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

DATE: FRIDAY, JANUARY 25, 2008
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

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

MEMBERS

Ms. Laura Thielen
Mr. Tim Johns
Mr. Jerry Edlao
Mr. Rob Pacheco
Mr. Ron Agor
Ms. Taryn Schuman
Dr. Sam Gon, III

STAFF

Mr. Morris Atta, LD
Mr. Sam Lemmo, OCCL
Mr. Dan Polhemus, DAR
Mr. Ed Underwood, DOBOR
Mr. Dan Quinn, SP
Mr. Eric Hirano, ENG
Mr. Dave Gulko, DAR

OTHERS

Mr. Colin Lau, Office of the AG
Ms. Pam Matsukawa, Office of the AG
Mr. James McCarty, K-1
Mr. Matthew Pyun, E-2
Ms. Lynn Brown, E-3
Mr. Douglas Blake, E-3
Mr. Clemeth Keali'ipoimokukanuha, Jr., E-3
Mr. Jim Coon, D-4, F-5
Mr. Rick Lesser, F-5
Mr. Ed Robinson, F-5
Mr. Phillip Kasper, F-5
Mr. Jeff Strum, F-5
Mr. Garry Kaaihue, J-2
Mr. Bill Wynhoff, Office of the AG
Ms. Denis Toombs, K-2
Ms. Victoria McCarty, K-1
Mr. Jon Moon, E-3
Ms. Cindy Sheehan, E-3
Mr. China Uemura, E-3
Mr. Brian Blundell, D-4
Mr. Russell Sparks, F-5
Mr. Greg Howeth, F-5
Mr. Steven Morris, F-5
Mr. Grant Arnold, F-5
Ms. Melissa Ling-Ing, J-2
Mr. Kurtis Ro, J-2

Mr. Joseph Napoleon, J-2
Ms. Janet Mandrell, J-2
Mr. Jimmy Anderson, J-2
Ms. Catherina Pudwill, J-2
Mr. Ron Iwami, J-2
Ms. Liz Enoka, J-2
Mr. Noa Napoleon, J-2
Mr. Michael Kraft, J-2
Mr. Bruce Middleton, J-2
Mr. Richard Ing, J-2
Mr. Chris Roridge, J-2
Mr. Greg VanderLaan, J-1
Dr. Charles Littnan, F-4
Mr. Fred Madlener, J-2
Mr. Les Parsons, J-2
Ms. Lavonne West, J-2
Mr. Tony Agad, J-2
Mr. George Downing, J-2
Ms. Susan Kim, J-2
Ms. Zelei Abordo, J-2
Mr. Frank Lange, J-2
Mr. Mark Cunnigham, J-2
Mr. Reggie White, J-2
Mr. Peter Drews, J-2
Ms. Marti Townsend, F1-F4

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

Item A-1 Minutes of November 16, 2007.

Member Schuman recused.

Unanimously approved as submitted. (Agor, Gon)

Item A-2 Minutes of December 14, 2007.

Deferred. (Johns, Agor) Not ready for this meeting.

Item A-3 Minutes of January 11, 2008.

Member Pacheco recused.

Deferred. (Johns, Agor) Not ready for this meeting.

Item K-2 Conservation District Use Application (CDUA) OA-3435 for an Australia-Hawaii Fiber Optic Cable System Located at and Offshore of Keawaula, Waianae, Island of Oahu - portion of parcel TMK: (1) 8-1-001:007 & 008

Sam Lemmo, Administrator for Office of Conservation and Coastal Lands (OCCL), briefed the Board on the background. He recommends approval of project subject to conditions. The project will take 7 days.

Denise Toombs for Telstra was here to answer questions.

Unanimously approved as submitted. (Schuman, Gon)

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

Sam Lemmo representing OCCL corrected landowner section to read McCarty's are the sole owners. He reported on the situation the McCarty's are experiencing and staff recommends approval.

James McCarty introduced himself and his wife Vicky. He informed the Board of the problems in acquiring Maui permits and hoped to obtain an extension. He cited permits on neighboring properties. Mr. McCarty distributed a handout to the Board.

Vicky McCarty clarified that the bankruptcy court has been cleared and asked to consider staff's recommendation. She noted that the property is not for sale and they intend to build on it.

Approved as submitted. (Edlao, Agor) All approved, but Member Johns opposed.

Item E-2 Request for Approval of the Placement of Hazard Signs on Improved Public lands Along the Kauai Bicycle and Pedestrian Pathway for Lihi Park to Kealia Beach, County of Kauai Pursuant to Act 82, Session Laws of Hawaii, 2003

Dan Quinn, Administrator for State Parks, informed the Board on submittal background.

Matthew Pyun, Attorney for Kauai County, asked for approval.

Member Agor remarked he visited the site and finds the location of signs appropriate

Unanimously approved as submitted. (Agor, Gon)

Item E-3 Request from Hulakai to Use a Portion o f the Kekaha Kai State Park - Kaulana-Mahai'ula Section to Hold the Third Annual Hulakai Longboard Surf Classic

Dan Quinn representing State Parks reported background. He described alleged violations and who benefits at Make-A-Wish Foundation.

Discussion of problems with surfers keeping general public out of parking lot, alcohol use, drugs, camping overnight, and jet skis.

Mr. Quinn explained there are few beach parks on the island that can hold such an event. Staff is balancing the benefits to a worthy cause versus the impacts to the public. It is represented as a fundraiser.

The Board had concerns with the use of a state park for a commercial venture.

Jon Moon of Hulakai explained products are given away to the children. Nothing is sold at the event. If any money is made it all goes to Make-A-Wish Foundation. He disputed the allegations and noted a DOCARE officer was there. It was Hulakai's first event which had problems, but they corrected them. Mr. Moon requested for more enforcement officers. Regarding advertisement, brochures were handed out. All the money made stays on the Big Island.

Lynn Brown, Executive Director of Make-A-Wish Foundation, introduced Cindy Sheehan, Development Director. Ms. Brown described their organization's reliance on volunteers and fundraisers. Make-A-Wish brochures are handed out and banners are displayed.

Douglas Blake expressed he has nothing against Make-A-Wish, but none of their children was there last year. Hulakai had their chance then and he doesn't understand why staff is allowing it. He described the allegations. There were no Make-A-Wish banners displayed, only Hulakai banners were up. It was held at Kawaihae the first year. He had no photos. Mr. Blake doesn't recommend giving Hulakai a permit because this is a non-commercial wilderness park.

Mr. Quinn reassured that staff will work with the Attorney General's (AG) office.

Discussion on penalties of violated conditions.

Member Pacheco concerned with any commercial activity and its impacts. He remarked that because of the expensive equipment left overnight Hulakai would need security.

Clemeth Keali'ipoimokukanuha, Jr. supports Hulakai, Make-A-Wish Foundation and traditional surfing. He noted on a daily basis 60-70 people use this park and with his own resources he volunteers to clean it.

Discussion on enforcement.

Mr. Moon mentioned the t-shirts are free, the food is free and described who the volunteers are.

Mr. Quinn explained the definition in Hawaii Administrative Rules states commercial activity is anything involving exchange of money on the site. He related there was pressure to start a commercial kayak operation and staff put a stop to that.

Discussion on number of contestants and people attending. 50-60 contestants, but unsure of the number of public attending.

China Uemura described the need for sponsors and banners. He observed tourists drinking in the park.

Member Edlao made a motion to approve submittal. Member Agor second.

The Board discussed the importance of this wilderness area and whether to post banners.

Chair Thielen queried the Board on whether to consider an amendment that this be the last approval of this Land Board for a surf meet held in Kekaha Kai State Park that additional conditions be imposed which require all banners and signage to primarily support Make-A-Wish Foundation and to delegate the Chair of this Department with the authority to impose fines upon the applicant if the conditions are not met.

Mr. Quinn replied staff will work with the AG's office.

Member Edlao moved to include amendment. Member Agor second.

Ayes: Jerry Edlao, Ron Agor, Laura Thielen
Nays: Rob Pacheco, Taryn Schuman, Sam Gon, Tim Johns

Motion as amended did not pass. Not Approved.

Item D-4 Authorize a One-Year Holdover for Grant of Easement No. S-5182, Lahaina Yacht Club and Grant of Term, Non-Exclusive Easement to Lahaina Yacht Club for Maintenance and Repair of Existing Concrete Pillars and Improvement Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-1: seaward of 5.

Morris Atta, Acting Land Division Administrator, conveyed background. Staff requested a 1 year holdover and issuance of a long term lease if all proper approvals are met.

Brian Blundell, Chairman of the Board of Trustees for Lahaina Yacht Club, asked for the Board's approval. He described background of Lahaina Yacht Club and the groups they support. He has been apprised of staff's recommendations.

Jim Coon member of Lahaina Yacht Club supports their application.

Unanimously approved as submitted. (Johns, Edlao)

Item L-1 Request for Authorization for the Department and its Agents, Employees, and Consultants, to Enter Upon Various Private properties and Easements / Right-of-Ways, for the Purpose of Conducting Investigations and Inspections of the Kaloko Dam, as Directed by Act 118, Session Laws of Hawaii 2006, Relating to Emergency Relief for Natural Disasters, and Pursuant to Hawaii Revised Statutes Chapter 179D.

Member Taryn Schuman recused herself.

Eric Hirano, Chief Engineer of Engineering Division, added to staff's submittal regarding Phase 2 dam safety inspection. Staff will gather topographic information which will assist staff to evaluate the stability of the dam, holding capacity and storage volume of the reservoir. This will help form additional dam break scenarios and evaluate potential impacts downstream of the reservoir. Ground evaluations would be provided to help better determine trigger points or alert warning levels to rising water which is attached to a water monitoring gauge. The study will look at the hydrology. A diversion from Moloa'a Stream feeds the reservoirs but was never registered with the water commission. This investigation will provide important information to staff and the owners or operators of the dam. He recommended approving staff's recommendations in the submittal.

Member Pacheco inquired who is responsible for registering the diversion.

Mr. Hirano replied it's the owners, operators or users.

Member Johns queried whether the land board has to make a decision to empower DLNR staff to utilize HRS §179D-6 to move onto the property to do the inspection that is being paid for pursuant to Act 118 (Section 24, 25 - Session Laws of Hawaii 2006).

Deputy AG Bill Wynhoff responded in the affirmative. Staff did ask the landowners for permission and they were cooperative with respect to Phase I. Because of the massive litigation it shouldn't be held against the landowners if they didn't feel able to accede to the Phase II. Staff believed it best to get Land Board's permission to conduct Phase II.

Member Johns asked if the HRS §179D provision is not related to the litigation.

Mr. Wynhoff replied it is not.

Member Johns inquired if HRS §179D doesn't have any provisions in it with regard to confidentiality for protection of the Land Board.

Mr. Wynhoff answered no; he believes staff took this position with respect to the Phase I. Once it was done and became public record he believes it will be the same case with Phase II when it is completed.

Chair Thielen queried Mr. Wynhoff if the intent behind that section of the statute is to allow the State to meet its obligations for dam safety inspection in the event the landowner does not give the State right-of-entry.

Mr. Wynhoff agreed. HRS §179D-22 was added last year in response to the Kaloko tragedy for the reasons the Chair mentioned.

Member Johns inquired if the AG's office reviewed the statute and found in the situation with litigation it is not asking the landowner to abridge the right against self incrimination or otherwise.

Mr. Wynhoff replied in the affirmative.

Member Pacheco asked if this was done with other dams.

Mr. Wynhoff explained this was done with this dam shortly after the tragedy and staff may have done it with other dams during the push to examine all the dams. The Board did take this specific action under the pre-existing statute at the time.

Member Johns asked if the public safety issue was done what is staff doing now. Over reaching for litigation advantage?

Mr. Wynhoff reported staff has not solved the problem. Staff went in concerned with the dam collapsing again and with the landowner's cooperation did a Phase I. The Phase I team did not think the dam looked like it will collapse, but they could not make no definitive conclusion without doing a Phase II.

Mr. Hirano remarked in answer to the Board's question, staff did come before the Board when the Corp. of Engineers and consultants were hired to cover the statewide inspections.

Chair Thielen inquired what the distinction is between Phase I and Phase II is.

Mr. Hirano replied Phase I is based on visual inspection. Phase II requires actual topographic surveys to calculate the slopes of the embankment, taking borings for soil samples and doing hydrology analysis. It is more costly than a Phase I.

Member Pacheco queried whether this authority to enter private property precludes any information coming from this investigation to be used in any litigation.

Mr. Wynhoff asserted it doesn't speak to that issue. The owners will have to work it out themselves in the litigation.

Mr. Hirano added it will become a public document once finalized.

Mr. Wynhoff stated the fact that there is on-going litigation doesn't legally override statutory authority and obligation.

Member Agor inquired how long this will take.

Mr. Hirano replied various consultants need to meet before setting a schedule.

Unanimously approved as submitted. (Agor, Gon)

Item F-5 Resubmittal – Enforcement Action against Maui Snorkel Charters, Inc. for Damaging Coral within the Molokini Shoal Marine Life Conservation District

Written testimony was received from Richard Lesser, attorney for Maui Snorkel Charters.

Dan Polhemus, administrator for Division of Aquatic Resources (DAR), reminded the Board that this submittal came before them in December. He gave a brief recap on the background. The Board pursuant to law has available to it two primary options for sanctioning Maui Snorkel Charters. First, revoke their commercial use permit for Molokini. Or second, impose an administrative fine and assess fees and costs of up to $672,618. At the time of the original submittal, DAR recommended revoking the permit for Maui Snorkel Charters for 1 year because it's a significant penalty that both reflects the seriousness of the offense, the damage and the circumstances surrounding the incident. The Board has the additional option of imposing fines and assessing fees. At the discretion of the Board it may impose a fine in addition to the permit revocation or the imposition of a substantial fine in lieu of the revocation. DAR considers this proposal reasonable and feels it should be considered because it provides direct benefit to the management of the resource. The State Office of the Attorney General is aware of this proposal.

Discussion and background on methodology.

Bill Wynhoff, deputy attorney general, explained that Hawaii Revised Statutes 187-12.5 talks about per specimen. The issue is not to measure the coral cover area or to put a market value on the damage. That point of view is how many specimens were damaged, destroyed or killed.

Member Johns asked why the difference between the two methodologies.

Mr. Wynhoff explained there are a welter of overlapping statutes related to fines. He referred to Pilaa and declared it's better or at least easier to go with a per specimen method.

Member Johns rephrased his question to Dan. Is staff confident on the number of specimens impacted in the area? He wondered if staff was trying to be conservative.

Mr. Polhemus replied in the affirmative and that David Gulko, a staff biologist, is available if the Board wants more detail. Staff produced a very conservative estimate.

Member Johns queried if this particular action is subject to a contested case hearing.

Mr. Wynhoff replied in the affirmative. But Maui Snorkel has not made a request.

Russell Sparks of Aquatic Resources on Maui reported that staff has gone back to the site since the accident, numerous times, to do annual coral monitoring assessments.

Dave Gulko, staff biologist with DAR, explained the regeneration issue. Eighty years is a conservative estimate of the slowest growing coral. He cited the example of a styrofoam cup comparing it to loss ecological services. It takes time to recover based on the type of coral and the environmental conditions.

Rick Lesser representing Maui Snorkel Charters thanked the Board for deferring this matter from December. He mentioned the distributed binder and who was here to testify. Mr. Lesser presented his testimony and photographs. He noted a permanent revocation would be fatal to Maui Snorkel Charter's operation. A high fine could be fatal, too. He recommended providing on-going income to the Department for the preservation, restoration and education of Molokini Crater. The company is willing to retain its permit by obtaining a surcharge in its operation to be directly donated to DAR in a total sum of $500,000 over the next 10 years guaranteeing a minimum of $50,000 a year to provide additional services that the DAR believes are required at Molokini. Mr. Lesser discussed the poaching problem, the use of enforcement and education.

Mr. Polhemus stated DAR has a commercial fisheries special fund available for this use. Staff consulted with the Office of Attorney General (AG) and they felt it is a possible option. He doesn't feel the Board should assess a fine so large it cannot be collected. DAR would like the resource to gain some benefit from any settlement and this proposal gives a tangible benefit to the management of the resource. Mr. Polhemus explained Maui Snorkel's situation where they had ample time to tow.

Discussion on how to prevent it from happening in the future.

Chair Thielen expressed she was offended by Mr. Lesser's presentation insinuating that the Board is looking for a piece of paper up on the wall that they have a win. She explained the Board takes their responsibility to natural resources seriously. Chair Thielen finds Mr. Lesser's offer interesting where DAR's use of the fund would be overseen by the commercial operators. Because Maui Snorkel made a series of decisions over a period of time which exhibited very poor judgment and impacted the reef for decades. It's interesting that Mr. Lesser should even bring that forward.

Member Edlao stated he likes the idea of a fund, but felt uncomfortable of having Maui Snorkel's passengers pay for Maui Snorkel's mistake. He clarified he is not against the company, but noted the severity of the situation. He asked is the $50,000 a year guaranteed.

Mr. Lesser replied it was discussed with the AG to obtain a real number that was collectable. He apologized to the Board that there was no offense meant by his comment. He reported in recent meetings, a multitude of options were discussed. The AG noted in past incidences where a fine was levied, but years later nothing had been collected. That is not what Maui Snorkel wants. They want to make sure there is something that will

work into the future for the reef. The reef is how the company makes its living and it is not trying to get out of this situation. Maui Snorkel wants to provide real funds to DAR to protect the reef they use, to help the moorings, to prevent the poaching and to educate the people to why it's so valuable. For those reasons, Maui Snorkel suggested a viable and realistic income stream that would last over the years. Mr. Lesser discounted the report on the growth rate and economic damage. He mentioned support for the reef and that Maui Snorkel are not the bad guys. He reiterated the situation.

Mr. Lesser mentioned that no petroleum or diesel leaked. He gave the analogy of cutting down an 80 year old tree and planting 25 little ones is not the same compared to the foam cup. No old coral was found in the impacted area. He added Maui Snorkel has no problem paying the fine. A six figure fine is not a viable option for this business which is the reality of it. Mr. Lesser reiterated the suggestion of reef preservation. It goes to the passengers, but so does everything else.

Discussion on why the captain didn't tow. Maui Snorkel understands they are responsible.

Chair Thielen suggested the coral regeneration time period is not necessarily an issue with the Board's ability to enforce the fines.

Mr. Polhemus encouraged the Board to levy an appropriate fine, but of sufficient magnitude that it recognizes the severity of the damage. While at the same time a fine that is collectable and utilized in the rehabilitation of the resource that was damaged.

Mr. Lesser suggested assuming the AG feels the period of reef conservation contribution, donation or fine is a viable option that the Board take certain parameters to revisit this in 12 months to see whether the money was collected, whether DAR was happy with what had been done and whether or not DAR felt it is a viable program. He suggested making an ultimate decision in 12 months rather than today.

Jim Coon, president of Ocean Tourism Coalition which represents 300 statewide ocean businesses. His organization is concerned with the situation and is shocked with the fine amount because no small business could pay a fine like that. Mr. Coon approved of the compromise and noted that Maui Snorkel is a long time supporter of local conservation. As an industry, his organization is committed to establishing some operating protocols because they don't want this to happen again. He acknowledged how important this resource is.

Member Johns queried whether it would be better for the resource to have these operating protocols. Or, are there too many tours going out there now, and if there are, why not start whittling it down with somebody who has done something as bad as this and eliminating them from the coalition.

Mr. Coon replied the reef is a limited resource and it's limited by weather. Molokini only has a window of 4 hours per day that allows the tours. The 42 operators share 24

moorings. One disadvantage of putting an operator out of business is losing a responsible operator. He explained as an industry these operators call each other to help in any accident and are willing to preserve the resource. Mr. Coon feels putting Maui Snorkel out of business will not enhance the resource. The industry wants to support that resource which should be encouraged. The weather may not allow any tours for days and the resource has lots of rest periods. The resource will benefit because of the responsible shared use and stewardship.

Member Edlao clarified after a year Maui Snorkel can reapply. Staff is not putting them out of business.

Discussion on whether they allowed a new captain to operate after 3 days based on his credentials. Reiteration of situation and mistakes made.

Mr. Coon explained if the weather is bad his staff will re-schedule or go somewhere else. If his clients are not satisfied they will get their money back. His operation will notify those clients in advance if the tour won't happen.

Chair Thielen was concerned why there aren't any internal protocols within the businesses currently. Here a captain said he knows he needs a tow, but a mechanic on shore said no you don't. Perhaps the businesses aren't taking as much responsibility or kuleana for the resource as they should. Mr. Coon mentioned protocols, but the Chair said she hasn't heard any time frames, any guarantees or anything delivered by the industry. She referred to the compliance of pumping toilets as an example. Chair Thielen asked Mr. Coon if he was confident that the industry will provide protocols for operating to avoid a situation like this from happening in the future some time in the next 6 months.

Mr. Coon agreed with the Chair in regards to the compliance of pumping toilets. He stated in regards to the protocols, the industry needs to get together. This situation has never happened before and now that it has the industry will put something in place to help the captains. The different operators will informally discuss on developing these protocols afterward. Mr. Coon has met with Mr. Polhemus on this.

Greg Howeth representing Lahaina Divers, Inc. testified he is a competitor of Maui Snorkel and has worked with them on a number of reef conservation projects. He explained that everyone in the industry is concerned because Maui Snorkel is a long time business who is able to give back to the resource. A start-up business would not be able to. The 1 year revocation would put Maui Snorkel out of business. Molokini is a significant part of its business. Mr. Howeth was concerned with the magnitude of the fine and what will be done with it. He supports a structured ongoing payment that will go back to Molokini.

Mr. Polhemus mentioned the Board could assess up to $672,618 based on the amount of coral damage. Staff did not endorse any amount. They are giving a range between zero and the amount stated. He noted that a fund going to the resource is palatable. But as an

operator any increases could price them out of the market. They are not governed by the PUC but the free market.

Discussion on who makes the call on the ship and reiteration of the situation decisions.

Ed Robinson has had a Maui dive business since 1971 and is concerned with the fine levied against Maui Snorkel. He felt the situation wasn't negligence, carelessness or irresponsibility, but stupidity. He is surprised there are no mitigating things to lessen the impact or some objective way to look at it. It isn't something that can be stopped.

Member Gon disagreed. It's an MLCD and all commercial use can be stopped at Molokini. It is the Board's discretion as to the amount.

Mr. Robinson replied he understands and was hoping for other considerations. He described the Maui Reef Fund and how it is used to protect the reefs. Donations are given to support it. He explained the commitment toward protecting the reef.

Steven Morris, secretary of the Hawaiian Islands Recreational Scuba Association Board and owner of Hawaiian Rafting Adventures Dive Maui, informed the Board that he has worked at Molokini. He is a volunteer with Malama Kai and the Maui Reef Fund. Mr. Morris acknowledged that Maui Snorkel is a responsible company, is a good example for other boat companies and they employ a lot of people. He described being a captain himself and that there is no one on the island to tow commercially. The other boat companies look out for each other.

Phillip Kasper, owner of Frogman Charters, addressed the Board that the operators install their own moorings on their own time and expense. He supports Maui Snorkel Charter's solution to the situation. Mr. Kasper reiterated Mr. Morris's sentiments. He added the engines are not perfect and problems will arise. It's difficult for anyone to memorize any one protocol when a couple situations happen at the same time. He compared this with car insurance that everyone makes mistakes. Mr. Kasper believes this won't happen again and requested the Board to consider all testimony.

Grant Arnold representing the Office of Hawaiian Affairs (OHA) explained that OHA was surprised by the series of decisions that were made in this situation, the amount of damage done and the amount of heavy commercial use in this marine preserve. OHA urged the Board to levy a punishment commensurate with the damage caused and to better manage this area.

Jeff Strum, general manager of Maui Snorkel Charters, apologized to the Board, the marine community and the citizens of Hawaii for the damage that was caused. He acknowledged that the captain and mechanic are employees of Maui Snorkel Charters and that they take full responsibility. Mr. Strum believes that the proposal made is fair. It benefits DAR, it benefits the marine industry, it gets the message out and the resource will benefit. His company is offering a vehicle to collect money to make things right. He

thinks Maui Snorkel can do it and the industry, the tourists and community will approve it. Maui Snorkel Charters strongly urged the Board to consider their proposal.

Member Edlao expressed that the wording in the written testimony makes it sound like the Board is condoning this.

Mr. Strum apologized for that. It wasn't the intent of his staff. He described the industry's need to be proactive and to meet with the State to protect the resource.

Mr. Wynhoff explained that revenues generally go to the State General Fund which is dispursed by the Legislature. The Legislature has set-up a few special funds, including this one which might be a vehicle so it won't necessarily go through the appropriation process. There is a special fund set-up by the Legislature that has primers on what can go in it and what goes out it. It can be determined by the Board.

Chair Thielen added that the Legislature has the authority to take funds and put them to alternate purposes.

Mr. Strum stated Maui Snorkel is willing to guarantee raising $50,000 a year and tie it to the renewal of the permit. He is not opposed to putting up a bond.

12:09 pm **Adjourned for Executive Session pursuant to HRS §92-5(a)(4) to discuss its legal rights, duties, privileges, and obligations relating to this matter with the deputy attorney. (Gon, Edlao)**

12:49 pm **Reconvened**

The Board:

Amendment to staff's recommendation:

Member Johns made a motion to amend staff's recommendation to instruct the Department through its Chairperson to negotiate a settlement with Maui Snorkel Charters and the parameters of that settlement shall include a commercial use permit suspension of an undetermined time and will also include a payment plan of not less then $550,000 and for the Chair to report back to the Board with the outcome of those settlement negotiations within 1 month. Also, $10,000 for administrative costs on top of the payment and included in the settlement negotiations. Member Gon second.

Chair Thielen summarized that the Chair has the authority to negotiate a settlement subject to the terms set by the Board and will be working with staff who will report back to the Board.

Unanimously approved as amended. (Johns, Gon)

Item J-2 Recommendation for final approval for adoption of rule amendments to Chapter 13-233, Hawaii Administrative Rules, as relating to small boat harbors motor vehicle and parking rules; denial of requests for contested case hearings by Arnold L. Lum, Garry Kaaihue, and Melissa Malulani Ling-Ing.

Numerous written testimonies were received via mail, e-mail and fax.
Portions were inaudible.

Ed Underwood, Administrator for Division of Boating and Ocean Recreation (DOBOR), briefed the Board on submittal background. There are issues with enforcing a 72 hour (3-day) time maximum because of the need to wait the 3 days before taking action on any vehicle. As written, the rules currently allow, DOBOR to meter the entire harbor (parking area) as well as the helicopter pad area. Originally staff looked at metering, but it was too costly and was never pursued. The parking area behind the harbor master's building was leased to Tahitian Lanai, but when the restaurant ended so did the lease. The Board did authorize DOBOR in 2000 to lease those lots to a public parking vendor but it was never pursued. Staff decided to look at the whole harbor instead of piecemeal. DOBOR held 3 public informational meetings to address concerns at the harbor. Staff sent out 560 survey letters to boaters. About 154 letters returned which is a 20% return rate. Of that 20%, 60% were in favor of a parking management plan. At the final public informational meeting, staff stated they will reserve the Ala Wai helipad area for recreational use parking. Reduce the parking time from 72 hours to 24 hours unless designated for longer periods. Staff would like to hire a parking vendor to run a parking management plan. Boaters will still receive parking, but at an increased rate from $25/year to $25/month. Staff requested approval of amendments to the rules.

Discussion regarding concerns with fishermen, launch ramp and enforcing the change in hours.

Melissa Ling-Ing representing Common Ground Hawaii requested for a contested case hearing, but was denied because of lack of standing and referred to HAR § 13-1-31 which says "...or who otherwise can demonstrate that they will so be directly and immediately affected by the proposed change..." She believes she will be affected and this supports her stand.

Chair Thielen pointed out that the Office of Attorney General says she does not have standing. Ms. Ling-Ing was recommended to see the Chair to see what recourse she had.

Ms. Ling-Ing noted all her comments are directed to the Ala Wai Boat Harbor. This harbor should be recreational, but has turned commercial. She can't see justifying fishermen and surfers paying for the boating fund when the public uses 10% of the parking. She is concerned that people are not able to pay the rates and might park at Magic Island instead. The rules are too vague. The 130 parking stalls are unclear and there is nothing specific in the rules. There's some city and county rates, but is it charged a portion of the hour or a minimum of an hour? The public has a right to know this.

This causes people to park somewhere else. It allows hotel and construction workers a cheap place to park. Staff is penalizing the public to park and from accessing the ocean for free. There will be accidents because people will park at Magic Island and swim across the channel to reach the surf spot off of Ala Wai. Ms. Ling-Ing asked not to approve amending the rules, to re-write them and that the 130 parking spaces should be written into the rules. There was 100% opposition at the last public meetings.

Chair Thielen explained what an administrative rule will do which is to give authority to the Land Board to make decisions within certain boundaries. After the rule is passed the Land Board has the authority to establish parking rates. DOBOR has come forward before the Board with a proposal to accept the public parking rates for that area. In that proposal 130 stalls will remain open and free for public parking. Under the existing administrative rules, the Land Board does not have the authority to do that and that is what DOBOR is asking to change. Under this draft the only change included in this proposed rule is for the slip holders, the permit that they have for parking will go from $20/year to $25/month. Any other change for parking fees will have to come back to this Board to set an administrative rules change. That is why it is not shown in this application. Chair Thielen understands there is confusion on this and that is why she is explaining it. She cannot foresee where circumstances would go on the record if this issue should come back to the Board in the future. That is why it is not shown specifically in this submittal.

Ms. Ling-Ing asked if these newly adopted rules are completed will the free 130 stalls of public parking at the heliport area be guaranteed.

Chair Thielen replied if this rule passes the only parking fee that will change under this administrative rule is the annual parking permit for slip holders that the rule gives the Board the authority to establish public parking fees and to assign for parking in State boat harbors. Any additional parking fess under this rule would have to come back to the Land Board for decision making.

Ms. Ling-Ing said it does not guarantee 130 stalls in the helipad area free of charge.

Chair Thielen responded that this does not change the parking stalls that are currently free at the Ala Wai. If this rule was to pass DOBOR intends to bring it back to the Board, a recommendation for a parking plan for the Ala Wai Harbor and in that recommendation DOBOR has committed to put in writing 130 stalls at the Ala Wai Harbor helipad will remain free and open to the public.

Ms. Ling-Ing queried could it be placed in writing right now.

Chair Thielen replied it's in writing now, but it's not in the rule. It's in the Land Board submittal.

Ms. Ling-Ing stated the submittal is saying for future changes which is leaving it open.

Chair Thielen reassured that staff is not leaving it open because DOBOR submitted a written recommendation to this Land Board, which is a matter of public record and a record for this Land Board, which extends to future Ala Wai plans that the 130 stalls are free and open to the public, if it passes. It is on record that staff will not change that helipad area. It will remain free.

Ms. Ling-Ing said she further recommends that any major changes to this parking arrangement in this area be approved by the Chairperson.

Chair Thielen added it would include keeping the 130 stalls.

Ms. Ling-Ing added and for all future changes. She thinks the Board should consider the future because these rules are good for 10 years.

Chair Thielen reiterated under the rules the only change that has to be adopted by this Land Board is in a public meeting that was noticed. DOBOR is on the record of saying that they are committed to keeping those 130 stalls at the helipad open and free for public parking.

Ms. Ling-Ing asked if it will not be put down in the administrative rules.

Member Pacheco clarified the 130 stalls will not be written in the administrative rules. The administrative rules give the Board the authority to go back and make decisions on how they want to manage the harbor parking throughout the State. The Board is getting the authority to do this only now. The parking will come back to the Board and that is when Ms. Ling-Ing can come back to make sure the 130 stalls are there.

Ms. Ling-Ing asked otherwise what does the public have right now to protect themselves? What do they have in writing that says they have free parking to the beach? We the people want something that protects their beach access.

Member Johns inquired as it stands right now there is nothing in the rules that protects the Department.

Mr. Underwood acknowledged the rule right now says it should be metered parking.

Member Johns pointed out that right now the rule and law says today it should not be free, it should be metered. This amendment creates an ability for the public to come back at a later meeting and ask for the 130 stalls. If the public says to stop this amendment now, the Department has the authority to go and put in the meters right now. He asked does Ms. Ling-Ing understand that.

Ms. Ling-Ing replied that she wants the public to do other things, too.

Member Pacheco recommended she go to the public trust office because it's mandated to provide public access.

Ms. Ling-Ing reiterated the above discussions and suggested the Board place this in writing to make people comfortable.
Member Pacheco asked Mr. Underwood if he would have a problem adding under recommendation #2 a memo to include 130 free parking at the heliport.

Mr. Underwood replied he had no problem with that.

Garry Kaaihue of Common Ground Hawaii reiterated Ms. Ling-Ing's testimony. He read and distributed his written testimony and he is against approving this.

Kurtis Ro of Common Ground reiterated previous testimonies and remarked this is the last free parking on this end of Waikiki.

Joseph Napoleon of Anuenue Canoe Club informed the Board of the history. His club uses the helipad parking and requested to keep it recreational.

Fred Madlener, boat owner and board member of Hawaii's Thousand Friends, proposed the community of boaters and recreation users be included in the rulemaking process. He reiterated the parking problem and that the boaters and recreational users want to work with DOBOR to simplify the plan.

Mr. Underwood suggested to provide free parking at the Ala Wai, businesses could pay a fee and concession the rest.

Janet Mandrell, boat permittee and a member of the Makai Society, told the Board that at the public meetings they were told this is the plan staff will be moving on and that Ala Wai Harbor is the first. The boaters thought they would have to go because the rule package shows, referring to Exhibit A map, where the zones are contrary to the existing statute. The map is confusing because Lot A is vehicle parking and Lot E is cargo parking reserved for boaters on the Diamond Head end. In the plan, parking Lot E was to go away because the area was to be utilized better. It was unclear.

Member Johns explained that the Board needs to find out whether it's true or not. He inquired if there will be another Ala Wai parking plan brought by the Department to the Board for future approval. He would address this submittal differently if this is the plan.

Mr. Underwood responded the plan, initially started as do nothing and block the harbor. The final plan that staff is proposing for the harbor is to reserve the 130 stalls free and raise fees for the permittees. The fees for the permittees are part of the rule where the plan will come back to the Board.

Chair Thielen clarified the confusion is the administrative rule that is before the Board right now. Under that rule it is to include the plan for the Ala Wai Boat Harbor parking which DOBOR discussed with the public.

Mr. Underwood mentioned that the administrative rule does not include a specific Ala Wai plan. That's exactly what staff didn't want to do. The exhibit A map is the current plan at the Ala Wai which staff is repealing.

Discussion reiterating the change to slipholders' parking permits and changing existing rules.

Member Johns stated there will be a plan and the community is saying staff should have more parity and put more restrictions on what that plan is. Don't do this, do that. At the end of today, the Board is not approving an Ala Wai parking permit. He asked is that right?

Colin Lau, Deputy Attorney General, replied affirmatively.

Member Johns added unless the Board does something else the Board can't approve and will not approve an Ala Wai parking plan today. The Board does not have the authority to do that even if they wanted to.

Mr. Lau responded in the affirmative.

Chair Thielen made it clear that DOBOR is not proposing that the Board adopt an Ala Wai plan today. All staff is recommending is the Board adopt this rule change which empowers staff to come back.

Ms. Mandrell remarked that the reason for the confusion is in the administrative rules and that it would further confuse things. That is why the opposition. The confusion was encouraged, a conflict developed and continued. She congratulated Member Johns for separating these two things and keeping them apart.

Ms. Mandrell testified agreeing with #1 and #5. Plan first, rule making later. There is a problem with how the rule is written because the parking rates are benchmarked in reference to the Honolulu City rates. This allows DOBOR to put in parking at anywhere from 25 cents to a $1.59 which commits the administrative rules written by the AG and not come back to the Board. This is based on the history of the Land Board. These rules will cause people to be written tickets, go to court and then get thrown out due to poorly written rules. The rule as written empowers DOBOR first to do what it wants throughout the State before moving on, it must come back to the Land Board. The way the rules are written and the fees that are suggested is a way to price people off of their land or a boat slip. Other harbors in the U.S. don't charge for parking. Here boat owners are charged for everything.

At every public hearing there has been overwhelming opposition to these rules as written. People were giving staff suggestions on how to handle it. Ms. Mandrell was one of the folks that got the survey. It's a bait and switch where people want a parking plan, but not at the cost. The public felt they are being deceived. She reiterated the need for a parking plan and she is concerned with how much goes into the boating special fund. After all

the public review a special effort should be put forth to change the law. Ms. Mandrell felt that the State is wasting people's time by going forward without public testimony.

Member Johns inquired where is the language that talks about coming back to the Land Board and the process for future development of the parking plan for the harbor.

Mr. Underwood replied it's in the administrative rule, but the parking plan is not specifically addressed in the administrative rule. To enter into any kind of agreement for a lease for a small boat harbor and to use a parking management company; it would have to come before the Board to ask for that approval.

Member Johns asked where is the overall plan. Is the private concession agreement part of a larger plan that would have open areas, reserve areas, etc. Where is it written that it comes back to the Board and where is the process described as to how that plan would be developed by DOBOR before it came back to the Board?

Mr. Underwood responded staff did not spell it out in the rule amendment now.

Member Pacheco inquired if it is a recommendation.

Member Johns said he is trying to figure out if all the Department is saying is that all this does is empower the Department to develop a parking plan for individual harbors then come back to the Board to address Ala Wai. Where is it? He doesn't see it. Is staff changing the recommendation or changing the language of the public rules themselves to do it? The way it's described makes sense, but he was wondering where it was.

Mr. Underwood replied that is not written specifically in the actual rule amendment package. Staff will bring everything before the Board.

Member Johns asked how does the Board ask the Department direction if the Department decides to go in. How does the Board make sure that happens?

Mr. Underwood responded staff will add it in as a recommendation in the rule.

Member Johns inquired if staff does it in a rule will it have to correct out.

Ms. Ling-Ing noted she is not familiar with that.

Mr. Lau explained it would have to go back to rulemaking if staff wants to change or approve any of the rules for Board policy.

Chair Thielen asked if this policy making was before the Board in the recommendations for rule changes now before us.

Mr. Lau replied it is now just an approval of the rules.

Member Johns asked if the board approves the rules, will the former recommendation be mentioned. Is it clear that the Department is not implementing their own plan if these rules are adopted?

Mr. Lau responded staff could correct or make rules regarding the plan in the future. The Board is only approving these before you.

Member Johns stated that is what he is afraid of. He wants to make sure it gets back to the Department to come up with individualized parking plans for each of the harbors and that staff agrees it's good to bring it back to the Board in a public setting and to agree that can happen. He asked what can the Board say to staff to make sure that happens. If it's through the recommendations then we could say it could be developed with input, before it comes to the Board. One of the things the Board is going to ask for is did you get input from the public. It's hard to take in more public input than what was envisioned because there is a discrepancy of what was written and what has been described to him today by the public. He suggested maybe staff could add recommendations to these rules as part of the rules.

Mr. Lau replied that doing that (amending the rules now) is right on the border because although the public can say these rules aren't the best and wants to require the agency to perform something else, including a specific harbor plan could be consider ad hoc rulemaking.

Member Johns added he is trying to figure out the legal process. If that is what the Deputy AG says, and this is what the Board wants, it can't be done today. After everyone is gone (in the future when a new Board and AG comes in), these rules are in place and then if the Board is not paying attention, maybe those plans could be put in place without coming back to the Board.

Les Parsons an Ala Wai boater reported he attended all the public meetings and thinks DOBOR is grossly disrespectful of constituents' concerns by ignoring input at the hearings. He referred to Bruce Middleton's testimony and recommended the Board consider it. Mr. Parsons suggested that DOBOR add more questions to the survey, but that was not followed. He also suggested reducing paperwork and instead of imposing all fees on boaters, for DLNR to seek to obtain general funds for the operation of harbors especially the Ala Wai which is a de facto public park in addition to its function.

Jimmy Anderson a surfer testified that surfers surf for 4 to 5 hours. The 130 stalls is not enough parking because the boater's guests and hotel patrons will park there. Also divers dive longer than 2 hours.

Lavonne West a resident of the Ilikai supports free parking. She noted locals use the parking and the construction workers use it, but will be gone in a year.

Catherina Pudwill opposed approving this. She reiterated there wasn't a parking problem before the construction workers came. There are 700 stalls, but she thinks the public is

losing 500 stalls and is concerned that it's too expensive if you go there everyday. She noted that the 24 hour rule change has gone through at the helipad area.

Mr. Underwood clarified that the 24 hour rule change is statewide and that some harbors have already adopted it.

Tony Agad cited Kapiolani Park as an example of metered parking by the County. Originally there were 175 spaces reduced to 130. He asked to consider future generations.

Ron Iwami, President of Friends of Kewalo Basin Park Association and spokesperson for Save Our Kakaako Coalition, wants free parking and ocean access to preserve a lifestyle for Hawaii's people. He commended Ms. Ling-Ing and supporters.

George Downing of Save Our Surf is concerned for surfers' accessibility being taken away and the extra expense on young people's pocketbooks. He wondered if money is an issue because if all this income is coming to DOBOR than why isn't all these piers fixed? He referred to DLNR giving Hilton a 50 year lease on the lagoon for no charge. It is funding that could be directed to the harbor. Why? Because the Hilton decided to repair the facility. When Hilton purchased the Kaiser lagoon they're assuming the lease of liability. The potential threat for the Ala Wai is the pressure brought upon the State by the hotel industry because of their usage of the lagoon area and the need for more parking. Right now there are 40-50 stalls being used by Hilton employees and construction workers which reduced the surfers' parking. He disagrees with approval of the amendment, but will come back when the parking plan is brought to the Board.

Liz Enoka testified that her family has been parking at the Ala Wai for years. Any parking fees would create a financial hardship for her family and others. She suggested if signs are put up to provide more enforcement.

Ron Iwami read Val Loh's written testimony as a recreational user because she had to leave. She is concerned with accessibility and economics. Hawaii is expensive to live and most of our incomes aren't keeping up with the constant inflation and cost of living. To limit or reduce free parking near the ocean is to cut into the peoples' access to the beach or the ocean and limits our ability to live in Hawaii. Hawaii is known for their water people. Access is essential. Please keep parking free.

Susan Kim disagreed with keeping the 130 free public spaces because she is unsure of the number of available open spaces. She recommended the Board include it in the amendment and to include and consider all community input. Miss Kim wants to safeguard the parking slip fee. She reiterated more enforcement and suggested issuing a FONSI.

Noa Napoleon represents the 2002 State coop group that the Board asked to make recommendations in regards to privatization. He reiterated the reason for the rules. He reported commercial surf schools are converging on the heliport to conduct professional

surf lessons there and he believes the current rules require permitting, but have not been strictly enforced. These companies have been asked not to leave their vehicles there all day, store surfboards and stage lessons there, but they do. He wanted to know if these rules constrain these surf companies. There should be prohibitions against commercialism not only at the parking lot, but at the beaches. There are 2 or 3 different vendors who use the heliport parking area and if it is not going to be enforced he thinks there will be a double standard where the public will prevent them from double parking. He suggested simultaneously having a hidden provision that governs commercial vehicle parking. If the package is not accepted then is it possible to address surf school companies at the heliport when DOBOR goes to publish the rules. He gave the Chair his written testimony.

Zelei Abordo commended the Board for clearing up the confusion with this amendment. She reiterated the survey percentages. It is saying 50% of the people are in favor of the parking plan which is totally incorrect. She noted that Marion Higa says there are 700 parking stalls in the harbor, 130 stalls reserved for the public, but the public is losing a lot of stalls. Ms. Abordo is not against DOBOR, but they need to respect the people who went out of their way to go to every meeting. She reiterated DOBOR's disrespect and non-accountability. She opposes this plan.

Michael Kraft, Ala Wai boater, read his written testimony. At the hearings, not one person wanted parking fees at the Ala Wai Marina. He referred to Mr. Underwood's letter that for years the Department received complaints, but Mr. Underwood didn't provide any data, how many, when or by who. Mr. Kraft presented photos of parking everywhere (at the Ala Wai) which is not a problem. The consensus by the public was to put up signs and enforce the rules. He described who attended and what happened at the public meetings. He passed out copies of the survey. If the word parking was substituted with parking management there would be totally different results. Mr. Kraft felt the money shouldn't be coming from the people who can least afford it and suggested going after the businesses that have deep pockets at the Ala Wai. The $25/month fee is a 1500% increase. There is no public marina he is aware of that charges parking fees to boaters. It's always included in the mooring fees which just had a 25% increase and will be having another 10% increase. He begged to dismiss this submittal for the best interest of the public and recommended starting over by rewriting the rules.

Frank Lange, Commodore of Hawaii Yacht Club, apologized for not bringing the complete board amendments with him. About 600 families use the Ala Wai harbor and boat facilities. The boat parking provides access for their members at the club which the club collectively pays. His position and recommendation is please, vote no and start over.

Bruce Middleton, Ala Wai slip holder and Chair of Ala Wai Marina Community Association, gave his written testimony that his organization opposes these rule changes. He suggested starting over by working with the boaters to come up with a plan that will work for the harbor and then rule on the basis of that plan. The association objects to the way the admin rules have been written because they confer upon boating and the

Department a lot of power that doesn't exist now in the admin rule. It's fine for management, but not good for the public. DOBOR has acted in bad faith to the community because DOBOR didn't tell the public that no matter what the public response is it doesn't affect DOBOR's position and nor did DOBOR address any of the problems. Mr. Middleton reiterated the survey percentages and the need for a parking management plan. He asked how did DOBOR come up with $25/month? City and County employees don't pay parking fees which is covered by a rule. He asked the Board to consider his testimony package and recommended that DOBOR work with the harbor ad hoc group to create a plan and revise the admin rules. He reiterated the public hearings were unanimously in opposition of this and he recommended plan first, rulemaking later.

Mark Cunningham represents all the recreational users who didn't make it here. He reiterated the importance of beach access, the survey and the Ala Wai having one of the last free public parking areas in Waikiki. The next free public parking and access to the beach is at Kaimana Beach by the Natatorium. He asked how many free stalls are there currently.

Mr. Underwood replied none. It's all metered parking once the meters go in.

Mr. Cunningham reiterated the lost of free public parking and access to the beaches. He feels for the boating community and agreed with a parking management plan. The problem of people paddling across the channel from Magic Island. The fact that DOBOR is moving ahead to maintain access to our ocean resources sounds like shibai to him.

Richard Ing opposed the rule change. He suggested analyzing where the money is going and where it went before asking for more money. He recommended that somebody manage the fund instead and direct where the money needs to go.

Reggie White an Ala Wai tenant and resident remarked there is no such thing as free parking if the property is improved and vehicles parking on it. Somebody is paying for the parking. Currently, the Ala Wai boaters are paying for all the parking to cover litter pick-up, landscaping, cleaning and maintenance of the restrooms. The Ala Wai should be the same as other recreational areas that have free recreational parking. It should be paid for out of the general fund or parks monies. Mr. White described the situation at his old pier. In order to fix it, it has to be paid for. But by draining the funds to pay for guest parking will make it harder to maintain these recreational boating facilities. He has sailed all along the North American Continent and there is no marina that charges for parking except at Ft. Lauderdale, Florida. Ft. Lauderdale charges visiting boaters to park a rented car next to the boat, but they don't charge the tenants to park their car. The slip rental pays for the parking lot.

Chris Roridge is a new Hawaii resident and U.S. citizen. He urged the Board to keep free access to the sea in the spirit of aloha to continue the Hawaiian beach culture, to retain and protect the use and enjoyment of the sea as it has always been. He believes this

Department and the State is responsible for governing Hawaiian culture and activities which are unique compared to any other state.

Peter Drews a surfer who considers bowls his home break admitted that he didn't read this document, but observed that no one can agree on what it says and it shouldn't be approved. He used to work on boats in the harbor, but since 1991 has seen the piers deteriorate. He reiterated making money for harbor improvements and the boaters and surfers taking the brunt of it, but felt it improper to make money off of recreation like surfing. Mr. Drews suggested uniting the boaters, surfers and the community to figure out how much money is needed. Approach some of the harbor businesses like the Hawaii Prince, the Chart House, and Hilton to provide money and in turn put up banners saying "parking was beautified by these businesses." Unite organizations like the Surfrider Foundation or Save Our Surf Coalition and have a big fundraiser where half the island comes out and spends money on a plate lunch rather than pay for parking. He hopes the Board is more cognitive and will get this problem solved.

A gentleman wanted to amend testimony with one sentence. He doesn't believe DOBOR has really considered the possibility of some serious confrontations at the heliport and the suggestion of free parking and paid parking.

Member Pacheco inquired if Ala Wai is a non-commercial harbor.

Mr. Underwood clarified that no commercial vessel activity is allowed in the harbor. Tasks on land at harbors can be used for commercial activity.

Member Pacheco said some of the numbers thrown out were 700 stalls. Does that include all the boat slips?

Mr. Underwood responded the total parking in the harbor is 1000.

Member Pacheco queried if the 700 are not associated with boat slips.

Mr. Underwood replied there are certain areas in the harbor that are designated public parking only and the remaining not designated public parking have been left open for this public boater access.

Member Pacheco inquired if he had the number or an estimate.

Mr. Underwood responded he doesn't have that on hand. It would be more open parking than current boater parking.

Member Pacheco assumed the parking put in for the harbor was for harbor users. He asked when the Department was put in charge, was there a mandate to set aside (parking) for beach access.

Mr. Underwood replied there was no mandate to set aside at all. Currently, with the way the administrative rule is written the entire harbor area can be metered. As the public testimony has shown, staff wanted to propose a rule change to allow parts of the Ala Wai for free parking.

Member Pacheco asked if the rule change is approved what is the process for it coming back (to the Board). If the Board approves these rules how would staff go about putting in the meters and to include them in the plan? There is no condition to come back to the board. He wondered what the mechanism would be.

Mr. Underwood's response was staff didn't write anything in particular under the rule amendment. But after he reviewed it he believes it is covered in the existing rule, HAR § 13-233-7 public parking. He read "as may from time to time be prescribed by the department, no person shall use any public parking area without payment of parking fees and charges [in areas where the fees and charges are properly designated and posted by signs] and may only park in areas designated by the department. The department may establish such areas by signage as convenient and efficient public use of a small boat harbor may dictate." Staff made minor changes where they've taken out "parking areas where fees and charges designated by posted signs" to say "can only park in areas designated by the department." The department has the ability to not only say where, but what to charge and where to charge. To what Member Johns instructed earlier it's already covered in the rule. But staff did not write a new amendment. Everyone considered that correct.

Member Johns clarified it allows the Dept. to do it, but it doesn't talk about the process or to amend it. It just says the department wants to amend.

Chair Thielen added it's not the Division, it's the Dept. that sets forth the policies for this Dept. It specifically does not give the authority to the Division.

Member Johns asked how does the Board know whether the Dept.'s parking is proper for the area.

Mr. Lau noted the rule is supposed to address this statewide. Staff is saying this is not specific to the areas of the Ala Wai. It's supposed to apply to all state boat harbors.

Member Johns asked Mr. Lau if he is saying for the individual signage placement, in order for this HAR § 13-233-7 to take effect, does the Board have the opportunity to make the decision on the parking, but not on how to implement it.

Mr. Lau replied that the rules allow the Board discussion on how to do that, but Mr. Underwood is clearly the policy maker, and representative of the Department, who can decide how to go about implementing without the Board. It was his understanding that Mr. Underwood has agreed to bring it to the Board for the specifics for the Board to approve how those requirements will be implemented, after the rules are adopted.

Chair Thielen added the intention with the Department was to require them to implement on the Department level not on the Division level.

Mr. Lau responded but not the Board.

Member Johns reported the rule says the Department can do what it wants. It can change policy rules. He said there is some question if the Division wants to say they need to come back to the Board with a specific parking plan and get input to do that, how do we do that? What does the Dept. want to do. How should the Board move? The Board wants to say come back on a specific parking plan, but how does the Board get input to do that.

Mr. Underwood replied would it be possible because staff is asking for the revision of the fee from the top 25-35 wording of minor revisions instead of saying "Dept.," then say "Board."

Mr. Lau stated that you would go back to a hearing if you do that.

Inaudible reply.

Mr. Underwood said his recommendation would be, if we do that than he would move forward with the existing rules that's in place now and amend it at a later date if the Board chose to do so.

Member Johns asked what does the Dept. want to do.

Chair Thielen reported the intention behind the rule was to permit DOBOR to better manage parking and address a number of problems. It helps when an area is not assigned. People may park at the boat ramps for more than 72 hours and that creates a problem because there may be derelict vehicles left there, not be able to remove them and no one to watch them. There is a statewide problem where signs are vandalized. Sometimes staff can't enforce because there is no signage. The change is for 24 hours, but the Board could still post longer for areas where people are fishing statewide.

The other issue is the parking permits for people who are using slips. Unlike the rest of the nation where there are slip fees, the boaters probably have an ala carte slip fee. Staff has to increase the permit fees to add the parking stalls. The small boat harbors has a backlog of capital improvements, around $300,000,000. The Legislature appropriated granted by the Governor's request last year for $10,000,000 lump sum for capital improvements to the following harbors. It came out of a bond that has to be repaid out of the harbor's special fund. Prior to that, the Legislature appropriated funding for the small boat harbors for $20,000(?) for "G" dock. The Governor has put in a request this year for an additional $10,000,000 in lump sum improvements, but with general obligation bonds. The "F" dock at the Ala Wai harbor came out of this money from the boating special fund. Staff asked for the release of the monies that were appropriated last year to do

various improvements that is clearly not sufficient to cover all the capital improvements and incurring maintenance costs.

The Board is trying is to address this rule change which is the amendment to the boaters. The purpose of the rule change was to give DOBOR the flexibility to develop and implement this parking plan for Ala Wai and take a look at other harbors where parking plans may be suitable. The current rule structure allows staff to charge Ala Wai for all the public parking that is to be metered. But recreational users want to retain good parking and would like to be able to include that parking when the Board adopts staff's plan. Boating has committed to bringing any plan for the Ala Wai Harbor back to this Board for review and approval, as stated in its recommendation.

Chair Thielen said that staff doesn't want to put our DOCARE officers in the position of having to enforce public parking of the small boat harbors and would rather use them for resource enforcement. The intention was to contract a vendor and that parking vendor would give a percentage of the proceeds to DOBOR for managing and supervising the parking. Unless there is oversight by a vendor the recreational users and boaters will be able to park there and not people who are trying to get free parking on their way to work or a construction site. This is the desire of the Dept. to be able to move forward with this.

There is concern that the admin rules don't specifically require Boating to come back to the Board and they would like to address that. It is the intention of Boating to come back to the Board to find a way to ensure people not feel that it is such a substantial change (?) to the draft rules that staff would have to go back on those rules and that people really can, however it works today. Chair Thielen stated it is not wise to place a plan on one harbor and she recommended the Department direct additional rule making for additional fees to the Board.

Member Johns inquired if the Chair is suggesting that the Board still pass these rules, but allow the Dept. to commence rule making amendments that would be specific to an Ala Wai parking plan?

Chair Thielen replied she doesn't support any rule amendments for any individual harbor because each harbor is different. There should be a focus on the process of the plan developed for each specific harbor. Direct the Department to do additional rule making to make it clear that future increases to parking fees or implementation of additional type of fees is done by the Board as opposed to the Department.

There was a suggestion and discussion for the Department to come up with a parking plan for each harbor, but mainly high use harbors like Honokohau and Ma'alaea.

Member Pacheco asked if this passes there really isn't any substance to get anywhere, but the fee of $25 and 72 hours. Is there anything else in here?

Mr. Underwood added and we create the free parking at the Ala Wai.

Member Johns mentioned it's not in the rules, anyway.

Mr. Underwood noted it's not specific, but if we implement the rule language that is there now staff would meter the entire area.

Member Pacheco inquired the Board has the rules now for free parking. He doesn't understand what the issue is. Are you saying we're in violation of the rules by having free parking?

Member Johns replied no. The Department has the ability…

Member Pacheco added to put meters in.

Member Johns replied it's not required.

Chair Thielen noted we have the ability to put meters in and what staff is asking for is the ability to enter into a contract with a vendor to manage the parking. In bringing forward that contract for approval in front of this Board staff will maintain 130 stalls at the helipad for free. There would be a cap on any fee that the vendor could charge.

Member Johns that's not planned, that's not right.

Female voice that's not part of the rules.

Member Pacheco remarked he can see that we're making more problems than correcting them. He doesn't understand what is being fixed here unless it's generating money from the parking.

Member Johns stated he doesn't have a problem with coming up with a better parking management plan for the harbors, but is not sure of the process. Something needs to be done because if the Board doesn't, there will be a situation where the Dept. could meter on its own and could go in now. Because that's what's on the law right now, that's on the books now. They could do that. There is nothing the Board could say about it unless the Dept. does this rule change which is what this is. He asked except, where does the process start?

Mr. Underwood asked does the Board want the Department to amend that HAR § section 13-233-7.

Member Edlao recommended the Dept. should go back and revisit this and come up with a plan that will accommodate other parking.

Member Pacheco inquired what drove this submittal?

Mr. Lau replied clearly there were safety concerns, unauthorized use of parking at Ala Wai by non-harbor users, and also equal access to parking.

Mr. Underwood suggested that the amendments changed from saying metered to paid parking zones.

Member Pacheco asked if instead of saying "state parking metered" could we say take out "metered."

Mr. Underwood reported the intent was it isn't necessary to meter. The mauka side is metered, but it isn't practical to meter all of Ala Wai because of the problem of meters being stolen, and explained that people were using pipe cutters. He suggested using parking pay stations in a number of stalls and to have someone continually monitor them. If no payment, staff can take enforcement action. Let's go to a different form and have a company who specializes in parking.

Member Agor I guess I would say come up with a parking plan with input from the public and (inaudible).

Mr. Underwood related he heard some people say that DOBOR didn't develop a plan. The plan was written and handed out at the last meeting explaining the next step which would be coming to the Board and following a rule making process.

Mr. Underwood noted some people said that DOBOR didn't develop a plan. The plan was written and handed out at the last meeting explaining the next step would be coming to the Board and following rule making process. That was written.

Member Agor deferred to the Dept. to develop a parking plan and have DOBOR discuss with the public.

Chair Thielen stated the Board can still come back to the plan or some aspects of the plan. It is required that the Board approves this because staff is going to be required upon administrative rule changes. The Department and Division can take their draft plan that they have on the Ala Wai back out. But again whatever comes back the rule changes here are intended to allow the Division flexibility.

Member Agor replied he has no problem approving the wording and the Department using the wording to develop a plan.

Member Pacheco inquired how long would it take.

Mr. Underwood described we go back out and start the public informational meetings over again. It depends how many people testify and if they don't want any changes. It's very clear. No changes. The only option staff heard was to provide more free parking. It's possible to have more parking at the triangle parking lot. Go down more on the 700 row which is an option to do. Then staff will have to get the boaters involved with this because it's their part of the property and will be the ones paying for it.

Chair Thielen added when staff makes the parking plan, rulemaking is an option by the Division. When staff goes to the parking plan they will ensure the public process.

*Member Agor made a motion to recommend approval of the rules and add another condition or recommendation for the Dept. to develop a parking plan for all the harbors that are affected by this with public input and come back to the Board for approval of that plan for implementation.

Member Pacheco asked would you consider Honokohau a high use area?

Mr. Underwood replied staff is having issues with the parking area now. It's a huge area and it would take awhile for improvements before the Board votes on that.

Mr. Lau asked if the Board was about to develop a plan in addition to the passage of these rules before public input and Board approval? The only concern that he had is that it may be a Sunshine Law violation.

Chair Thielen replied the Board will have conditions added.

Member Johns stated the added conditions are on not rulemaking. He seconded it.

Member Pacheco remarked the public will lose out and he does not support this. He is really concerned with the public parking. There is a need for public input in regards to the public parking that way when staff goes out there the facility can handle it. He had more issues about those spaces for harbor users to access the ocean and DOBOR needs to do that. He doesn't know how or where to fund for more public access or more public parking at the Ala Wai.

Chair Thielen pointed out for state parks they have their own separate funds and they asked the legislature for specific purposes. It's similar to the fund for parking like City & County. In harbors the special fund is primarily funded by the boaters for these are the harbors primary use. On the Ala Wai situation where enough people need general recreation access and generally need free access for non-boaters to be subsidized by the boaters. The Board is caught between balancing by giving some free parking for recreation access because ocean recreation does fall under this Division. And also to relieve the boaters from having to subsidize parking for other people as well.

Member Pacheco cited the example where a lot of people who access the beach on one side and the national park on the other side. It's very bad. People are using the resources from the state for all the parking for that area.

Member Agor asked if Mr. Underwood would come up with a plan regarding Ala Wai.

Mr. Underwood replied not at all. He said staff have been through this process already. Staff has no problem doing it again, but the testimony is the same which is to do nothing; leave it the way it is.

Chair Thielen suggested regarding the comments on the problems boating has on capital improvements and the level of use, it maybe worthwhile for Boating to go back and come up with a compromise that could graduate into something to help. So we can bring to that situation there. We make a different exception as of today.

Member Johns alluded to the fact that the Board would need to vote on that.

Chair Thielen stated the motion to accept the recommendation of staff to add an additional recommendation that the Division will go out to meet with the public and have public input when developing a plan on the harbors parking beginning. We have a motion and second.

Member Johns asked that motion is on the floor. Is the Chair suggesting that the Division go back out?

Chair Thielen suggested that the Board pass the rule so that the Division is within the authority provided in this rule rather than go back out beginning with the Ala Wai Harbor to lay that management plan on the table for the people who are here today, boaters in the harbor and others, to work on a revised parking management plan for the Ala Wai Harbor for the Dept. Other than these staff rules under consideration right now before the Board would simply give the Division the flexibility to implement that plan again it allows free parking in the Ala Wai Harbor.

Member Johns inquired if the rule would not be sent to the Governor and made into law until we get something else?

Chair Thielen confirmed it would not be the plan until ruled.

Member Pacheco suggested if the increase in public parking were entered than maybe he could draw that up.

Member Agor stated with that admission this rule would come back.

Chair Thielen clarified only the parking plan.

Mr. Lau asked should it be a plan by public hearing or by a rule?

Member Agor replied a plan is being developed by the department using the public.

Member Johns noted again, the rules do not require that.

Chair Thielen clarified that's the existing rules do not require that. Staff is not in the business of managing parking lots. Why not have somebody else manage it instead of wasting DOCARE's time in checking meters and use the boating fund. We want to enter into a contract especially for this Dept.

Member Johns explained need to understand where the Dept. wants to go with that. The problem he has with it is the Dept. has the responsibility, but the public, that the plan of what they want to do will have to move forward in order to come back to the Land Board and then to Boating, but that is not what is in front of us. If that plan was before him today he would vote one way or another or he would revise it, but that's not what we're starting out calling it. It's another process, that's not the submittal. The Dept. or public that this was planned in B&W and was written down in a plan that was signed off on is in the rules, but might say whether or not outside whether it's fair or not fair and kind of missing what the plan is. Then saying the Board can't do it or DOBOR says that is not what the rules say.

Chair Thielen gave one of the reasons staff couldn't bring the plan for the Board approval today is these rules don't allow it and the rules are not going through the final process until after the Board votes. It would've been moot to do that.

Member Johns pointed out in order to do a plan for a modified plan there needs to rule change which he understands. But this rule change is going to allow, in writing, the Board and/or the public additional input to the Department and the plan.

Chair Thielen explained other than the plan, the Division has made the commitment and has submitted a recommendation to this Board which has committed today and the motion that is on the table has a recommendation with a provision to develop this plan. That's the best that the Board could do in absence of putting a parking management plan before this Board because of the rules.

Ms. Ling-Ing asked do those specific revisions to those forms have to come back to the Board? Or would it be a one time thing?

Chair Thielen remarked that's a good question. This Board has the ability to direct the Division to grant subsequent rules that would require coming before the Board for approval.

A gentlemen asked they can stop them from implementing a planned rule.

Member Johns remarked in that case I fully confer if that is the master plan we decide then I probably won't push it. In order to move this forward then staff will need to come up with a master plan to come before the Board. Somehow what the Board needs to decide at this time is additional information that comes in at the meantime. If you want to do something else you could do something else. It needs to be voted on and it probably needs to be passed. If staff doesn't have a plan presented to the Board in 3 months then it'll be the same setting. He thought that was fair. Does Mr. Underwood have a problem with that or think that is fair?

Mr. Underwood agreed.

Member Johns added that's if you have a problem with the whole sunshine issue.

Member Pacheco queried this whole idea of the parking meters is going to take over the harbor. He was wondering how to solve this parking meter to make it a viable business to operate.

Member Johns remarked that's his point. Is it 131? Or maybe 131 is not enough?

Member Pacheco noted but staff will still have to go back out to the public. The public hearings are still planned. That rule hinders our ability to vote, but it's not right. If we have to go back out to the public just do the whole thing over.

Member Johns noted he would normally agree with that, but based on the rules now without doing the interim stuff by giving authority to have people get the Department today to agree to use what is now something else to allow them to vote on that thinking. Even to institutionalize the staff submittal on the ground right now. Even to do that. So they don't have the authority to do that. Somebody said to him, lets try to think anybody will separate 300 A and 700 B. It would still need to make a rule change of some sort. The question is what rule change and how will we process the Board submittal. (parts are inaudible)

Member Edlao inquired if the Board signs it staff has to go back out for public input? Then come back?

Member Johns responded affirmatively. He understands for the Department.

Member Agor added the rule can be adopted. What it is will be seen. He hopes the Department and concerned citizens can get together and look at the whole situation and deliberate. Its not somebody has to win somebody has to lose. He wants everyone to win.

Mr. Underwood mentioned when staff put this plan together, somebody didn't agree with the community or the boaters then staff could present to the Board. But this is what staff feels to let the Board decide on the plan.

Member Agor reported that's not what's going to happen.

Mr. Lau stated he thinks he heard Ed talk about the City & County parking rates in 13-233-26. It's his understanding Ed wanted to go up to city & county rates but no greater.

Mr. Underwood replied rates up to or less than. Staff wanted the ability to set rates below City & County rates if possible.

Mr. Lau added as long as staff stays within the range. It is already authorized at 40 cents per hour up to that amount.

Member Edlao hoped staff can go back to something that the Board can begin working with for the public. There's a lot of access and we should hang on to it because nothing is happening here at DLNR. He approved this, but he didn't accept it.

Member Johns accepted the motion, but the only way for the Board to give this is there be no changes at the harbor until staff makes a parking plan and it comes back to the Land Board to approve it. Despite what the rules might say because if staff doesn't fit in with the rules it won't be much fun. He doesn't want to see any changes at the harbor until that comes back to the Board however long it takes. He insists staff comes back otherwise he'll deny.

Mr. Underwood agreed - before any changes to the harbor in regards to the public parking.

Member Johns insisted only do the 72 hours and the boating slip fee, but don't make any other changes other than that.

Member Pacheco asked how does it work with the 72 hour change and cited Honokohau example. For someone who obviously is not fishing, what is the time frame and there are signs put in the ground allowing for 72 hours in appropriate places. Is there some leeway in that?

Mr. Underwood replied it won't go out until these are signed by the Governor. It'll be several months. There will be public informational meetings.

Bruce Middleton and Janet Mandrell requested contested case hearings.

The Board:

Amendment to staff's recommendation:

Moved by Ron Agor, second by Tim Johns that the board accept staff recommendation for amendment of the Chapter 13-233 HAR, and add new recommendation that the Division of Boating and Ocean Recreation shall go out and meet with the public for input to develop parking management plans for each of the high use small boat harbors, beginning at Ala Wai small boat harbor, and to come back to the Board of Land and Natural Resources for approval of any plan before implementation of public parking fees.

Ayes: Laura Thielen, Taryn Schuman, Jerry Edlao, Ron Agor, Tim Johns
Nays: Rob Pacheco

No change will be made to the public parking areas at Ala Wai small boat harbor until such plan has been developed with community input and brought to the Land Board for its approval.

Proposed changes to monthly permits for slip holders and the limits on parking at boat ramps were approved.

These rules must be forwarded to the Governor's Office for final approval and filed with the Office of the Lieutenant Governor before they are final.

DOBOR will work with the public and make announcements before changing any practice at the boat ramps.

Unanimously approved as amended. (Agor, Johns)

Item L-1: A contested case hearing was requested by attorney from William McCorriston's office.

Item J-1 Request for Approval to Conduct Public Hearings to Amend Hawaii Administrative Rules, Sections 13-251-76 and 13-256-108, Relating to Commercial Activities on Waikiki and Kaanapali Beaches and Ocean Waters and the Lahaina-Kaanapali Offshore Restricted Area; Possible Executive Session Pursuant to HRS Sections 92-4 and 92-5 (a)(4).

Written testimony was received from Greg VanderLaan of UFO Parasail and James Coon of Ocean Tourism Coalition.

Ed Underwood representing DOBOR explained the background behind this request to amend the number of commercial parasailing operations from five to six in HAR § 13-256-108; and to repeal subsection (g) of HAR § 13-251-76 because it has caused confusion. Staff consulted the Attorney General's Office on this request.

There was discussion regarding commercial activities in the Kaanapali ocean waters.

Pam Matsukawa, Deputy Attorney General, said it would be advisable to use revocable permits pursuant to HRS § 171-155 for the commercial activities occurring on land (Kaanapali beach). The Board could consider issuing for other types of commercial boating activities which may be occurring.

Greg VanderLaan, owner of UFO Parasail and member of the Ka'anapali Beach Association, testified on his written testimony. His company operates on Ka'anapali Beach and described what happened in 2001 and 2003. In 2007, he noticed there was a new company without a permit operating on the beach. A harbor agent not versed in the Boating rules issued 3 commercial permits. He spoke to Mr. Underwood about these rules. He asked the Board to deny this request.

Member Johns inquired as to why the Board should change the rule (§ 13-251-76), and whether this was appropriate or not appropriate.

Ms. Matsukawa agreed that the Board could issue revocable permits under the current rule. But eliminating subsection (g) would allow the Board to review all the commercial activities currently occurring on the beach and decide on the commercial activities that would be appropriate. DOBOR would bring applications to the Board and the Board would decide which permit should be issued. If sub-section (g) were deleted, it would provide some clarity.

Member Johns stated he didn't understand how much clearer it would be.

Ms. Matsukawa recommended going into Executive Session to discuss the Department's legal responsibilities and liabilities.

Mr. VanderLaan mentioned going back to the history of the rule which is to mandate the Board to preserve the resource by limiting commercial access.

There was discussion of issuing the sixth permit.

4:40 pm **Adjourned for Executive Session pursuant to HRS §92-5(a)(4) to discuss the Board's legal rights, duties, privileges, and obligations relating to this matter, with the deputy attorney general. (Johns, Pacheco)**

5:07 pm **Reconvened**

The Board:

Approved staff's recommendation with an amendment regarding HAR § 13-251-76. Department should go out, work on, and come back with amendments for the Board's consideration that will put an effective cap on commercial activity on Kaanapali beach.

Unanimously approved as amended. (Johns, Edlao)

Item D-1 **After-the-Fact Issuance of Revocable Permit to Coco Palms Ventures LLC, for Parking and Landscape Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-03:17.**

Item D-2 **Consent to Assign General Lease No. S-5584, Mary K. Thronas Assignor, to Michael J. Fernandes, Assignee, Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-9: 20.**

Item D-3 **Consent to Assign General Lease No. S-5264, Emmis Television Broadcasting, LP., Assignor, HITV Operating Co., Inc., Assignee, Humuula, North Hilo, Hawaii, Tax Map Key: (3) 3-8-01:11.**

Item D-6 **Rescind Prior Board Action of December 8, 2006, (Agenda Item D-15), Consent to Assign General Lease No. S-3764, Sugita Enterprises, Ltd. dba Hawaiian Floral Nursery, Assignor, to Coral Shores Enterprises Inc. dba Trade Winds Flower Farm, Assignee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:08.**

Item D-7 **Amend Prior Board Action of October 13, 2000 (D-17), Resubmittal: Cancellation of General Lease #S-4329, Waiahole Irrigation Company, Ltd., Set Aside to Department of Agriculture for the Capture, Collection and Transportation of Water and Uses Incidental Thereto, Including Without Limitation, the Use of the Existing Camp Site in Waiahole Valley and the Aqueduct System in Kahana Valley and the Management Right-of-Entry, Waiahole and Kahana, Oahu, Tax Map Key: (1) 4-8-13: portion 1, 19 and 5-2-1: portion of 1.**

Item D-8 **Consent to Assign; Amendment of Grant of Non-Exclusive Easement Bearing General Lease No. S-5210, Linda M. Rivera, Trustee, Assignor, to Michael Miki and Mary Lau-Miki, Griffith Yanagi and Olivia Yanagi, Assignees, Kaluanui, Koolauloa, Oahu, Tax Map Key: (1) 5-3-010:17 (seaward).**

All unanimously approved as submitted. (Johns, Edlao)

Item D-5 **Sale of Lease at Public Auction for Commercial Purposes, Waikiki, Honolulu, Oahu, Hawaii: Tax Map Key: (1) 2-7-36:04 and 16.**

Morris Atta representing Land Division requested deferral by Senator Ihara.

Member Johns recommended staff obtain input from the Neighborhood Board and to bring it back to the Board. He was concerned with the face value of the parking lot.

The Board:

Approved to Defer:
The Board agreed to a request by Senator Ihara to defer the matter.

Deferred. (Johns, Schuman)

Item D-9 **Grant of Perpetual, Non-Exclusive Easement to Hawaiian Telcom, Inc. and Hawaiian Electric Company, Inc. for Access and Utility Purposes and Issuance of Construction and Management Right-of-**

Entry, Hauula, Koolauloa, Oahu, Tax Map Key: (1) 5-4-009:004 (por.).

Member Johns recused himself.

Unanimously approved as submitted. (Pacheco, Agor)

Item E-1 **Approval to Issue a Permit at Ahupua'a 'O Kahana State park, Ko'olauloa, O'ahu to Na Kamalei for Educational Purposes**

Item E-4 **Termination of Revocable Permit No. S-7164 to HKK, LLC; Issuance of Revocable Permit to IWF KKH, LLC., Lanihau 1st, North Kona, Hawaii, Tax Map Key: (3) 7-5-06:22**

Dan Quinn representing State Parks reported on the background and noted no changes.

Unanimously approved as submitted. (Schuman, Johns)

Item E-3: Mr. Quinn informed the Board that staff received a petition for contested case.

Item L-2 **Certification of Election for Mauna Kea Soil and Water Conservation District Director**

Unanimously approved as submitted. (Johns, Pacheco)

Item M-1 **Issuance of Master Lease FAA Agreement No. DTFAWP-08-L-00012 United States of America (USA) Federal Aviation Administration (FAA) Molokai Airport**

Item M-2 **Issuance of an On-Demand Airport-Based Shuttle Bus Concession at Kahului Airport**

Unanimously approved as submitted. (Pacheco, Johns)

Item F-1 **Request for Authorization and Approval to Issue a Papaha-naumokua-kea Marine National Monument Conservation and Management Permit to Commanding Officer Karl Mangels, National Oceanic and Atmospheric Administration (NOAA) Ship OSCAR ELTON SETTE, for Access to State Waters to Conduct Conservation and Management Activities.**

Item F-2 **Request for Authorization and Approval to Issue a Papahanaumokua-kea Marine National Monument Research Permit to Dr. David Johnston, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, for Access to State Waters to Conduct Cetacean Survey Activities.**

Item F-3 **National Monument Conservation and Management Permit to Dr. Charles Littnan, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, for Access to State Waters to Conduct Hawaiian Monk Seal Monitoring Activities.**

Item F-4 **Request for Authorization and Approval to Issue a Papahanaumokua-kea Marine National Monument Research Permit to Dr. Charles Littnan, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, for Access to State Waters to Conduct Research on Hawaiian Monk Seal Foraging Activities.**

Dan Polhemus, Administrator for Department of Aquatic Resources, described each submittal background.

Discussion regarding subsistence fishing which is not allowed.

Marti Townsend representing KAHEA distributed their testimony booklet. She stated they have no opposition on the permit, but they had some concerns as noted.

1. Have permitted activities been identified.
   Example: Item F-3 has related discharge checked off to allow activity, but nothing states what is discharged.
2. Require a daily "take log."
   To ensure compliance which prevents and checks for violations. To include activities in the cruise log for better enforcement.
3. Require an incident reporting protocol on accidental kill of monk seal.
   Item F-3 is an attempt to build protection.
4. End commercial fishing.
   Should be protecting not fishing.
5. Clarify what is discharged.
   Don't know if chemical or non-chemical. Best to name what these are.

Ms. Townsend gave her concerns and supporting information.

Mr. Polhemus noted that specimens taken are identified. A daily take log is already being done. The Monument is protected.

Dr. Charles Littnan representing NOAA explained that KAHEA's concerns are imbedded in protocol. His staff always reports activities.

Mr. Polhemus mentioned state rules prohibit discharges in state waters which was once before the Land Board last year. The monument permit allows outside of state waters. The waters close to the islands are under a higher level of federal protection.

Member Johns stated the co-trustees are in the position and could certainly do that, as long as the Board has that position.

Chair Thielen added the Board members have neutral ground in consideration of KAHEA's comments on the process.

Member Johns replied he would rather take the comments from KAHEA on how to handle the situation.

Mr. Polhemus responded he could do that. It could be done within the boundaries of the monument rules.

Ms. Townsend noted she was advocating improvements to the permit.

Mr. Pacheco suggested going back to the co-trustees.

Mr. Polhemus recommended scheduling within the context of time.

Chair Thielen noted there will be a presentation with co-trustees and an opportunity for the Board to discuss the final process.

Member Johns asked about the draft.

Mr. Polhemus stated he hadn't seen the draft, but thanked everyone involved.

Chair Thielen remarked the Board members approved in a variety of forms including that one. The approval is an opportunity for the Board if we're not there.

Unanimously approved as submitted. (Pacheco, Johns)

Adjourned. (Johns, Pacheco)

There being no further business, Chairperson Laura Thielen adjourned the meeting at 5:33 pm. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Adaline Cummings
Board of Land & Natural Resources
Secretary

Approved for submittal:

LAURA H. THIELEN
Chairperson
Department of Land and Natural Resources