatus. "The Last Resort" is by ABC. ABC stepped aside to open up some of the space that they are not using. The Sony Company will be shooting a pilot starting March to April. They will split the $30,000 a month based on the amount of property Sony will be using.

Unanimously approved as submitted (Morgan, Pacheco)

Item D-11 Sale of Remnant to Harry Y N Mau Family Trust and Kenneth and Estrellita Leonhardt, and Withdrawal from Governor's Executive Order No. 1598; Waimanalo, Koolaupoko, Oahu; TMK (1) 4-1-024:portions of 066.

Mr. Tsuji said he had nothing to add and noted that the representative was here, but he left earlier.

Unanimously approved as submitted (Morgan, Gon)

Continuation of Item D-10 from earlier in the meeting.

Item D-10 Resubmittal – Request to Cancel Grant of Term, Non-Exclusive Easement to TLM Partners Ltd. for Seawall, Lanai and Landscaping Purposes, and Request for Refund of Consideration Paid, situated at Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:seaward of 009.

Mr. Kugle said they are amiable to the idea although the Deputy Attorney General will have to explain why it has to be done slightly differently than you suggested, but as we understand it's being suggested that we agree to lien on the property for the purchase price which is has a provision that it will be subordinated to a first mortgage in the event the McConnells need to refinance at any time. They would receive in its place the easement and then that lien would be paid at the time of sale in the future. That is what we understand and that concept we are agreeable to. One issue we want to have clarified before we leave today and he was not sure if this is the forum to do it is there is the question of the actual easement language which was the original problem and Mr. Tsuji suggested he would be amendable to changing it. One of the things Mr. Kugle didn't want to happen when they walk away today is they end up in a fight or come back to the Board saying we still can't agree on the language of the easement.

Mr. Wynhoff said it's my understanding of the DOR is they get the easement now, but they don't pay for it until it's sold. From my point of view that is fine. It's up to you to make the deal. I have to make sure it's enforceable. The concept I was talking to Mr. Kugle was I thought that we might need to have a note secured by a mortgage in order to make sure it gets paid, but I have to think about the legalities of it number 1. Number 2, it's obvious that we are exactly where we are before is that we don't really have an understanding as to what the form of the easement is going to be. What I would like to suggest is I don't see much point in you guys saying we have a deal and the terms are yet to be negotiated. If you want to pursue this route I would suggest the matter be deferred yet again for a month and we come back to you and say here's the deal.

Mr. Tsuji asked also give your inclination about whether there is going to be an unlimited time limit or zero interest be known or term and interest if any. Mr. Kugle said we have a problem with kicking this can down the road again because Mr. McConnell has to return to Hawaii and has to pay Mr. Kugle to do it and it's getting expensive so he has a concern about delaying it to negotiate a deal and then coming back again and again having done it

twice the past 6 or 7 months. Mr. Wynhoff said he agreed, but we don't have a deal, we don't know what the terms are.

Member Morgan pointed out the specific objections about the signage part. Mr. Kugle agreed saying the general concept was the signage and also to allow the beneficiary, the holder of the easement to continue to maintain the easement property which includes the sea wall without having to come back to the Board. Member Pacheco said there could be a problem with the signage, but Mr. Kugle said he didn't think that it is because it had been OCCL's recommendation that it be declared public property. He wasn't aware of any statutes that require that. Chair Aila said we could do the research it and if it is, it is. We can't violate statute.

Member Agor asked what is fronting the ____ (can't hear what was said). Mr. Wynhoff said I'm just not sure what you need to have to enforce a piece of property. My general view is that you can't have some free floating lien. A lien from my understanding is typically a security interest to secure something else. It's not a promise itself to pay. You usually have the promise over here and in order to enforce that promise you have a lien which is exactly like a mortgage. The note is over here. If I promise to pay you guys $10.00 maybe I will, maybe I won't, but you have some security which might be a security lien on my car or more commonly on my house. All I'm saying is when I go research it and understand it and talk to Greg about it I got to make sure that if you do this deal you have it on enforceable grounds. Mr. Tsuji said if the proposal on the table is then promising to pay upon the sale and if that is what they are considering it shouldn't be a problem. Mr. Wynhoff said to me it's got to be enforceable. If I need a note to enforce it then I am going to have to insist on a note. I don't know if that's sold yet.

Member Edlao asked whether 30 days will be enough and Mr. Wynhoff said yes where Member Edlao said until then no money will be returned and everything stays as is until you guys resolve this thing. Mr. Wynhoff said I don't think you guys and I don't recommend, but it's up to you. I wouldn't recommend a deal you don't know what the terms are. You are going to give him back his money if we come to an agreement on his terms. What is going to happen if you don't come to an agreement? Member Morgan said one of the options is to say give the money back and take it over to enforcement. So this whole lien thing could be a result of enforcement. Mr. Wynhoff said right. So you could just give them the money back and if they want to do a deal we are going to come back and enforce it, fine. Member Morgan said as a result of the enforcement.

Member Edlao said part of the problem was initially you didn't know what the deal was which is the reason why we're here. It's unfortunate you have to come back and forth. It is what it is. It's got to be resolved. It appears to be where we're heading.

Member Pacheco said I can't see the Board ever supporting and Russell bringing an easement to us that doesn't have the consideration that says we'll put a lien on the property until the next property owner. This is an unusual situation. From that perspective I don't think I can support a deferral leaning towards a lien and that is my own personal preference. Member Agor asked what the issue was with the lien. Member

Pacheco said he is not going to support a deferral. Member Agor asked even if the owners agree and make the whole issue go away. Member Pacheco said it won't go away and there's going to be the same issues. Like I said we'll be kicking the can down the road.

Member Goode said I don't think they got into the signage issue. They don't know if there is a statute or not. They really haven't dealt with it. You guys got to roll up your sleeves and take a look at it to understand what the most current form the easement has.

Chair Aila asked whether the Board wants more time to deal with this so they don't have to come back and Member Pacheco said he don't want them to come back. If they agree to the lien we are giving the money back, right? If they don't agree we come back we are going to have to make this whole action about...there has to be something coming down the road. I prefer doing it right now.

Member Pacheco made a motion that we don't have a deal. There is no easement therefore we need to return the money. Member Morgan seconded it.

Chair Aila said there is a motion to take option A which is to return the money knowing that there is going to be a violation that there is going to be a second action to this.

Mr. Kugle asked it's the lien right. Member Edlao said no, it's the encroachment. So you are going to back regardless.

Member Pacheco moved to withdraw his motion and we'll see what happens if somebody wants to move that lien forward.

Member Wynhoff suggested from what I am hearing make a motion to give his money back. If it carries, it carries. We all know we are going to come back. He knows he is going to come back and in the mean time before we get a chance to come back if he wants to negotiate some other deal we'll do it. Then we'll come back to the Board and say in lieu of an enforcement action this is the proposed enforcement action. Mr. Tsuji said if the Board says return the money he has no choice the deal is off. Mr. Wynhoff agreed saying that's right. Mr. Tsuji said then we aren't going to talk about no real estate thing. You are going to go for all avenues including the removal. Mr. Wynhoff said yeah, whatever we consider we'll consider as Member Agor is suggesting.

Member Edlao said I see what Ron is trying to do, but I can see it getting a little bit more complicated and then you guys may not agree to whatever's...Member Agor asked why can't do go out for ½ an hour to an hour and make a deal right now. Member Edlao said they already went out and come back saying what about this and don't want this. Mr. Wynhoff said we can't make a deal today. We don't know enough about the law. It is not possible.

Member Morgan said I make a motion to consider that there was no deal and we refund the money. Member Edlao seconded that.

Member Agor said he can't support that.

Member Goode asked whether there is an amendment that adds that we direct the Department whichever is appropriate to work with the applicant to either prefect some type of lien or initiate an enforcement action within 30 days. Member Edlao said I think that is going to happen either way. Even with giving the money back.

Member Pacheco asked whether this property qualifies for remnant sell. Mr. Tsuji moved his head side to side. Member Pacheco said no, apparently not. Mr. Tsuji said he never supported a sale. Unless this Board is inclined to sell a remnant that is 2,000 square feet. Bill would have to comment whether it qualifies as a remnant. You can't build on 2,000 square feet. Mr. Wynhoff said it would be very expensive. We sold Doc Kelly's remnant for over a million dollars. It's going to be a lot more than an easement. Someone said $1.68 million. Member Pacheco said just to give the applicant an idea of what's out there.

Mr. McConnell asked whether they should go out and discuss this because he would like to end this today. Mr. Wynhoff said you are going to have to talk about it in court. We can't talk about it anymore today and we are not going to give it to you period.

Chair Aila said but, if they act on the motion we are going to have a short period of time to try and resolve it afterwards. Mr. McConnell asked with Mr. Wynhoff. Mr. Wynhoff said with Mr. Tsuji. Chair Aila said between us taking action...Mr. Wynhoff and to come back to the Board. It would only be a deal by the Board.

Member Edlao said the way I see it, keep the money we take the easement and you don't have to come back or we'll give your money back and there will be actions further and you will be coming back and it will cost you a lot more. Mr. McConnell asked whether Mr. Tsuji and Mr. Kugle reviewing the terms of the current easement with the language that we found objectionable and redo that. Member Edlao asked didn't you guys just do that? Mr. Wynhoff said we can't. We are not going to resolve it today. It's either you give him his money back or he is going to take the easement or it's going to be deferred. There are no other possibilities. They are not going to resolve it today. I have exactly 2 more minutes to talk about this until I have to call the court. Please accept that it is not going to be resolved today and handle how you want. Member Edlao asked do you want the easement or your money back. Mr. McConnell asked the easement as written. Mr. Kugle said yes, we have a problem with that. Everybody has acknowledged a problem with the easement as written. If it boils down we would take the money and try to work with them and the more time Mr. Wynhoff needed we'll have.

Member Goode said the amended motion was we give them the money back and they have 30 days to work with the Department either perfecting a lien to come back to the Board or the Department is going to initiate an enforcement action which they don't have to come back to the Board on, but you would hear about it eventually.

Mr. Tsuji asked just so that he is clear to ultimately come up with an easement. If not, enforcement. Is that the idea? Member Goode said yes. Mr. Tsuji asked we go outright return the money and go straight enforcement. Member Goode said no, the idea is to work out the language on an easement and the consideration would be through the lien. Member Edlao said I think what Russell is saying the easement will stand as is. Mr. Tsuji said he just wants to make sure he understands because typically if you return the money the deal is off and we go by rule. Chair Aila said that is why this amendment is here which says you got 30 days to work on something. Mr. Tsuji said as long as Mr. Kugle understands the value paid was based on a non-exclusive easement. Anything more than that you would actually end up having to pay more. Chair Aila said I'm sure he understands the consequences.

Member Pacheco asked the motion we have on the table is to give the money back, but give them 30 days to try to work something out either through a lien or an edited easement document. Member Goode said a lien and easement counts as a package and the Department will enforce it.

Chair Aila took the vote. All voted in favor except Member Pacheco.

The Board:

> **Ordered the return of the money deposited to TLM Partners, Ltd. (TLM) and if an easement document is not agreed to within thirty (30) days, then staff is asked to proceed with an enforcement action against TLM which may involve fines and removal of the wall and any other encroachments onto State land.**

Unanimously approved as amended (Morgan, Edlao)

Item E-2 **Cancellation of the 2004 Request for Qualifications/Request for Proposal (RFQ/RFP) and request for authority to take action - including eviction if necessary - against present occupant at public recreational facilities at Malaekahana State Recreation Area, Kahuku Section. Request for Approval to Issue a Revocable Permit for Operation of Public Recreational Facilities at the Malaekahana State Recreation Area. Approval to Issue a Request for Qualifications/Request for Proposal (RFQ/RFP) for the Development and Operation of Public Recreational Facilities at the Kahuku Section, Malaekahana State Recreation Area, La'ie (Ko'olauloa), O'ahu, TMK: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65.**

Written testimony from Zenobia Iese was distributed to the Board.

Dan Quinn representing State Parks conveyed agenda item E-2 that there is a long and complex history of the tenure of this area beginning with a Board submittal in 1994. (He was interrupted by the counsel and landowner for item D-10. Mr. Quinn reconvened later.)

Mr. Quinn noted that the section of Malaekahana State Recreation Area that they are referring to is the Kahuku section closest to Kahuku acquired in 1980 with a number of structures and the State subsequently built a comfort station at the end of the area. The issue over the years has been non-compliance by the current occupant with a number of EPA (Environmental Protection Agency) regs., the Department of Health (DOH), failure to comply with a number of notices to cease and desist and directives from the Division. He related from staff's submittal the background management of the property since 1994. The Friend's of Malaekahana changed its name to Lanihuli Community Development Corporation (LCDC). There were over a dozen different Board actions listed under the background. While the LCDC was there under a series of revocable permits (RP) and one short term lease the State went out through an RFQ/RFP process to get more long term tenure and hopefully issue a lease to someone who would both develop and operate the park. Staff only received one applicant from a group called Malaekahana Partners headed by the same gentleman who heads the LCDC and Friends of Malaekahana organizations. All the RPs has been issued gratis. When we went through the RFQ/RFP process the Board set a couple requirements. One was to have the bidder pay for an appraisal and also develop a development agreement and come back to the Board for approval. The Malaekahana Partners said they could not proceed with any of the discussions on the RFQ/RFP appraisal until community presentations were completed which was also a process required by the Board. There were a series of issues before the Board ranging from cancelling the process to recommending that the Malaekahana Partners be the designated selected bidder. The last RP was issued in 2006 which expired at the end of that year and no other documents are in place at the moment. Mr. Quinn said some of the concerns the Division had were un-permitted grading, un-permitted construction, work on the cabins or beach houses that were there, a letter from State Historic Preservation, also from State Parks, cease and desist, building things on the site and of great concern for us is grading. Given the shoreline area we know of at least one burial that is in this area. Anytime you mess around with sand on the shoreline we have concerns with uncovering iwi (bones).

Mr. Quinn reported subsequently, the DOH and the EPA both issued notices of violation related to waste water disposal systems. The DOH is more concerned with permitting of systems that are built. The EPA has bigger picture issues and cited the Department for large capacity cesspool violations and if the Board remembers they went through a process to get ride of large capacity cesspools throughout the State both in State Parks and the Boating Division. This park was not included in that inventory as we had figured we would have the lease in place and then the lessee would be taking care of it. When the EPA made an assessment they counted five (5) large capacity cesspools. Some were created by putting small restroom facilities over existing cesspools that had been there from earlier cabins. Because you can't regulate the number of users they are classified as large capacity cesspools that are fed by more than one structure.
Mr. Quinn also reported that the largest and most historic cabin in the park burned down referred to as the Kawananakoa Cabin shown as cabin #1 on the map. We sent communication to Mr. Chapman saying not to build anything on that site. Subsequently, construction was done with temporary structures, yurts, trailers, restroom facilities and some containerized type structures to contain a complex around there that we believe

now constitutes a large capacity cesspool because there are multiple structures and more than 20 users. And, that by our count would be six (6) large capacity cesspools. We are at risk for fines by EPA for that and that is a concern to us. There's been some additional grading with a Notice of Violation. There is a Notice of Violation by the City and County of Honolulu and I know one was cured shortly afterwards. There are a number of temporary structures – yurt like tents and what Lanihuli refers to as grass shacks. One was built way too close to the shoreline and was moved back.

Mr. Quinn said there has been a history of non-compliance with directions by the Division, EPA, and DOH regulations. In addition, the tenant was to pay 60% of the water bill. There is a water meter that feeds both the restroom that the State Parks maintains and the part occupied by Lanihuli. They have been in arrears to that bill since 2008. The Board submittal state that the past due was as of January 5, 2012 was $16,399. Our check today indicates that is at $14,683 so payment was received on that particular bill.

Mr. Quinn indicated we have various cabins there in various stages of disrepair. Some of the cabins in this park were some of the poster children of bad management of State Parks cabins when they went through the Recreational Renaissance initiative. One thing we need to do is assess the conditions of those and see if they can indeed be saved and pursue that. There are several of those cabins left. There are other structures occupied by both the manager and some of the employees of the park area. There are a couple pretty innovative containers built structures where they used shipping containers and created a couple eco-cabins in the area, but none of those were built with any permits.

Mr. Quinn said a couple things needed to be done by Board directive that weren't. One was the appraisal and the other was a development agreement and a number of violations which remain to be unresolved. State Parks has an action plan which is in your submittal and includes regaining operational control of the area. Pursuant to construction of a single permitted comfort station and wastewater disposal system. One of the big differences between the past and now is we have received capital improvement appropriation to address the wastewater issues and help make any improvements they are able to do to the existing cabins should they be able to save them. We need to assess the condition of those cabins and we would like to enter into a RP in the interim with an operator to offer reduced tent camping and cabin rentals. We request assistance from the Department of the Attorney General to pursue any claims that might be forthcoming and to pursue a new RFQ/RFP process to see if we can find another operator for the area. The Board has the recommendations. This has been a long standing issue for us. We should have gotten to it earlier. We had shortages of staff, funding and other things that we are catching up on and this was one of the items that languished and now needs to be addressed.
Per Member Edlao's question on what a yurt is Mr. Quinn said it is a tent.

Member Pacheco pointed out that it's been 6 years without a permit and understands the lack of staff, but. Mr. Quinn explained the last time they thought they would have a lease in place and the last RP ran to 2007 and should have renewed then, but in 2008 the

Friends were in arrears with the water bill and have been there ever since. The last conditions the Board put in was this was to be renewed as long as there is no default on any finances, but the Friends have been riding in default ever since. Chair Aila said in that time period the Department has been reconciling other situations similar to this which he related and now is the time to address this.

Member Morgan asked when did the insurance lapse and when was the fire. Mr. Quinn said he couldn't remember, but they had liability insurance and he believed they had fire insurance before not too long before the fire, but they could clarify that. There could be a number of items any one of which could have initiated this kind of action. Even being in arrears on the water bill technically is enough to bring it before the Board for cancellation. Staff issued a number of notices on the Division level, but there has been a consistent pattern of ignoring what the Division had to say. I can't come before the Board and recommend long term tenure with this kind of a track record for the care of the public resources.

Member Morgan asked why weren't there more bidders. Mr. Quinn said one of the issues is the amount of money the bidder/developer would need to put into it. The State developed a master plan which we used as the ultimate build out frame work when we had asked people to bid which was in the neighborhood of $4 million dollars. In addition the bidder needed to go through Chapter 343 compliance with the additional capital money that we have. It is our intent to build at least a fundamental wastewater facility in the center of it and address any Chapter 343 compliance we need for that and some of the bigger Chapter 343 compliance issues as well.

Member Morgan said it seems the RFQ/RFP went out, but maybe it was an unreasonable goal to shoot for. Mr. Quinn said they will re-think the RFQ/RFP before it goes out again.

Ipolani Tano said she had the video screen working, but it wasn't working now and distributed a handout of her slide show to the Board. She testified that she has been on the Board of Directors for the Friends of Malaekahana for the past 18 years and was their first Executive Director. In May of 1994, she was the one who met with Keith Ahui to present an alternative plan for the development of the Malaekahana State Park. Ms. Tano presented her slide show from her lap top describing who Friends of Malaekahana were, their Board and staff members giving some background on each. Also presented were their philosophy; team profile; contributions to community economic growth; how they work; success strategy; yurts; ideal for kupuna; 18 year history of stewardship and service; ground improvements; cabin renovations; partnerships, collaboration & networking; a legacy of innovation; a model for State Parks; track record of excellence and consistently voted #1 on Oahu. The challenges working with State Parks; BLNR & staff changes resulted in loss of continuity; prevalent "we want you to fail" mentality; loss of Kawananakoa Cabin – result of internal politics; Parks staff combative and confrontational; Parks staff poor communications heighten tension; 2004 RFP – poorly conceived and executed; hoops and hurdles for Malaekahana Partners; double standard applied to Malaekahana Partners; double standard practice continues; but we also make

mistakes; additional Park staff concerns; Friends concerns with Parks statements; summary & recommendation. The Friends of Malaekahana have an 18 yr. track record of successful park management, broad community and public support, restored this pu'uhonua creating a unique park with accommodations and amenities for every budget, a history of trying to work with State Parks, but faced hurdles and obstructionist behavior. They request the Board immediately issue Friends a revocable permit to remain on premises – and allow us to immediately resolve LCC (large capacity cesspool) issues using holding tanks as interim solutions (as approved by EPA and DOH – and communicated to Bill Aila on 1/17) – to be followed by permanent DOH/EPA approved solutions. Deny all the recommendations in the staff submittal. In lieu of staff recommendations, adopt the following: Allow MP to update the Malaekahana Master Plan to implement changes (different mix of yurts, eco cabins & grass shacks) to better meet the needs of our growing customer base. Instruct staff to act in good faith and work directly with Friends to resolve all outstanding issues that might stand in the way of issuing Friends a 35 year lease and said task to complete within 90 days. Follow through on Senate Resolution 139. Nobody can care for Malaekahana than Friends of Malaekahana. They thank you for the support over the years and asked to extend your support now to move forward.

Member Edlao asked for a copy of Resolution 139. Ms. Tano went to get a copy for him.

Anthony Alto, Chair of the Oahu Group of the Sierra Club testified that the majority of our members are involved in exploring and they want to keep parks accessible to the community. He interviewed people in Malaekahana Park for the film project that some people were distraught if the park were to close because they have no where to go. The facilities installed by the Friends do thread lightly on the land and the Sierra Club approves of those efforts and referred to the City's Sustainable Building Task Force. The EPA approved wastewater management systems should be encouraged. It is National Sierra Club policy and incumbent of this Board to show deference to the unanimous opinion to all the neighborhood boards in Ko'olauloa who all voted in support of Malaekahana continued managing of this park.

Zane Buvet testified that he is responsible for the yurts at Malaekahana having made a joint venture with Craig and Ipo. He related meeting with staff who were serious in dealing in good faith to obtain a long term lease, but staff has a vendetta against Craig and throughout the process staff did not allow them to move forward even when they got the money, the resources, a plan that fit with staff's criteria and they were stonewalled every step of the way. They are still here and want to do this.

Roger Babcock, a licensed engineer of wastewater treatment systems with the University of Hawaii (U.H.) testified that DLNR funded a facilities plan on wastewater systems and cesspools on the site and the Friends are prepared to implement that plan that was put together by Engineering Solutions. He is here to help them. They would get everything approved by the EPA and DOH. The Friends are interested in doing more than the minimum – advanced treatment, recycling, possible zero discharge, etc. All those are approvable and they can get permits. Chair Aila asked how many of the systems in place

now are approved by DOH. Dr. Babcock said that there are three (3) wastewater systems and none of those were approved. The Chair asked whether they were experimental ones and Dr. Babcock confirmed that.

Ipolani Hiram Thompson testified that she is here as a kupuna and asked what is important to your families where she displayed photos of family reunions at Malaekahana and families are taught how to care for the land. She described the yurts and invited the Board members to come and see. Things go off key because people aren't feeling the aliveness of the land. The reason she is here is the joy that Malaekahana brings to her family and it worries her, where do they go? It is wheelchair accessible.

Kela Miller testified relating some of her personal background and confirmed what Aunty Ipo said of the many programs held at Malaekahana. They learned to malama the aina (care for the land), families come to kanikapila, other halau come to visit and have opened their door to everyone. The Friends of Malaekahana have proven their worth over the 18 years and can do the job to continue what they have been doing. She hopes the Board members will give them the permit.

Gladys Ahuna testified relating her background that they are lineal descendents which is why they need to take care of this place. She related some history with Kamehameha in this area and when they went to bid for the park in 1994 in Kona because staff almost guaranteed it to this other group. Ipolani made a presentation and staff asked them to negotiate with this other applicant to work things out. This other applicant decided to take another area and the Friends got the park. Ms. Ahuna described cleaning the park that there was no money to pay for anything. Staff talks about preserving these cabins, but people don't want to stay in them because they need to be removed and replaced and the yurts are a perfect replacement. There is a conflict between my son-in-law, Craig who isn't easy to get along with, but he is innovative and she is proud of him. Ms. Ahuna related some history about the Kawananakoa Cabin. A misconception of the Alternative Learning Center that they were making money from DOE, but DOE never paid for the 14 years they were there. Malaekahana is a healing place where people come from around the world and she described the yurts, its lifespan, the furnishings and the containers. Her son-in-law wants to go off the grid which would be a plus for the State.

Ahi Logan Kumuhonua testified he is a kupuna and a fisherman from Laie, Ko'olauloa and related that Malaekahana is a pu'uhonua for the mano (shark), a sacred place. He described the area – islands, rivers, streams and all the sharks there are 'ohana to the people there so that they don't steal the fish and the boundary line between La'ie and Malaekahana.

Uilani Pua testified that the people out there are poor, but innovative that they don't go for handouts. People invest where the money is that no one wants to invest in the poor. They pay taxes, but are always the last to receive which made them the people that they are. They have good workers, people with imagination, and they move on. That is what they are guilty of at Malaekahana. We service our people, we service the tourism. We do the best with what we have and the State has no money. It is not an issue for them

because they are used to not having money, but we go on and we create. People ask what's the problem? Like what her mom said Craig is not the most workable, adorable man out there. Open communication is needed so that this can carry on. To some people this is just a piece of land. For us as you've heard this is our way of life and our home.

Dr. Jim Anthony testified that Ipo made the case for the issuance of a revocable permit to Friends of Malaekahana. Staff's submittal is missing a lot of things and that the Board can't in good conscious accept the recommendations. The Friends should be given an RP setting a deadline of within 180 days with a negotiated settlement about a long term lease. The Board should order staff and the Friends to get together to work out what needs to be done. Dr. Anthony described meeting with Dan Quinn along with Craig Chapman that there was a procedural issue with the Federal funds used and Mr. Quinn's position was to issue a lease because of a Federal regulation that had to be met. Dr. Anthony thought there must be a way around it. The Board has to act pro-actively. The Friends made some mistakes, but they do good work in preserving Malaekahana and the spirit of the place. He noted the complaints about the yurts then why not the Waikiki skyline and that Malaekahana is for poor people. Solve the problems that are there and go on. It has gone on 18 years. The Friends are sympathetic about the State's lack of money and losing staff, but be fair to these people who cannot go forward and have the money, the resources, the creativity, the imagination, enthusiasm and support of the community. Dr. Anthony had one private reservation as to who should not be involved in the meeting, but as a professional courtesy he will talk to Chair Aila about it. At one time Dr. Anthony was opposed to what Friends was doing. He sat down with Craig Chapman, they had disagreements, but in the end they solved those problems and he came to support the Friends because this is important to future generations. Using the term intergenerational equity this is important to the public trust. He is not Hawaiian, but he does have Hawaiian kids and this is part of their legacy that he should leave them and all of the children of these islands which is your mandate also and hope you do the right thing.

Hi'ilani testified that Craig is her grand uncle that she has been coming to Malaekahana since she was 5 that this place is like a staycation – relaxing, having fun, that the ocean is priceless and there are lots of childhood memories there. The homeless people come here and they love how everything is set up and their friendliness. The community loves coming here. It would be a travesty if they were to shut down. She would like to keep Malaekahana open.

Alex Zak testified he is from the Ukraine and has moved here that Malaekahana is a great place and likes the yurts. He wants to keep this place.

Eric Ishiki, a mason foreman for a construction company from Kaneohe testified that he came to this park to donate his services, to give back to the community and to help make this park more like old Hawaii by doing the landscape. Craig gave him the opportunity to serve by using the natural resources and he finds peace with himself by working with the land. This park should be preserved and stay the way it is that there is not too much of Hawaii left. The stream has a lot of opae still yet and there is a fresh water spring there on the ranch and that is pure to me.

Mike Hiche testified originally from New Zealand, he was the videographer who went with Jim Anthony to shoot at the park 4 months ago. He noticed a mana/vibe at Malaekahana that the park is being taken care of so nicely. He was impressed with Craig's innovation. The container homes are an example of what we should be doing statewide that Craig turned this area into something productive. People were shocked and dismayed when they heard this park might close that this shouldn't be lost and is something of value. Mr. Hiche asked to allow them to continue and to give them their support.

Dawn Kalamaipuanakawehi Watson greeted in Hawaiian and testified describing Malaekahana's winds. They want to pass this on to all the children of Hawaii. Laie is the only place they know of having a pu'uhonua where she described taking school children to Malaekahana teaching them about the land and the responsibilities in restoring the reefs. That the park should be open to the general public and should not be a private park or given to any private hui or any organization. Ms. Watson described refurbishing of the fish and at a fishing shrine the reef there has not one limu (seaweed) and it could be contamination from the sewage. Federal funds were used to purchase this park and we have a responsibility to open it to the general public and she is here because the general public's voice is not heard. The members of this Board have a fiduciary responsibility to look out for their well being, for the general public and the people of Hawaii.

Verla Moore, Laie Community Association and Neighborhood Board testified that she began with the Friends of Malaekahana as a founding board and worked there. They never refused anyone public access and is always open.

Rochelle Flagston, a tourist testified that she is neither for nor against the issue because she is unfamiliar with the issue, but she understands Hawaii depends on tourist dollars. Ms. Flagston explained that she and her husband runs the Honolulu Marathon and afterwards they like to camp and see the ocean. On behalf of Friends of Malaekahana they feel very safe there relating how their car was broken into at Waimanalo, a county park. The Friends patrol the park and she feels safe there. As a tourist they come and spend money even if it's not at a big hotel, but she wanted to speak on the Friends behalf.

Mr. Quinn pointed out regardless which decision the Board wants to go on this we have no permit in place right now and we need to decide whether to give an RP for this group or some other. Staff has no intention of closing the park or developing it beyond what the community has expressed as far as the level of use of the area. It is still going to be a State Park. Staff wants to make improvements, but we want to make sure they are done legally. Certainly, innovative improvements we want to look at, but we need to know what is going on rather than doing things out of creativity and innovation. Construction of those eco-cabins is not threading lightly that a level of excavation occurred in the area which is of great concern to us. This was a dune area that was graded and footings dug. We do have the large capacity cesspools that need to be addressed as well as compliance to DOH.

Mr. Quinn said some references were made to the Federal funds. Land, Water and Conservation Funds were used to purchase this property. It has to remain in outdoor public recreation forever, otherwise they have to come up with replacement recreation some place else. Housing, social services are worthy causes, but are not the kinds of activities the Federal Government would approve when we run the lease by them. The issue with the Land, Water and Conservation Funds is we need to have the Department of the Interior take a look at the lease or at least the provisions related to compliance with their concerns. In reference to Senate Resolution 139, when that resolution was passed we were already in the process of the RFQ/RFP to seek a long term lease for the area. With what was said here about communication, etc., concerns by some and accusations by others if the Board has questions staff can answer.

Member Morgan commented that he was impressed by this proceeding, a lot of great people here with good intentions and a lot of respectful testimonies. The Friends of Malaekahana has great contribution from the community and filled a niche which he thinks is worthwhile and resonates with him that not everybody has money to spend on higher priced things and he sees the value of secure camping. There are issues with compliance and unauthorized actions are obvious concerns and the need to resolve the accompanying bad relationship. I would like to see both parties adopt a win-win, can we collaborate and come to some kind of agreement approach because that seems like the first way we should try to approach it rather than burn the bridges right now approach. How do you succeed? What do you do? He asked with the recommendations I think it would be improper to say you are out of here right now. I totally agree that there needs to be an RP that there should be a transition because there has to be a transition to something. It maybe to the same party or maybe a different party, but I wouldn't hazard that speculation and I think there should be an RP with the current tenant. So would it be appropriate if that was the disposition of the Board to grant an RP. Approve recommendation 1, 2, make a new one and issue a 6 month RP as was suggested and not existing 3 and 4 and approve 5, 6 and 7 which is looking to the future and see how you create. Looking at his fiduciary, stewardship and custodial responsibilities of the State I don't think it's a bad idea to see if other people are out there. I think it would be great if the existing tenant could continue, but there is always the possibility that somebody else is better suited for the job and I don't think we should turn our backs on that individual and that's what I think 5, 6 and 7 are all about. Go with 1, 2, 5, 6 and 7 and add a provision to give them a 6 month RP.

Mr. Quinn said I think we had a provision to issue an RP which is in the proposed action plan. We need to have the Board over ride the previous decision or direction not to come back for renewal with this group if there were any financial arrears which there is or setting aside that provision. Member Morgan said I'm not sure what the current arrears is suggesting giving them a 30 day cure period and then an RP.

Member Pacheco asked that he heard testimonies that they didn't receive the water bill for 18 months and they get billed for $21,000. Is that accurate? Mr. Quinn said he doesn't know whether it was that long. There was an address change and that they were in arrears since 2008 for varying amounts. The payment history has been sporadic. The

physical address was changed to the P.O. Box when staff was getting the bills returned on the physical address, but he would have to ask Fiscal and how many of those bills were returned. It did run up to $20,000 in that short period. It was progressive. Ipo Tano interrupted clarifying that their address was always the P.O. Box and that the State system didn't pick it up.

Member Morgan related that after having visited Malaekahana that one of the impressions he came away with was that aesthetics is important to him and the place doesn't look very good. The videographer mentioned he was from New Zealand and that Member Morgan visited there in December and the one thing that impressed him was he didn't see any place that was un-kept no matter how simple a house was the yard was neat and looks good and that resonated with him after looking through the place. If I was the landlord I certainly would feel good about my tenant taking care of this place. I realize there are comments on stewardship that is one of the things as a representative of the State whatever comes out of this it also can be for the lack of something better. It's a hodgepodge of different things. It's an observation. It doesn't have to be costly to have it on better terms. Member Edlao asked you went to the site and it wasn't in the best shape. Member Morgan said it looked like a hodgepodge of different things and I hoped to see a plan that would have a more aesthetic look to the whole place. Member Edlao said interesting comment. Looking at the submittal and what was said it looks like we're talking about apples and oranges. If you went to the site, I don't know. I've never been there. It sounds like you guys had a good plan and things were working nice, but ...

Ms. Tano commented that part of the issue is those cabins are very old that no one authorize them to do any repairs and they would love to which is why they put up the yurts that they are embarrassed by those old cabins. Chair Aila noted that a historic site has to be done a certain way.

Dr. Anthony said that the Board doesn't have to accept staff's recommendations and suggested issuing an RP to the Division to make a decision and embrace the idea. Have staff meet with Friends of Malaekahana, give a deadline to come back to you with recommendations that both parties can live with and pick it up from there. Taking any of the parts of the recommendation is not a healthy way to take an initiative that is designed to be productive to get good results. Dr. Anthony agreed with Member Morgan's comment that the place looks kapakahi (lopsided) because of the old buildings falling down, but he always found it appealing, clean and well kept.

There were some discussions about a Master Plan between Member Agor and Mr. Quinn who confirmed there was one that also included the side of Malaekahana that the Parks operates and the Board at the time asked these concepts be taken out to the community and the plan was modified as they went through the public review process. There was another version, but he wasn't sure if it went back to the Board. Member Agor asked how close are the Friends to the Master Plan. Mr. Quinn said some of the yurt concepts were consistent with some of the cluster visions, but nothing else that was built is closed to what the ultimate vision was. It's a hodgepodge and things are where they are because of pre-existing cesspools. The State did a Master Plan that they referenced shows levels

of development ranging from camping on up to camping and cabins similar in density to what is there now which was the guideline for those who wanted to bid on the long term lease.

It was asked by Member Edlao if this moves forward as recommended, the Friends of Malaekahana would not be able to bid on this. Mr. Quinn said if they are deemed eligible they are not necessarily disqualified, but may need the AG's advice on that. With no permit in place now I believe there are provisions if a party defaults they can't bid again for five (5) years.

Member Pacheco asked if State Parks gets ready to takes over operational control do you have staff on for on-site security, will there be a reservation system, how would the operation of it by the public perception, the visitor and guest experience differ from what you'll be able to maintain in that transition. Mr. Quinn said barely. There is a security residence just off of the property occupied by a DOCARE officer, there is a bathroom and our staff is stretched real thin that they wouldn't look at this long term by our own. We will be looking at an interim permit for another group as quickly as we could. We would have to do some clean-up and removal of what we deem un-safe or can't continue to maintain to give a cleaner slate for the next group coming in.

Member Pacheco said when a relationship is not working both sides can bring something to it. He has been out there three (3) times and had the same perception Member Morgan had about the place and in context with other parks, it's average. There are things that need to be taken care of – the cesspools. I don't know how we can throw that and hold that on the Friends who don't have a permit and don't have the legal ability to make the kinds of repairs that you do with capital investment in there without a legal agreement and how they can put that on them. If there is a way we can find the leverage, the strengths of both entities here, find some way to move through these fixes, and in the meantime try to find a long term solution. Looking first towards the group and it doesn't look like that is going to happen. You got the cabins to deal with immediately and figure out what to do with those. If you had the money and everything was going fine with this relationship everything would be going fine on the State side, right? The money that was designated for the comfort station. Mr. Quinn said no, we targeted this when we found weren't coming to a good solution with the tenant. It wasn't our intent when we began the process to sink any capital dollars into it at any degree. Member Pacheco asked you were looking at the Lessee to put these in place. Mr. Quinn said that is correct. Member Pacheco said they weren't a Lessee, but they were once per Mr. Quinn where there was a three (3) year revocable lease that wasn't executed, but there was a series of RPs. Member Pacheco indicated that they never had a functional lease to put millions of dollars of capital improvements in place. Mr. Quinn acknowledged that is correct. Member Pacheco said he understands the change has to happen there, but he wasn't sure about the gap having been on this Board a long time and hasn't seen anything happen fast as far as coming up with agreements with people or getting anything in place and coming through here so we'll have this huge gap where there will be less service to the public and I don't see the facilities being cared for. Unless you can guarantee caring for the facilities better…I don't see it. If we are to move forward why not find a way to work

with these folks and have them do what they are doing that we have to do these things and move forward that way.

Member Edlao said it was mentioned that they do have funding, but because of the lack of permit which makes sense that I'm not going to dump money into something if I don't have a permit. He agrees with Member Pacheco that if they do have the funding maybe we should give it a shot and have the Friends prove that they can do it. Sounds like a good idea. The RPs is month-to-month. Mr. Quinn said they are a maximum of 1 year, technically month-to-month. Member Edlao suggested giving the one year RP and see what they can do. If at that time maybe we can get somebody else out there. It will take a long time to get someone else and who knows, maybe in a year it will be a different story. Have them submit a Master Plan, proof of funding...

Chair Aila noted but we have the EPA looking at us to resolve the wastewater issues. I cannot in good conscious go forward and approve an RP that allows non-compliance with the wastewater. Yes, these folks have some great experimental things going on, but the DOH is not going to certify them at this point. Member Pacheco asked what are we going to do about it because right now it's ours. They don't even have a revocable permit. We're the ones responsible. Chair Aila said that the EPA wants to shut it down right now. DOH is telling us to shut it down right now because they are not in compliance.

Ms. Tano explained that they have a letter from Kate Raul of the EPA in 2005 saying we have a perfectly good holding tank design which they e-mailed and we were told we weren't authorized to implement. Chair Aila said right because the DOH who will issue the permit for the wastewater system is not going to approve that right now. EPA says it's a great idea, but the DOH...Ms. Tano interrupted saying but the system she is talking about is approved by the DOH already which is a CPB international treatment wastewater technologies. That is the proposal that Roger Babcock is producing. The Chair said that he just testified earlier that wasn't approved by DOH. Ms. Tano said Dr. Babcock was talking about a green arch system there for the test protocol. She asked someone to pull out their for the CPB international treatment wastewater technologies certification from DOH. Dr. Babcock said the existing systems are on site, but money will have to be spent to have the Friends...The Chair asked you don't have the system in place. Ms. Tano said no, it is not in place, but they have the solution already approved by the DOH and that is what they propose implementing. Let them propose the CPB system or if Roger comes up with something more innovative we go with that, but they approved designs by the DOH. They are not implemented now, but they are affordable and they are approved.

Member Goode asked the approved designs for this site and these uses from DOH. Dr. Babcock said nothing is submitted to DOH yet. You folks funded a study that came up with good recommendations to go forward and are willing to implement those changes. Member Goode asked do you believe DOH could approve some type of system for this location and this type of use. Dr. Babcock said absolutely. Member Goode asked how long that would take with design as submitted, it's got to get approve, it's got to get built,

and inspected. Dr. Babcock said 18 months. Member Goode asked can you do it in a year. Dr. Babcock said maybe.

Mr. Hiche said he believes from the submittal it will cost over a millions dollars to remediate the old fashion way and the proposal that Dr. Babcock is talking about is a fifth of that price. I don't know if you feel obligated to spend more than a million dollars. Chair Aila said I'm more interested in how much the EPA plans to fine us on a day to day basis. Mr. Quinn said it's over $25,000 per day per violation.

The Chair said we're at a place where we have lots of difficulties, but we have the EPA saying you need to address this or these fines. He asked can we hold them off for 18 months while you do this and at the end the EPA will say, sorry. Dr. Babcock said that the EPA authorized the holding tank. Chair Aila pointed out you just said the EPA has, but DOH has not. Dr. Babcock acknowledged nothing is in place or in compliance. The Chair said that we can talk about it all we want. The reality on the ground is right now, we're not in compliance. The State is not in compliance, the tenants on the ground right without permission to be there are not in compliance and we have to deal with it.

Dr. Anthony suggested discussions with EPA to get around this problem to buy a little bit of time. Someone said the only option is to shut the park.

Chair Aila said that is one possibility that he wanted the Board members to understand what the full picture is here. Member Morgan said he appreciates that. What's missing is the clarity and that the submittal is thin on a lot of stuff.

Russell Kumabe, State Parks Development Branch Chief testified that there are two sets of Notice of Violation issued to DLNR – State Parks. The Federal Notice of Violation which is the large capacity cesspool (LCC) prohibition centers on 5 identified large capacity cesspools. Chair Aila mentioned that their focus is that we address not using these cesspools anymore. Steps to that regard has been closing facilities and having nothing going into the cesspools. Staff has done this on several projects that they have such as shutting down restrooms for a long period of time or until we find solutions to that. The other way EPA recognizes a large capacity cesspool closures is converting these cesspools into seepage pits. I believe Craig and Dr. Babcock described possibly a method utilizing the disposal of the treatment through seepage pits. Chair Aila had clarified that there is a distinction between the Federal and the State regulations and authorities. EPA is charged with overseeing the compliance with the prohibition of the LCCs. In that regard because a lot of time the LCCs are tied into new wastewater systems, sewer improvements they work hand in had with the DOH direction as far as improving wastewater systems. The EPA had told us that 5 large capacity cesspools are prohibited and you guys are technically in violation, but since DLNR – State Parks had come up with an action plan to address the IWS issues in which there were 3 identified then they will accommodate that IWS actions schedule as a reference or a guide of DLNR- State Parks meeting the LCC closure compliance. They had reminded us that this agreement or the deadline set forth with the DOH sewer improvements are no ways or means are they mandated by that to say that yes you are allowed the same time frame.

They are accommodating us because the two issues can be remedied and had been remedied in the past by an action or improving a service. Technically we are still in violation of the LCC prohibition if we are still using these cesspools to dispose effluent from any of the facilities. The bottom line for EPA is fine. Immediate resolution would be stop using them. In other words stop having any of the upland disposal come into it. On the State side, DOH the criteria had clarified that the EPA defers to the authority of the State implementing agency when it comes down to wastewater sewer systems. EPA is concerned with the larger global effect of large capacity cesspools. When it comes down to how do you address the impacts and how do you improve the situation the authority is deferred to the State implementing agency which is DOH. Now DOH has through the Notice of Violation has identified certain requirements that need to be met. DOH requires a two step approval process for the sewer plans. One, you need to submit the plans to them in a format with criteria that they had specified, they will review it and upon approval they will say ok, you can construct it, that is the first step. Second step, after you construct your system you need to have a report - either an engineer's report or final inspection report to confirm that the system that they had approved was built. The first step that Dr. Babcock had mentioned that things have to be submitted to DOH and that has to meet the criteria of the DOH format and not including plans, layout, calculations, flows, etc. that they can base their decision upon it. You can come up with any innovative systems be passed by DOH. If it meets their criteria and it meets all the criteria set forth by State of Hawaii regulations I'm sure it would, but it has to be submitted in a format that the State regulating agency is requiring. According to the Chair that as far as the EPA we are still in violation and one way to cure that is not using the cesspools anymore. Friends of Malaekahana had identified means of maybe not using the cesspools, but having things contained. I would recommend DOH's concurrence that as an interim measure this could be acceptable, but I would defer that to DOH as far as utilizing containment tanks and might be the regulations. As far as the containment tanks and its transport to a wastewater treatment plant for disposal. The EPA had said stop using cesspools. There are other options you could use in the mean time like using porta potties as an option. It sounds like the larger container unit that Friends of Malaekahana had described could be viewed as a variation of larger porta potty. The bottom line is nothing should be going into these cesspools. DOH violations need to be cured by submittals of plans. If not, I do believe the prudent action would be not using the facilities until we have waste compliance of the wastewater system. To clarify, the violations are with the individual wastewater systems - sewer systems servicing the comfort stations. The treatment and disposal in which DOH says you have to come through that. As far as the facilities that contribute to the sewer systems I would say that would have to be a decision made by the DLNR or the Board as far as what is appropriate.

It was asked by Member Agor whether they could still use the cesspool system for seepage pits. Mr. Kumabe said the cesspools can, but would have to go through DOH review and is handled initially by the Wastewater Branch. The Safe Drinking Water Branch has a program called the underground injection control program. They are the ones that would control all seepage pits and what they would do is access flow would have to be registered as an injection well and all the necessary steps need to be taken to

that. If the DOH wastewater guys it will say treatment is all good and we use the cesspool as a disposal unit. Both the Wastewater Bran and UIC would be talking. As far as outright cesspool closure there are certain procedures that have to be followed pursuant to State regulations. There are in-filling, documentation, filing and processing requirements that need to be done.

Member Edlao asked the State is in violation and even if we were to shut these guys down is the State prepared to change everything or just close the park to everybody so nobody can use that place. Chair Aila said we have to deal with the issue of the cesspools in terms of what will follow as an interim measure. If the decision was to close it, go forward, allow only camping then bring in porta potties to handle that situation. Member Edlao asked then the violation would disappear. The Chair said if we took care of our cesspools, correct. Mr. Kumabe said for the EPA violations we had expressed to the EPA we are committed to address the closures. Whichever direction this decision is made we are going to close the cesspools one way or another. Closure means that the methods either literally closing them down or having it legally or approved by DOH to be utilized as a seepage pit.

Member Morgan said my question wasn't answered. I heard you say we're technically in violation and we collectively are in violation. Where is the hammer in the ark? When you are in violation you are in violation. If hypothetically there are 6 month RPs and you go to the DOH and EPA and say by the end of this we are going to have a solution. Construction starts 6 months from now and can we go along this time frame? Hypothetically they could say yes. In other words we don't know where the hammer is sitting at this Board. That is the information that would be helpful to assess the liability there. Someone said or they could say no. Dr. Babcock explained if you went to the EPA and asked they are not going to give you as much time as you need and related his experience with hundreds of DOE schools. It's important to have a plan in place, issue contracts, hire a contractor, etc. Member Goode asked whether they can ask EPA or give EPA an action plan. Mr. Kumabe said that they proposed an action plan to EPA based on the DOH plan and they are working with them as far as on compliance through that. Member Goode asked whether the EPA accepted our action plan. Mr. Kumabe said they have accepted it as long as we can meet the deadline of addressing the large capacity cesspools of April of this year. They are willing to accommodate that on us. If there are any changes to that we will need to go back to them and identify what our proposed timeframes to that. But, as far as the large capacity cesspool closures we fell that compliance can come a lot sooner than the individual wastewater system issues. By virtue of not having anything going into the cesspools at all and also closing or working on converting the cesspools into seepage pits. As interim staff, basically not have anything go into the cesspools at all and that could work with EPA as far as the follow through on the processing of how we close the cesspools down.

Member Morgan said in April the main thing is there is a plan. We have a 6 month RP that is going to end and I think we could still have a simultaneous RFP process to see who else is out there. I think we should get rid of #7.

Mr. Kumabe said in answer to you question about the hammer and things that have affect and it appears what is the situation. Dr. Babcock mentioned the 2005 cesspools were prohibited, DLNR had got into a consent agreement finding of fact with DLNR that we had worked for our Boating and Park facilities. As far as demonstrating DLNR's commitment and intent of compliance with the EPA mandates. We have worked with them before and spent CIP projects to that and for compliance. As far as having a working relationship with EPA we had had one since 2005 and I have been the point person for the Department working with the LLC coordinators at EPA since that time. Because of our track record in committing and meeting compliance as far as the case for Malaekahana maybe certain flexibilities are provided to us because we have proven that if we say we are going to be compliant or will try to comply with this we have a track record that we can say we have done. So can we do this by April 2012 and I'll say we're committed to do that and we will in either form that's acceptable as far as the closures.

Member Edlao asked because of your relationship with EPA and if it goes beyond the April deadline they will work with us. Mr. Kumabe said yes, as long as we know the direction at least we can provide them with reasonable practical time frames that we can work with them upon. If it appears certain cesspools can be converted then so be it. That is the interim measure that has to go through the process, but if it's deemed that none of them can be converted...It depends on DOH making that determination on whether we can use cesspools as injection wells. They can't make that determination unless something is brought forth to them as far as demonstrating the effect of the treatment and so forth.

Mr. Quinn said to Member Morgan physically the way I read the stuff from the EPA, if we don't have solid closure of most everything by April then the hammer will hit.

Member Edlao suggested giving the RP and say you guys shut down the large capacity cesspools and come up with a plan. The difference would be because you have a working relationship EPA will probably give you the allotted time whereas these guys (the Friends) don't have a working relationship with them and may not even look at their plan. Mr. Kumabe clarified the reason why they are working with EPA is DLNR, State Parks is the landowner of the area which is being permitted and released. As landowners we have default of these improvements. Same thing happened when we had to go through ADA improvements. We made ADA improvements at the office of Friends of Malaekahana and they did that to all State properties, even those managed by non-profits. That is the reason why EPA/DOH contacted us and why we're working with them on the Notice of Violations.

Member Morgan made a motion to accept staff's recommendations 1, 2, 5 and 6 and not 3, 4 and 7. And adding issuing a six (6) month RP which during that time the parties will have to get together and look to solutions for all the compliance issues. Basically trust issues and all that. It gives everybody a fighting chance to make it work to find a win-win solution. Member Gon seconded that.

Member Gon pointed out he was impressed by the insightful and informative testimony provided by the community. That is becoming an uncommon thing and instead of feeling polarized and defensive, I felt enlightened and provided with information that can help us make the best decision that we can and thanked them for that and which is why he heartily seconded Member Morgan's motion.

Chair Aila said to grant an RP to Friends of Malaekahana if this motion passes we have to still deal with the outstanding water bill. Ms. Tano said she can write him a check tomorrow and that is not an issue for them.

Member Pacheco asked how is this going to move this forward, this motion. The Chair said I think it legitimizes somebody on the property right now which we don't have. Number 2, talks about down the road so everybody is clear what is going to happen and he read conditions#5 and #6 which allows them to have someone legal on the property while they work out the issues and the understanding that the Board's intention is to go out for an RFP/RFQ.

Member Pacheco asked other than the water bill what other outstanding issues do they have because we heard testimonies that contradicted staff's submittal about un-permitted buildings. Do the yurts need permits? Mr. Quinn said he believes testimonies related to permits from the County permits for the yurts and that a former Chairperson Ahui gave permission for yurts and it maybe valid for a few of them, but there are numerous un-permitted structures throughout the park that Board Member Morgan saw some of those. One of the other issues is insurance and in the past as Ms. Tano referenced fire insurance is not in place anymore. It would have helped with the Kawananakoa house if we had it there. It was a substantial structure and is now completely gone. Member Edlao said if this goes forward they will have to be in compliance with everything, all the issues on the site. Ms. Tano interrupted saying they said to show them your lease to get fire insurance. The Chair said it's an RP.

Member Goode said he will support the motion that he read the submittal and couldn't believe how long this has been going on. He echoed Board member Gon's statements that he was enlightened today. The Friends are the hardest working community and understands what goes on there and how to make it work, but there is a disconnect with the staff. Somebody from the Friends needs to get on board someone that speaks the lingo of the State that they need someone better because there are too many things not in compliance. You have a complicated property – shoreline, maybe historic structures, potential iwi, cesspool issues, a lot of complications and its all red tape while taking care of the folks that come there. I think as we move forward I hope you participate in the RP process and really concentrate on how you are going to bridge that gap.

Member Pacheco asked the RP, what kind of time frame are we talking about. Member Edlao said six months. Member Gon said the RFP will have to come back before the State. There were some discussions about whether they can give the Friends a six month RP. Ms. Chow said they can. Chair Aila asked whether the Board wanted to authorize the Chair to work out the details of the RP. The Board and Ms. Chow all said yes.

Chair Aila took the vote. There were 6 ayes and 1 nay by Member Pacheco. Motion passes.

The Board:

Approved to accept staff's recommendations 1, 2, 5 and 6, added issuing a six (6) month RP during which time the parties will have to get together and look to solutions for all the compliance issues and authorize the Chair to work out the details of the revocable permit (RP).

Unanimously approved as amended (Morgan, Gon)

Item E-1 **Request to Cancel the Assignment of General Lease No. SP-0182 Kumuwela, Inc., Assignor, to Derek L. Souza, Assignee, Lot 30, Koke'e Campsites Lots, Waimea (Kona), Kaua'i, Hawai'i, TMK: (4) 1-4-004:020**

Mr. Quinn conveyed that item E-1 that came to the Board previously where there was a consideration of $50,000. The Board required that half of that be given to the State, $25,000. The issue between the lessee said it was for the furniture, but staff told them that shouldn't be part of our kuleana and they wanted to withdraw it.

Unanimously approved as submitted (Agor, Jerry)

Item D-1 **Amend Prior Board Action of August 24, 2007, Item D-2, Sale of Remnant to Lynette Emi Umetsu, Calvin Sunao Umestu, Carol Yoshie Aceret, Gail Marie Umetsu-Lee and Lisa Naomi Kimura, Wailua Homesteads, First Series, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-2-06:through parcel 19.**

Item D-2 **Amend Prior Board Action of April 25, 2008, Item D-9, Approval in Principle of Direct Lease to United States of America, Department of Agriculture for Research, Educational and Housing Facilities Purposes; Amend Extensions of Approval Granted by Board Actions of April 24, 2009, Item D-2, January 8, 2010, Item D-10, and December 9, 2010, Item D-8; Confirm Issuance of Direct Lease to United States of America, Department of Agriculture, for Research and Educational Purposes, Laupahoehoe, Hawaii, TMK: (3) 3-6-6: portion of 46.**

Item D-4 **Issuance of Revocable Permit to Valentine Redo and Sari Powell for Intensive Agriculture Purposes; Wailua, Koolau, Hana, Maui, Tax Map Key: (2) 1-1-004:006.**

Item D-5 **Amend Prior Board Action of March 24, 2006, Item D-4, for Grant of Perpetual, Non-Exclusive Easement to John Ellis and Claudia**

Johnson-Ellis for Access and Utility Purposes, and Amend of General Lease S-5587 to Ellis, Inc. for the Withdrawal of 4,320 Square Feet for Additional Access Easement Purposes, Makawao, Maui, Hawaii, Tax Map Key: (2) 2-9-005: Por. 020.

Item D-7 **Issuance of Revocable Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on March 8, 2012,Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).**

Item D-8 **Consent to the Assignment and Amendment of Grant of Non-Exclusive Easement to John and Jenny Dooling, Assignor, to Chin Onn Choo, Assignee, Makiki, Honolulu, Oahu, Tax Map Key: (1) 2-5-019 :009 portion.**

Item D-12 **Set Aside to the Department of Education for School Purposes, Haleiwa, Waialua, Oahu, Tax Map Key: (1) 6-6-013:012.**

Item D-13 **Amend Prior Board Actions of November 18, 1994, (Item F-9), October 22, 1999, (Item D-5), March 10, 2000, (Item D-5), July 8, 2010, (Item D-17); Perpetual, Non-Exclusive Easement to Hawaiian Telcom, Inc. for Utility Purposes; Keawaula, Waianae, Kuaokala, Kaena, Mokuleia, and Waialua, Oahu, TMK (1) 6-9-003:por.002 and 005, 6-9-001:004, 6-9-005:001, and 8-1-001:007.**

Land Board understood staff submittal and no action was needed or taken.

Item D-14 **Memorandums of Agreement Between the Department of Hawaiian Home Lands (DHHL) and the Department of Land and Natural Resources (DLNR) for Construction and Maintenance of Certain Roads by DHHL in East Kapolei, and Subsequent Dedication of the Roads to the City and County of Honolulu (CCH) by DLNR, Tax Map Keys: (1) 9-1-16: Por. of 141, and (1) 9-1-17: Por. of 110.**

Barry Cheung said he had no changes.

Unanimously approved as submitted (Morgan, Gon)

Ian Hirokawa, staff member from Land Division introduced Barry Cheung, Oahu Land Manager said they needed to bring a matter to the Board about item D-10. Deputy AG, Linda Chow said item D-10 is done already and there is no item H-1. Chair Aila said you will have to brief us the next time.

Item L-1 **Appointment of Michael Fernandes as East Kauai Soil and Water Conservation District Director**

Item L-2 Authorization to: (1) Contract Qualified Professionals to Provide Technical and Advisory Services Related to Geothermal Resources; (2) Contract Services to Update Hawaii Administrative Rules Related to Geothermal Resources; and (3) Contract Qualified Professionals to Assist in the Auditing of Geothermal Royalties

Carty Chang said he had no changes to items L-1 and L-2.

Unanimously approved as submitted (Pacheco, Edlao)

Item L-3 Informational Briefing on the Status of the Dam Safety Program Administrative Rules (Repeal H.A.R. Title 13-7, Chapter 190; adopt H.A.R. Title 13-7, Chapter 190.1) "Hawaii Dam and Reservoir Safety Act of 2007," Hawaii Revised Statutes Chapter 179D

Mr. Chang presented non-action item L-3, informational briefing to the Land Board explaining why the rules were not approved yet. The Governor had some concerns and didn't sign it at that time. Staff went out to do some outreach explaining how the rules would impact the owners and gave some comfort that staff would work with them in implementing these new requirements. Staff worked with the Farm Bureau to form a group of dam owners' representatives and they had a number of meetings. The concerns were a certificate to impound process which is a new requirement and done every 5 years. If they didn't get the certificate will they be shut down and the answer was no. The dam owners wanted to know what the process was referring to the exhibits. Staff explained the process that there is some specific deadlines and notices prescribed in the rules requiring certain notices. This process is intended to allow the dam owners to be part of the process and allows staff to ensure certain minimum requirements are met by the landowner. Minimum requirements are making sure vegetation and debris is clear, having an emergency action plan, having a manual. You should be doing these with or without the rules as any prudent dam owner. Second, staff will look at what the deficiencies of your dam are. Owner submitted implementation plan on how you are going to comply with the law. You can be certified, not certified or do you have to have some restrictions applied to your dam. You can get certified conditionally, but you may have to do mitigated measures like you have to lower your water level which reduces risk and at the same time allows you to operate. You may have to put up stream gauges to be more watchful. The owner is going to be part of this process.

Member Pacheco asked if he thinks this process is going to stem the breach of our dams. Is this process something that will keep our dams in place? Mr. Chang acknowledged and said definitely that we recognize that water is important and government is not there to shut you down so lets work together to come up with a process. I think the dam owners need more time to get the money. A lot of times it's getting the financing to bring their dams to compliance and I believe this process will address some of those things.

Chair Aila said and an amount of flexibility was to obtain some level of safety. The Board members spoke in agreement. Chair Aila explained the reason why this is on the agenda today is Assistant Deputy Chief of Staff had been getting some inquiries from Legislators and asked us not to ask the Governor to sign the bill until we had another opportunity for dam owners to come forward. We placed it on the agenda to give them an opportunity to come listen to the presentation. No one showed up from the dam owners' community. Our intent is to ask the Governor to sign the rules so they become effective and this process will begin.

Mr. Chang said for hazard classifications that they built flexibility in for dam owners to submit their own generated model with some engineering background.

Member Morgan related some testimony from Punahola Ranch up in Kohala as being high hazard because of sub-divided lots below even if nobody is there.

Mr. Chang explained that staff did share the inundation map and it clearly showed that if the dam was breached the water would flow through a sub-division that had property. Chair Aila said in addition to the roadways. Mr. Chang said the owner is welcome to submit his own if he feels the water will go another way or get absorbed and staff offered that to him that he knows he has the opportunity to present to staff, they will evaluate it and then come to the Board to maybe reduce his classification to a lower one. No fees are an issue. We don't get general funds and it costs money to run a program. Staff went last year for general funds and it didn't work. The only way they can run the program is to pass some of the cost to the dam owners and I think that's fair. Unless we can get general funds somebody has to bear the cost. Staff wants to get the rules in place because we can't fulfill our mandate until they are in place. The rules are needed because there hasn't been a lot of activity with dam safety permits. We had only 11 come in since 2007 which gives the idea that people are not really moving. We need to get these rules to ensure that we have the ability to enforce and we have the tools to get these dams safe which is another reason why they need to move forward with this. Bill Tam is here.

Member Gon said he assumed all this information will be distributed to all owners of dams. Mr. Chang confirmed that.

Member Morgan asked where A&B was because they testified on 80% of the dams. Mr. Chang said A&B has 40 something dams. The response he got was everybody acknowledges there needs to be some type of safety. A&B is aware to do their dams when it comes to financing. Staff doesn't expect them to do it all, but what they presume will happen is to look at your worst dams are. What they prioritize as their priorities within the system and bring that together to work out a plan– 5 years, 10 years and that is where we are going with the dam owners who have multiple dams. They are going to need to come up with a plan and come up with some way to ensure that it's done in a manner that maximizes the safety. Chair Aila said the administration is introducing a bill which is a two step process that will make the repairs of dams ineligible for a special revenue bond. It's a constitutional amendment and then you got to go back and change the statute. In recognition that this is going to cost some money for dam owners who

have multiple dams out there this is the best that we could do. Mr. Chang said it may help certain dam owners who have the revenue like service the debt on bonds. Chair Aila said also recognition on how important water is going to be years down the road.

Item K-1 Time Extension Request for Conservation District Use Permit (CDUP) HA-3520 Regarding Initiation and Completion of Construction of a Single Family Residence and Related Improvements for Edward and Mariko Bilinsky at Waawaa, Puna, Hawaii, TMK: (3) 1-4-028:009

No one was here for this item and Chair Aila asked for the motion.

Unanimously approved as submitted (Pacheco, Agor)

Adjourned

There being no further business, Chairperson Aila adjourned the meeting at 3:30 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Adaline Cummings
Land Board Secretary

Approved for submittal:

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