

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

DATE: FRIDAY, AUGUST 28, 2009
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:20 a.m. The following were in attendance:

MEMBERS

Laura Thielen
David Goode
Ron Agor
Dr. Sam Gon

Robert Pacheco
Jerry Edlao
John Morgan

STAFF

Kevin Kong/DOCARE
Morris Atta/LAND
Paula Hartzel/DOFAW
Sam Lemmo/OCCL
Michael Constantinides/DOFAW
Dan Polhemus/DAR
Dan Quinn/PARKS

Mark Young/DOCARE
Paul Conry/DOFAW
Scott Fretz/DOFAW
Eric Hirano/ ENG
Ed Underwood/DOBOR
Keith Chun/LAND

OTHERS

Randy Ishikawa, Deputy AG
Meri-Jo Abrams Manuel, Item D-15
Perry White, Item C-2
Robert Harris, Item K-3
Kealoha Pisciotta, Item K-3
Beth Lum, Item D-10
Ted Shephard, Item D-17
Bruce Hansen, Item D-11
Greg Stevens, Item J-2
Patty Miyashiro, Item M-1, M-2
Kimo Lee, Item C-6

Julie China, Deputy AG
Carey Koide, Item C-2
David Henkin, Item C-2
Marti Townsend, Item K-3
Derrick Elfalan, Item L-7
Stephanie Pascual, Item D-19
Kelson Poepoe, Item K-1
Richard Ingersoll, Item D-2
Glennon Gingo, Item J-2
Hi'ilei Kawelo, Item F-2
Jennifer Okina, Item D-20

Stan Fujimoto, item D-16
Keith Kiuchi, Item J-1
Charles Bellman, Item J-1
Rick Tuden, Item J-1
Sheri Seybold, Item J-1
Miguel Ramirez, Item D-21
Eric Yuasa, Item L-2

Derek Young, Item D-24
Ray Gruntz, Item J-1
Dave Cooper, Item J-1
Carey Johnston, Item J-1
Bill Kruse, Item J-1
Mike Swanson, Item D-3

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

Item A-1 July 22, 2009 Minutes

Approved as submitted (Agor, Gon)

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

Not ready. Deferred.

Chair Thielen introduced Mark Young, DOCARE's new Administrator.

Item B-2 Request Board Approval to Enter into a Joint Enforcement Agreement between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, and the National Marine Fisheries Service, Office of Law Enforcement

Kevin Kong representing Division of Conservation Enforcement reported on background.

Item B-1 Request Approval to Seek the Governor's Approval to Indemnify the City and County of Honolulu Department of Parks and Recreation for the Use of the Koko Head Shooting Complex on September 19 & 20, 2009 for National Hunting and Fishing Day Celebration

Mr. Kong described history and background.

Board member Goode asked whether this event will happen every year which Mr. Kong confirmed explaining the benefits. Member Goode asked whether to do the request every five years. Chair Thielen queried Deputy Attorney General, Randy Ishikawa whether the Board could provide the indemnification for future years for this event. Mr. Ishikawa confirmed that the Board could, but would need the information for each particular year and what scope the indemnification would be in addition to the comptrollers pursuant to statute. Chair Thielen asked whether the Board could delegate to the Chairperson to do the indemnification for issuance. Mr. Ishikawa replied that we could look into that, but he thought there wouldn't be any provision on it. The Chair suggested looking into that

in the future and Mr. Ishikawa said it would be subject to the Office of Attorney General's review.

Unanimously approved as submitted (Agor, Morgan)

Item D-15 Mutual Cancellation of Lease of Non-Exclusive Easement S-5252 and Issuance of Term, Non-Exclusive Easement to Meri-Jo Abrams Manuel, Trustee of the Lakala Trust for Wooden Deck and Concrete Piers Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-001:055.seaward of Tax Map Key: (2) 4-5-001:006.

Morris Atta, Administrator for Land Division described the background for cancelling an existing easement which is inaccurate and this new easement will incorporate the new area which staff supports.

The Board members questioned whether the new term easement will run with the lease easement term and for how long. Mr. Atta said it was his understanding the valuation was based on the 65 year term. The easement term would coincide with the value that was assessed to it.

Member Morgan asked how staff came up with the rental amount where Mr. Atta explained that there is an in-house appraisal staff and the original values were obtained through a formula approved by the Board using adjacent land values and shoreline encroachment.

Member Edlao asked what happens if the appraiser comes up with a fee and the applicant doesn't agree. Mr. Atta said it is a take it or leave it situation because it is an encroachment on state land.

Meri-Jo Abrams Manuel said she was here to represent her family and accepts staff's recommendation.

Unanimously approved as submitted (Edlao, Pacheco)

Deputy Attorney General, Randy Ishikawa stepped out and Deputy Attorney General, Julie China stepped in.

Item C-2 Request for Approval to Release the Draft "Short-Term Seabird Habitat Conservation Plan: Kaua'i Island Utility Cooperative (KIUC), "Island of Kaua'i, for Public Review.
Attachment materials are available. See bottom of agenda.

Division of Forestry and Wildlife (DOFAW) Administrator, Paul Conry communicated some background on having a short term plan to move into a long term plan for the Newell's shearwater, Hawaiian petrel and dark rump petrel. That the Habitat Conservation Plan (HCP) has gone through a review with the Endangered Species

Recovery Committee, will go through a public hearing on Kauai, comments will come back and go to the Board for consideration. This incorporates interested agencies, community experts with conservation biologists; implements mitigation measures and is an interim step until staff goes to the island wide plan. He introduced staffers Paula Hartzel and Scott Fretz who are working on the plan and asked the Board whether a hard copy or electronic file would work in the future. Members Agor, Gon and Pacheco said they preferred electronic files.

Carey Koide for KIUC requested the Board's support noting that KIUC likes the short term plan.

Perry White representing Planning Solutions, Inc. said his company prepared the HCP and was here to answer any questions. Also, his company appreciated staff's assistance.

David Henkin, an attorney with Earth Justice, testified saying that they thought someone from U.S. Fish and Wildlife Service would be here to raise a procedural issue and Mr. Henkin had substantive concerns with the plan, but the procedural concern is to secure both Federal and State approval. Fish and Wildlife is currently reviewing the draft plan and has not determined whether in its current form would be appropriate to go out for public review and comment under their own processes. Earth Justice's concern is this is their opportunity under Chapter 195(d) for the public to review the plan for the purposes of the State process and that it could cause both confusion and missed opportunities if the State goes out with a plan that is different than a plan that goes out for Federal purposes. Earth Justice has no desire to delay the processes and was hoping KIUC would move forward, but what Mr. Henkin is suggesting doesn't involve a delay because there could be no authorization for the take unless KIUC receive both the state and federal permissions. He reiterated the concerns regarding confusion that it is more efficient and more appropriate to ensure adequate public participation to have the two processes go forward parallel rather than staggered.

Member Gon stated in an ideal world that would be preferred, but in the interest of getting information out to the public this is one of those inefficiencies we would have to live with, noting that some of the Federal processes have long delays. Mr. Henkin said he couldn't speak for the Feds that the Federal will put out a plan after the Department of Justice reviews it for adequacy whereas the State puts it out then determine whether it is adequate. There could be material changes on the Federal level to meet their standards that may need to circle back in the State process to address and there is a mandate in State law to provide opportunity for the public to comment on these documents. If there is material changes it will circle back and people can only attend so many meetings. Chair Thielen clarified that if there were substantive changes that people may not have a chance to weigh in on the state level, but this is to just to circulate for comments and would have to go back out for further comment for any substantive changes before this Board and there will be an opportunity to do that. People say they can attend only so many meetings, but on the other hand the Department is frequently criticized for not circling back to give people multiple opportunities because they can't attend the one meeting. The Department's legal review is more on the technical level, not the policy level, looking at

the policy choices for adequacy as staff writes it and the Attorney General's Office reviews with a different process.

Member Morgan asked whether the EIS is public and whether Earth Justice attended those (meetings) which Mr. Henkin acknowledged.

The Chair asked Mr. Conry what the Federal timetable is. Mr. Conry said the Department's process cannot always be in sync with the Federal Government and cannot control the Federal side, but are part of the Endangered Species Recovery Committee. If there are substantive issues from the Federal Government, that could be brought to public hearings as well. Paula Hartzel noted that staff is working with Fish and Wildlife and have not expressed a definite time period, but there are issues that Ms. Hartzel couldn't speak for Fish and Wildlife or KIUC on. Staff will collaborate with them to get as close as a public review document as they possibly can.

There was more discussion reiterating that the Federal Government has a different review process that it is difficult to line them up exactly and that staff wants to hear from the Federal before going to final. Ms. Hartzel also noted that both sides need authorization from each other, but the Federal has more flexibility as far as HCP versus Section 7 consultation and other avenues aren't covered in HRS 195(d) that the Federal may or may not have an HCP that looks like the Department's because the process maybe somewhat different.

Member Gon questioned whether the Fish and Wildlife Service representatives on the Recovery Committee are involved in the process of approval of the Fish and Wildlife Service. It is not likely that the Committee working with KIUC would contradict what the agency would do. Ms. Hartzel answered saying if Fish and Wildlife had any concerns it would be toward more conservation efforts.

Unanimously approved as submitted (Agor, Gon)

Item K-3 Request for a Contested Case by Mauna Kea Anaina Hou, The Sierra Club-Hawaii Chapter, The Royal Order of Kamehameha I, Kahea, Dwight J. Vicente, and Clarence Kukauakahi Ching, in Regards to the Mauna Kea Comprehensive Management Plan, Located at Mauna Kea, Hawaii, TMKs: (3) 4-4-015:009 & 012

Written testimony was received and distributed to the Board.

Member Pacheco recused himself.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) reported on the request background referring to the conditions from the April 9, 2009 Board meeting where the Department took oral requests at that hearing. Petitions were filed subsequent to that meeting where there were a number of issues raised in the petitions listed, and in the staff report indicated per petitioner. Staff is asking the Board not to approve the petitions per the reasons stated in the staff report and the Deputy Attorney General could

answer any legal questions. The recommendation is to deny the six requests for contested case hearings filed timely with the Department. Also, staff received written testimony from KAHEA.

Robert Harris testified on behalf of Sierra Club, Hawaii Chapter saying he is baffled by staff's recommendation to deny the contested case hearing based on the lack of standing. For the commissioners who aren't attorneys, a lay person's definition of standing which is essentially a requirement to make sure the parties involved in a legal matter actually have an interest or concern about a particular matter. In the federal courts, they specifically established a higher threshold to make sure parties involved have an interest. State courts established a lower threshold particularly for environmental matters citing the Superferry. The courts found having a recreational interest was sufficient for standing in that case. There is a separate definition for standing for organizations like the Sierra Club who have an interest to protect the environment and members who have utilized areas for recreational, cultural or environmental interests. That's why this particular staff recommendation is really stunning. It essentially says the only definition for standing is if you have a property interest in a particular area and that is blatantly contrary to the law. In fact, here you have plaintiffs that have been juristically recommended to have standing in this matter. This is a continuation of the matter where the court has ordered that there is an obligation here to do a Comprehensive Management Plan. If following staff's recommendation the Board would be going contrary to what the judge has already found. Mr. Harris had the Board refer to the petitions saying there are some assailing facts. The Sierra Club has members who have been involved with the management of this area for years and for your decision not to have standing is laughable. Staff's recommendation is contrary to the law and further denies the public the opportunity to meaningfully participate in this process. It essentially denies these plaintiffs the opportunity to cross examine witnesses, introduce evidence and have in depth discussion which is what the law provides here. It's not an appropriate penalty, but everyone is entitled to their day in court which doesn't apply here, but this decision denies the public an opportunity to be involved and if it is appealed; quickly overturned.

Marti Townsend for KAHEA, The Hawaiian Environmental Alliance said that they are also petitioners for a contested case hearing on Mauna Kea and was the original plaintiffs of the Mauna Kea Anaina Hou lawsuit that brought about the Comprehensive Management Plan. The Board has her written testimony outlining KAHEA's right to a hearing which she briefed. The interest of KAHEA's Board members and more than 6,000 members satisfy requirements for standing. They are people interested in protecting the natural and cultural resources of Hawaii. Specifically, KAHEA's Board members regularly visit Mauna Kea engaging in traditional and customary practices there. These kinds of interests have been long recognized by the Hawaii Supreme Court to give Native Hawaiian practitioners access to the courts to protect their interests. Ms. Townsend reiterated Sierra Club's statement that if the statute of limitation is accepted as written and standing is denied it will be quickly overturned by the court of appeals. In addition, KAHEA is concerned that the petitioners were not given the 20 days notice as required by the regulations that they received a document on August 13, 2009 and it was not quite 20 days from the date of this hearing asking to start over. In addition to giving

petitioners 20 days notice KAHEA asked that the hearing be held on Hawaii Island that regulations require that the hearing be held where the conservation district is located – Hawaii Revised Rules, Section 13-5-4(b) that having this meeting in Honolulu violates this rule. Ms. Townsend summarized asking to reschedule the meeting, give 20 days notice, and hold the meeting on Hawaii Island.

Kealoha Pisciotta for Mauna Kea Anaina Hou distributed collective written testimony on behalf of Mauna Kea Anaina Hou (MKAH), Sierra Club – Hawaii Chapter (SC), Royal Order of Kamehameha I (ROOKI), KAHEA: Hawaiian Environmental Alliance (KAHEA) and Clarence Kukauakahi Ching. Ms. Pisciotta informed the Board that she came from the Big Island to represent those who couldn't be here noting that when she refers to the hui she refers to the people who challenged in the Third Circuit the requirement under DLNR rules for a Comprehensive Management Plan (CMP) where the Third Circuit found in their favor and that is why the CMP is being reviewed by this decision making body now. Ms. Pisciotta related concerns that the University of Hawaii is a private firm where Ku'iwalu is delegated to manage the conservation district of Mauna Kea and within that is a natural area reserve. The natural area reserve should dictate the rest of the conservation district. She clarified because there is a lot of misunderstanding. As a conservation district all of the rights that we want to continue to exercise and resource to protect are things the law protects. Astronomy isn't one of them. It's an interesting science, a noble endeavor, but it doesn't necessarily coincide or comply with the rules of conservation and is part of the State Constitution. Ms. Pisciotta reiterated KAHEA's testimony to hold the meeting on Hawaii Island and to give a 20 day notice. She concurs with Mr. Harris and Ms. Townsend on standing reiterating that the court recognizes that they have standing on the original claim and respectfully disagreed with staff's recommendation to deny their standing. Also, staff recognized HAR 191-1-5 that a contested case happens prior to decision making. On April 8 and 9, 2009, the Board continued with decision making conditional approval of the University and Kuiuwalu's Comprehensive Management Plan. But, the due process rules require that when a contested case is called for the hearing for standing is considered before a final decision or its equivalent to a judge. You can't make a final decision till he's heard all the evidence. Ms. Pisciotta believes a contested case hearing, the administrative process for the public to simply provide decision makers with information that is critical to the decision that they are going to face which is a quasi-judicial administrative process to do that and she does not see why it should threaten the hui's intentions because they love Mauna Kea and want to protect it to its maximum extent. The goal is to put forward information to protect the mountain and respectfully disagree with staff's recommendation reiterating and summarizing her testimony. If this is denied the hui will bring it back to the First Circuit and we don't know how Judge Hara will rule when he already ruled in favor of the hui, and, she doesn't understand that.

Chair Thielen said to the Board that some of this is based on legal advice by the Deputy Attorney General and if members would like to seek counsel from the AG's Office for legal advice we could.

Member Morgan requested to go into executive session to consult with the Board's attorney on the Board's rights, duties, privileges, immunities and liabilities. Member Agor seconded it.

10:09 AM EXECUTIVE SESSION

10:35 AM RECONVENED

Chair Thielen said because we have new Board members and some folks in the audience might have questions she explained that the Comprehensive Management Plan arose when the University of Hawaii was proposing the Keck Observatory on Mauna Kea and came before this Board for a conservation district use permit (CDUP) which is an application and permit process that the Board decides for a specific project that does physical development on the mountain. That was appealed in a contested case hearing and the testimony we heard earlier from the parties that they were granted standing in that matter because it was an appeal under rules and law that authorizes contested case hearings when there is actual projects and development. The judge in that matter and appeal instructed that a Comprehensive Management Plan needed to be done and the University of Hawaii was to put together a Comprehensive Management Plan which was brought before this Board at two days of hearings held on the Big Island who heard testimony from the parties' today and many other people. The Board approved the management plan with some conditions. There was some additional work to be done and matters to be addressed where the Department will be doing further review in the future. There is no project being proposed under that management plan and the approval doesn't trigger any development or any actions which is the basis for the recommendation before the Board from staff.

Member Agor moved to accept staff's recommendation and Member Edlao seconded. All were in favor except for Member Gon who opposed.

Chair Thielen said if in the future there is a conservation district use application before the Board, the petitioners may come forward at that point and follow the process like the last time when there was some development and thanked people for coming.

Approved as submitted (Agor, Edlao)

All voted in favor except for Member Gon who opposed.

Deputy Attorney General, Julie China stepped out and Deputy Attorney General, Randy Ishikawa stepped in.

Item L-7 Application for a DLNR Dam Safety Construction/Alteration Permit Permit No. 34 - Opaeha Reservoir No. 1 (HI00018) Reservoir Repair, Haleiwa, Oahu

Eric Hirano with Engineering Division passed out some attachments and noted some modifications which are to increase the spillway capacity and to stabilize the down

stream face of the earthen embankment. It has been reviewed and staff recommends approval.

Derrick Elfalan of Ocenit was here to answer any questions.

Unanimously approved as submitted (Agor, Gon)

Item D-10 Amend General Lease No. S-5513, Condition 20, Relating to Mortgage; Consent to Mortgage with Estoppel Certificate, Hospice of Hilo, Lessee/Mortgagor, Piionua, South Hilo, Hawaii, Tax Map Key: (3) 2-3-032:011.

Mr. Atta reported that the Lessee is getting a loan from First Hawaiian Bank and is asking for an amendment to allow mortgaging and noted that this is a direct lease to a non-profit organization that restricts the entity holding the lease to a non-profit. In the event of foreclosure the mortgagee may have issues with who they can transfer the lease to.

Member Edlao asked about the \$2.00 which Mr. Atta confirmed is correct.

Beth Lum of Hospice of Hilo said she was here to answer any questions

Unanimously approved as submitted (Edlao, Gon)

Item D-19 Issuance of Revocable Permit to Hawaii Explosives Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:021 portion.

Mr. Atta presented background information on the revocable permit.

The Board asked if the dates change does the permittee have to come back to the Board or can it be done administratively. Mr. Atta said it can be done administratively because there are open ended random dates included. He also noted that the reason for issuing a revocable permit rather than a right-of entry is that staff wanted to issue a more long term type of arrangement for specialized commercial activity on the beach. To distinguish the nature of the activity.

Stephanie Pascual for Hawaii Explosives Pyrotechnics, Inc. asked to amend page two under the Remarks section that it be a revocable permit for one year, October 2009 to October 2010 and she would like to see this revocable permit run through their contract with the client to 2012 for three years so that they don't have to come back every year.

Chair Thielen explained that under State law a revocable permit has a maximum of one year. Mr. Atta said it is renewable.

Unanimously approved as submitted (Morgan, Gon)

Item D-17 Issuance of Revocable Permit to Waikiki Roughwater Swim, Inc. for 40th Annual Waikiki Roughwater Swim at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:021 portion.

Mr. Atta briefed the Board on the permit background that it is similar to Item D-19. In case staff is not able to process the paperwork for the revocable permit due to the layers of approval he wanted to add the recommendation for the Board to authorize the Chairperson to execute a right-of-entry for that date, if necessary, to accommodate this request.

Ted Sheppard, Race Director for the Waikiki Roughwater Swim spoke saying he was here to answer any questions giving some background.

The Board:

Amended staff's recommendations by including an additional recommendation authorizing the Chairperson to issue a right-of-entry for purposes of allowing the subject event to occur as planned, if necessary. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Gon, Morgan)

Item K-1 Conservation District Use Application (CDUA) MO-3503 for an After the Fact Cement Boat Launch Ramp by Hui Malama O Moomomi, Submerged Land, Located at Moomomi, Molokai, Offshore of Plat (2) 5-002-005

Mr. Lemmo reminded the Board that this item came before them due to a complaint and staff processed this as a violation proceeding. Mr. Poepoe came and took responsibility for the situation, a fine was levied, and a request for him to file an after-the-fact permit for the ramp which is what this is. The CDUA went out to various agencies (OHA, DHHL, Maui Fire, etc.) where all were supportive of an approval. The ramp has no negative or inverse impact on the beach and because it serves the Molokai community staff decided to support it and recommends Board approval.

Kelson Poepoe testified he would be happy that the Board approves this because it is a problem for him to come here and prefers staying home managing the fishing. He doesn't think the ramp will cause any problems relating the number of people who use it and thanked everyone for the good things in his community.

The Board members thanked Mr. Poepoe for coming here.

Ray Gruntz (an Oahu voter) suggested returning the fine.

Unanimously approved as submitted (Edlao, Gon)

Item D-11 Sale of Remnant to Concept Construction, Inc., Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-57:por. 01.

Mr. Atta presented some background on the sale of remnant.

Member Pacheco asked whether anyone from the community approached staff regarding the Rails to Trails program where no one has per Mr. Atta who explained usually these remnants are not connected to any trail system and these are small abandoned or unusable lots. From a land management standpoint it makes more sense to sell it because it exposes the Department to liability and other issues. Staff is more than welcome to open discussion about the trails program.

Bruce Hansen from Concept Construction said he is trying to buy the parcel and to answer Member Pacheco's question the parcel right next to it is being bought and several are private property.

Unanimously approved as submitted (Pacheco, Edlao)

Item C-4 Amend Prior Board Action of January 11, 2008, Item D-3: "Acquisition of Private Lands and Set-Aside to Division of Forestry and Wildlife (DOFAW) for Addition to the Upper Waiakea Forest Reserve at Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-008:003."

Acceptance of Hearing Officer's Report on a Public Hearing for Seven Proposed Changes to the Forest Reserve System on the Island of Hawaii.

Approval and Recommendation to the Governor for and Executive Order to Amend Governor's Proclamation Dated December 22, 1928 to Change the Status of the Lands within Hilo Forest Reserve Defined as TMK (3) 2-4-008:003, Comprising Approximately 1,336 acres at Waiakea, South Hilo, Hawaii, from Private to Public (State) Ownership Under the Control and Management of the Department of Land and Natural Resources Division of Forestry and Wildlife.

Confirm and Adopt Prior Board Actions and Recommend to the Governor the Issuance of Executive Orders for: 1) Addition of approximately 110 acres to Hilo Forest Reserve (Laupahoehoe, North Hilo, Hawaii; 2) Withdrawal of approximately 182 acres from Hilo Forest Reserve at Piiponua, South Hilo, Hawaii 3) Cancellation of Governor's Proclamation dated April 17, 1917 that established Panaewa Forest Reserve at Waiakea and Keaau, South Hilo and Puna, Hawaii, under which approximately 1,125 acres remain; 4) Withdrawal of approximately 4.4 acres from the Waiakea and Keaau, South Hilo, Hawaii; 5) Addition of approximately 1,261 acres to the Waiakea Forest Reserve, South Hilo, Hawaii; and 6) Addition of

approximately 1,257 acres to Ka'u Forest Reserve at Kapapala, Hawaii.

Item C-5 Amend Prior Board Action of March 13, 2009, item D-5: "Approve in Principle to Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, for Waimanalo Forest Reserve Purposes; Rescind Prior Approval dated June 26, 1992, Item F-9; Authorize the Division of Forestry and Wildlife to Conduct an After-the-fact Public Hearing Relating to Waimanalo Forest Reserve at Kailua, Kaneohe, and Waimanalo, Koolaupoko, Oahu, Tax Map Key (1) 4-1-008:013, (1) 4-1-010:074, 091, & 093 4-2-005:001, and 4-2-010: portion of 001."

Acceptance of Hearing Officer's Report on a Public Hearing for Five Proposed Changes to the Forest Reserve System on Oahu.

Approval and Recommendation to the Governor for an Executive Order to Amend Governor's Proclamation dated January 3, 1923 Changing the Status of the Lands within Waimanalo Forest Reserve Defined as TMK (1) 4-2-010: portion of 001, Comprising Approximately 1,544 acres, from Private to Public (State) Ownership Under the Control and Management of the Department of Land and Natural Resources Division of Forestry and Wildlife.

Approval and Recommendation to the Governor the Issuance of Executive Orders for: 1) Addition of approximately 456 acres to Waimanalo Forest Reserve, Koolaupoko District, Oahu; 2) Removal of approximately 28 acres from Pupukea Forest Reserve, Koolauloa District, Oahu; and 3) Set Aside 28 acres to the Department of Land and Natural Resources Division of State Parks, Koolauloa District, Oahu.

Confirm and Adopt Prior Board Action and Recommend to the Governor the Issuance of Executive Orders for: 1) Cancellation of Governor's Executive Order 4172, dated August 28, 2006 for the Makua-Keaau Public Hunting Area, Waianae District, Oahu and 2) Addition of approximately 584 acres to Makua-Keaau Forest Reserve, Waianae District, Oahu.

Written testimony was received on Item C-4.

Mr. Conry informed the Board to take Items C-4 and C-5 together because they are similar actions and are giving Board approval to proceed with the next step in requesting the Governor to issue executive orders for a number of additions or withdrawals from the forest preserve system. The initiation of these actions has taken place in previous Board individual actions. Staff grouped by Big Island for Item C-4 and Item C-5 is for Oahu. Staff went out to the public hearings and no one opposed. Mr. Conry related more background detailing the additions and withdrawals to the forest reserves.

Chair Thielen noted that staff briefed her because of the complexity. Additions to the triggered clean-up of old executive orders and removing de facto removals to be consistent with the actual uses, but they are fairly large.

There was some discussion regarding the Kapapala Koa Management Area which will go into the Kau Forest Reserve where the University and the community will survey and grow the koa. Also noted, Laupahoe is adjacent to the forest reserve. Member Pacheco asked on that property, concerns were raised for public access and whether the Feds were approached. Michael Constantinides from DOFAW noted on the hearing officer's report attached to Item C-4 that the division's intent was to maintain the right for any potential public future access that would have to respect the terms of the current lease. Staff thought for the disposition of a new lease for the forest service site would be non-exclusive as far as its use of the existing road. Should public access up to that parcel occur at some time in the future, it's not presently there in a functional way, then, it would be in the interest of the Department to facilitate that access across this parcel and then build a road up to the NARS. Mr. Conry said that's consistent with the cooperative agreement with the Forest Service noting it is encumbered state lands under an ag lease which will be added to the forest reserve. Under the statute that lease will be maintained for the duration of its term under its current purpose.

Member Gon noted that one side of Olomana will be turned over to the forest reserve where Mr. Conry confirmed that is being proposed.

Unanimously approved as submitted (Gon, Pacheco)

Item D-2 Consent to Stock Transfer and Control in Sunrise Capital, Inc. Lessee under General Lease No. S-4946 and Revocable Permit No. S-7256, from Sunrise Capital, Inc., Transferor, to Integrated Aquaculture Hawaii, LLC, Transferee, Kekaha, Kauai, Tax Map Key: (4) 1-9-10:37; 1-9-10:34, 35, 38, and 1-9-11:7. (The General Lease and Revocable Permit will continue to be owned by and held in the name of Sunrise Capital, Inc. Consent is requested to a "deemed" transfer of the General Lease and Revocable Permit by reason of recent acquisition of most of the stock of Sunrise Capital, Inc., by Integrated Aquaculture Hawaii, LLC, and a resulting change in control of the stock ownership of Sunrise Capital, Inc.)

Mr. Atta described the background on the consent and through the analysis; staff has determined there is no assignment premium that will be assessed.

Richard Ingersoll for Sunrise Capital said staff's presentation was clear and he was here to answer any questions.

Member Gon asked whether Mr. Ingersoll agreed with the recommendations and he was fine with them.

Unanimously approved as submitted (Agor, Goode)

Item J-2 Consent to Assignment, Mortgage, and Amendment Extending Lease Term, for Harbor Lease No. H-83-2, from Kona Fuel and Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee, Kealakehe, North Kona, Island of Hawaii, Tax Map Key: (3) 7-4-008-040.

Ed Underwood, Division of Boating and Ocean Recreation (DOBOR) Administrator reported on the background history relating that the property is in disrepair and needs substantial improvements. There were a lot of complaints about the fueling dock noting that Kona Fuel has defaulted on its current mortgage and are in arrears with the State for \$35,000. Mr. Underwood read staff's recommendations. Chair Thielen clarified subject to curing of all defaults because some of the complaints that came in about the condition of the dock regarding safety for the usage of it would be included in curing the defaults which would be required. Mr. Underwood agreed and said that is the first portion of the improvement which is to replace the dock.

Member Pacheco asked what the timetable would be to replace it. Mr. Underwood deferred to Craig Stevenson who introduced himself as the principle owner of Gold Stream Capital Corporation, which is the current lender with the defaulted loan, and said subject to permits and local jurisdictional matter about four to five months. Mr. Stevenson confirmed the complaints and as a good neighbor will repair that dock as soon as possible.

Glennon Gingo reported that the source of his information is from the Governor's West Hawaii Advisors Counsel and the West Hawaii Fisheries Counsel. Mr. Gingo distributed some photos of the condition of the dock and said it should be closed for the safety of the community until the dock is replaced and brought to standard. More than 30 days closure would be a hardship for boaters would have to trailer their boats for land based fueling operations which is an inconvenience.

Board member Goode asked whether there could be immediate remedial small repairs while pursuing the permits. Mr. Gingo answered negatively explaining that there are days when the dock is completely submerged underwater and it has to be immediately rectified.

Mr. Stevenson noted that there are two docks where the smaller dock needs to be removed within about 15 days and go through the normal permitting process and he was not sure how long that would take. The larger dock is operational, but is inconvenient for the smaller boats because boaters have to step high up to get to it and he agrees with Mr. Gingo. Mr. Underwood mentioned that a permit for replacing a fuel dock goes quickly.

Member Pacheco asked referring to the Remarks section about the revocable permit whether the State will lose the dock area for mooring. Mr. Stevenson said this dock area is under DLNR control and his company requested use of this area for ease of getting boats in and out. There is always a boat there.

Member Pacheco asked that the arrears is about \$35,000 or so. What does that represent in time for being behind? Mr. Stevenson said its for four quarters in payments 1997 and 1998 annual percentage rents. Member Pacheco wondered whether that is typical for arrears to go that long before DOBOR gets to it. Mr. Underwood replied that it's beyond the time it should have gone. Staff was trying to work with the lessee to keep the fuel dock going, but the current lessee wasn't cooperating. Staff started talking to Mr. Stevenson's company last December to try to get this moving forward, but it's taking awhile to get this in line and Mr. Stevenson reassured that his company will make any back payments before anything can be signed.

Dan Polhemus, Administrator for Division of Aquatic Resources (DAR) said staff recommends no longer than 30 days for removal of the fuel dock. Also, loss of pier space south of the current fuel dock where DAR's vessel moors would have a significant impact on DAR's resource management operation.

Unanimously approved as submitted (Pacheco, Morgan)

Item M-1 Issuance of Lease by Direct Negotiation to Seafood Hawaii, Inc. Parcel 3, Domestic Commercial Fishing Village, Pier 38, Honolulu, Harbor, Oahu

Item M-2 Amendment to Prior Land Board Action of July 14, 2006, Under Agenda Item M-1, Regarding Issuance of Direct Lease to Paradise Inn Hawaii, LLC, dba Tsukiji Fish Market Restaurant, Parcel 6, Domestic Commercial Fishing Village, vicinity of Pier 38, Honolulu Harbor, Honolulu, Oahu

Patty Miyashiro, Property Manager with Division of Transportation (DOT) – Harbors Division said she was here to answer any questions

Unanimously approved as submitted (Edlao, Agor)

11:25 AM RECESS

11:40 AM RECONVENED

Item K-4 Time Extension Request for Conservation District Use Permit (CDUP) OA-3230 for a Temporary Bypass Road and Replacement of the North Kahana Stream Bridge by State of Hawaii Department of Transportation- Highways Division, Located at Ahupuaa O Kahana State Park, Koolauloa, Oahu, TMK: (1) 5-2-005:003 (portion)

Mr. Lemmo reported that staff recommends approval of the extension of two years to complete the project subject to standard conditions.

Member Morgan asked whether the temporary road will go on the beach. Mr. Lemmo said it will go makai of the existing highway, but he didn't have a map and could check and come back.

Unanimously approved as submitted (Morgan, Gon)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Native Hawaiian Practices Permit to Hi'ilei Kawelo, Paepae o He'eia, for Access to State Waters to Conduct Cultural Reef Assessment Activities

Written testimony was received and distributed.

Dan Polhemus, Administrator for Division of Aquatics (DAR) reported on the request background. The scientific review supports acceptance, cultural review supports acceptance and no comments were received from the public. DAR staff was of the opinion that the applicant should be allowed to conduct this work and the Monument Management Board was of the opinion that the applicant met the findings of the Presidential Proclamation.

Hi'ilei Kawelo of Paepae O He'eia was here to answer any questions. Member Gon asked whether this was an extension of the work and if anything exciting came out of the first trip. Ms. Kawelo gave an account of last summer's trip going to four different atolls and her group will see four new ones this summer to compare the resources here in the main Hawaiian Islands to those found in the Monument waters as a reference. She saw small aku swimming in six feet of water. There is a lot to learn and potential for future Native Hawaiian research practices.

Marti Townsend representing KAHEA said that written testimony was distributed and she supports this applicant, but was concerned that an environmental assessment was not conducted or a cumulative impact statement had not been done and she hoped those issues would be addressed.

Unanimously approved as submitted (Gon, Agor)

Item C-6 Request for Approval to Clarify Location of the Puna Trail under the Jurisdiction of the Na Ala Hele Trail and Access Program and to enter into a Memorandum of Agreement between W. H. Shipman for the Joint Management of the Puna Trail situate at Kea'au, Tax Map Key: 1-6-1 various parcels.

Mr. Conry informed the Board on the request background noting increased use by off-road vehicles creating management problems for the adjacent land owner (W.H. Shipman) whom staff had been working with to address those issues. Staff asked the Board's approval to move forward to establish an MOA with the private landowner to

establish on their property a parking area set-up for structured management of the access to the site.

Member Edlao asked whether the parking will be in gravel and Mr. Conry said that staff will manage the trail and Shipman will manage the parking.

Member Gon asked whether vehicle use has continued and has damaged the trail. Kimo Lee representing W.H. Shipman confirmed that the trail is being degraded by vehicles over the past five years.

Unanimously approved as submitted (Pacheco, Gon)

Item D-20 Grant of Term, Non-Exclusive Easement to Beecom Hawaii LLP for Revetment Purposes, Waialae-Iki, Honolulu, Oahu, Tax Map Key: (1) 3-5-058:seaward of 010.

Mr. Atta noted that this encroachment had been addressed in 1964 and the Board at that time authorized issuance of an easement, but it never occurred. The current owner found during the shoreline certification process that the easement was still there and the easement hadn't been resolved. This request is to address that and for the Board to reissue that revetment.

Member Morgan asked whether the revetment is covered by sand, but it isn't per Mr. Atta, it can be seen.

Jennifer Okino for Long and Associates was here for questions.

Unanimously approved as submitted (Morgan, Agor)

Item D-16 Amend Prior Board Action of July 14, 2000, Item D-1, April 27, 2007, Item D-13, and February 13, 2009, Item D-4, Rescind Prior Land Board Approval and Set Aside to Housing and Community Development Corporation of Hawaii for a Senior Project with Assisted Living and /or Health Support Services and a Management Right-of-Entry, Kaakaukui, Honolulu, Oahu, Tax Map Key: (1) 2-1-051:portion 009.

Mr. Atta described the background and read staff's recommendations asking to amend the first recommendation to expand the Chairperson's authority to execute by going beyond just a joint development agreement, but any other necessary documents for the development of this project will track the discussion. Chair Thielen asked because staff doesn't know at this point of any other documents. Mr. Atta confirmed that there may be documents DLNR are required to sign as the landowner.

Stan Fujimoto for Hawaii Housing Finance and Development Corporation (HHFDC) was here for any questions. Chair Thielen asked whether HHFDC has a timetable. Mr.

Fujimoto said HHFDC has approved this property, obtained \$15 million for redevelopment funds to design and plan, and is going through the sub-division process now. If everything comes together the plan is to start construction next summer. Originally, it was planned as assisted living, but now it's a family rental.

The Board:

Amended staff's recommendation by amending Item 1. to read: "Authorizing the Chairperson to execute the joint development agreement and any other document necessary for the development of the project." Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Goode, Edlao)

Item D-24 Issuance of Right-of Entry Permit to University of Hawaii on Lands Encumbered by Governor's Executive Order No. 1716, Keawaula, Waianae, Oahu, Tax Map Key: (1) 6-9-003:Portion of 002.

Mr. Atta reported this is to allow the University to install equipment to conduct surveillance.

Derek Young from University of Hawaii, SOEST was here to answer any questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item J-1 Amend Board Action of July 11, 2008, Agenda Item J-1, Authorizing Issuance of a Request for Qualifications / Request for Proposals for Public Lands at Ala Wai Small Boat Harbor ("AWSBH"); Approve Selection of Developer for Exclusive Negotiations of a Development Agreement and Lease for the Fuel Dock and Haul-out/Repair Sites at AWSBH, Kalia, Honolulu, Hawaii; Authorize the DLNR Chairperson to Negotiate and Enter the Development Agreement and Lease. Tax Map Key Nos: (1) 2-3-37:20-, (1) 2-6-10:05, 16 and portions of parcel 3.

Some written testimonies were submitted to the Board members.

Mr. Underwood asked to approve and briefed the Board on the background and on a number of actions as noted in the submittal. This is part of a comprehensive improvement plan on the upgrade of the Ala Wai Small Boat Harbor that staff had finished replacing all floating docks, is working on the repair and maintenance of the fixed piers, and moving forward on the long term parking plan. Now staff wants to concentrate on the fast land development within the harbor where they felt a private entity would be better able to make those improvements than staff would because a private entity has the expertise and can do it much quicker. The first phase went out for request for qualifications where two applicants came forward and the evaluation committee reviewed both of them and approved them to move to the next stage which is

to submit their proposals. The qualified bidder is required to build a haul-out and a fuel dock and any other proposed improvements had to be permitted within the public precinct. During the phase for a request for proposals, staff received one proposal and the evaluation committee reviewed it based on the criteria in the RFP. The committee decided to move forward and asked the Board to select Honey Bee USA, Inc. as the developer for the haul-out and fuel dock areas at the Ala Wai. Staff is asking to select Honey Bee for the negotiations of a development agreement and that will require Honey Bee to obtain all the necessary government approvals such as the use variance to comply with Chapter 343, EA or EIS, SMA and all of these will require public hearings and input. Honey Bee must obtain all these approvals and perform all the requirements of the development agreement in order to be issued a lease.

Member Morgan asked whether staff talked to the other applicant and why they pulled out. Mr. Underwood explained that they were a mainland marine development company who had three companies partnering to do this and they felt it wasn't feasible to move forward and wasn't interested.

Member Morgan inquired who is Honey Bee. Mr. Underwood explained that Honey Bee USA, Inc. is the primary partner; a Japanese wedding firm who is partnered with a local group who has experience with managing the small boat harbor and haul-out facilities.

Member Pacheco asked who was on the evaluation committee. Mr. Underwood said himself, engineer – Eric Yuasa, boating staff officer – Kevin Yim and Keith Chun from Land Division.

Member Morgan wondered whether the lack of applicants was an indication of a poor economy. Mr. Underwood responded saying there were several other interested candidates – locally. Ko Olina expressed an interest, but felt the lease rents were too high and didn't want to submit a bid at that time. Plus, there are a lot of restrictions and requirements in that area – height restrictions, Waikiki Special Design District, gateway to Waikiki, etc.

Keith Kiuchi, attorney for Honey Bee USA, Inc and its principle, Iwayaki Shimakura explained that Mr. Shimakura is a developer from Kyoto currently working on three projects in Japan and is partnering with a wedding company and some individuals who have some experience in haul-out marine facilities in Hawaii. One of the objectives of the RFP issued by DOBOR was to upgrade the fuel dock and the haul-out repair facilities to improve these marine support facilities and services. Honey Bee agreed with DOBOR that these services are critical to the boating community in the Ala Wai Small Boat Harbor. DOBOR also stated they are seeking to improve its return on these lands and to seek increased lease revenues from the redevelopment of these two sites. The Honey Bee proposal meets both objectives and creates a new commercial center that will increase revenues which will be used to maintain and enhance existing harbor services throughout the State of Hawaii. Honey Bee will build the facilities that will integrate with the boat harbor to create attractive public areas that feature architectural components compatible with both the area's natural beauty and urban location. The proposal modernizes the

current fuel dock and boat repair services at the Ala Wai Boat Harbor and brings them into compliance with mandated environmental requirements and the development will incorporate green building principles. The proposal significantly increases the revenue stream to the harbor fund. This Board recently passed Plan B of the Renaissance Plan to raise user fees because it was concerned about monies available to DLNR with the latest state budget. Honey Bee's rent which is \$564,000 a year for the fast lands is almost 4 times what the present tenants paid per year through this past February. These monies will go a long way to ensure this and harbors throughout the state are properly maintained even in these difficult times.

Honey Bee's proposal increases and enhances the public experience in the harbor. Currently, the commercial activity in the harbor centers around two private clubs. The development proposal creates a fully integrated maritime commercial center that includes retail shops, restaurants, office space for businesses serving the boating community, ocean recreation centers, storage lockers for boat owners, a wedding chapel, a fuel dock and boat repair facility. It is exactly this type of mix use facility marinas that you find at harbors on the West Coast where Mr. Kiuchi cited examples. This is also the type of mix use contemplated by the Honolulu City Council when it passed a resolution in 1991 encouraging the development of the Ewa Marina community as a major marina and related maritime commercial center containing light industrial, commercial and visitor accommodation uses. Honey Bee's proposal comes at a time when privately funded development in the state is sorely needed to create jobs and stimulate the economy noting a recent survey showed there are no major projects scheduled in Honolulu during 2010. The multi-use facilities that will be used for weddings will serve to market Hawaii to the Far East noting that DBEDT stats showed that Far East visitors declined 11% at the beginning of this year, but travel by honeymooners increased by 8.8% from last year. Wedding facilities are the least intrusive uses noting it doesn't create traffic congestion and does not create any noise like a restaurant or nightclub. These businesses provide revenue to support the fuel dock operation and boat yard. The activities that Honey Bee proposes can exist within the public's requirements of the Waikiki Special Design District. This is an opportunity to create commercial and recreational development.

Mr. Kiuchi noted that there are no banquet rooms planned at this time just a chapel and offices. All recreational facilities including surfboard, kayak racks, launch ramp for kayaks, showers and lockers will be available to the general public at the fuel dock facility.

Member Goode asked about the size of the building. Mr. Kiuchi said the first floor and the second floor of the fuel dock building is 6,000 square feet each. The boatyard building fronting Ala Moana Boulevard is 8500 square feet on the first floor and 7500 square feet on the second floor and his company is still designing the third floor. The wedding chapel is 1400 square feet on the first floor and the same for the second floor.

Member Goode inquired about the typical wedding size and Mr. Kiuchi said the wedding company says 8 to 12 people with about 2 or 3 per day. The wedding company doesn't anticipate much use before 11:00am or after 7:00pm. Member Pacheco asked how

important is the wedding chapel revenue to Honey Bee's business plan. Mr. Kiuchi said that the wedding chapel is the least intrusive with the highest return as opposed to a noisy, crowded restaurant or night club and they are concerned with the impacts because it is essential to their proposal.

Chairperson Thielen reported that certain restrictions like height limits', requiring a fuel dock and haul-out was placed on the RFP/RFQ and constraints placed on the developers. Member Agor asked what the construction timeframe would be where Mr. Kiuchi said they anticipate getting all the permits in about a year, the boatyard building would take about a year to build and the other building about six months. The chapel and fuel dock building is steel construction.

Ray Gruntz told the Board that he represents the Waikiki Neighborhood Board and is against any commercialization at the Ala Wai small boat harbor. He questioned the height limit of this project at three stories when the height limit is two stories. The haul-out will be small noting that the current operation is very busy with a lot of dust flying around and not good for a wedding. Wedding chapels in the harbor was forbidden in the past because it was not marine related. Mr. Gruntz said we are trying to support the rest of the state on the backs of the people living at the Ala Wai Small Boat Harbor emphasizing "small boat harbor."

Charles Bellman testified that he was the boat yard manager for the Ala Wai Marina Corp. when that business closed in February 2009 relating some of his background history in selling marine supplies, sailing small vessels, and was a former navy enlisted person having performed overhauls on nuclear submarines and at boat yards for many years. Mr. Bellman spoke in favor of Honey Bee USA because after having operated the boat yard at the Ala Wai Marine it is not a profitable operation as just a boat yard. In order to generate increased revenues to Hawaii harbors, the Ala Wai needs to develop commercial activities noting that harbors on the mainland depend on additional commercial activities to enhance revenues while maintaining needed services to the boat yard community. Having seen mainland harbors, commercial activity is needed to be self-sufficient unless you want to continue to raise slip fees to pay for harbor improvements. Rainbow Bay, Pearl Harbor and Hickam Naval Base have a commercial entity open to both the general public and the military. The Hawaiian boating community cannot develop on tax payer funds to maintain and improve existing harbors throughout the State.

Member Goode asked Mr. Bellman based on his knowledge whether the chapel and haul-out can co-exist and Mr. Bellman acknowledged that they can.

David Cooper presented his written testimony that he has been in the marine business for about 45 years and was concerned with Honey Bee proposing to build on reclaimed filled land that may take significant site engineering to support the building footprint. A haul-out facility is needed for the 700 boats in the Ala Wai; otherwise boaters have to go to Keehi or Pearl Harbor. Scaling back the facility is not a good idea and recommended a

larger travel lift. Mr. Cooper said he thinks with the number of boats, the haul-out can be a viable operation without non-related businesses to it.

Rick Tudor reported that he is currently a resident in the Ala Wai Small Boat Harbor and has 12 years experience in the tourism industry and wedding business at the Sheraton and Royal Hawaiian Hotels. He referred to the 2006 Executive Order saying to commercialize the Ala Wai Small Boat Harbor and related some history about the Hobron Estate transferring this property to the Bishop Estate noting that part of that trust was for public usage, not commercial use. The State is turning their backs on the people of Hawaii to serve the tourism industry and he had concerns with the architecture of the wedding chapel and not seeing the co-existence with a boating facility and bar reiterating previous testimony about smells and dust. The people in the harbor are concerned with commercialization and asked that DLNR not be focused on tourism, but protect the rights of the citizens of the State.

Carey Johnston, a tenant and manager of the fuel dock at the Ala Wai Small Boat Harbor testified that Brian Barbatta is the current permittee who was here, but had to leave and he left his written testimony which staff and the Board did not receive. They are opposed to Honey Bee USA's proposal and the improvements to the haul-out facility and fuel dock saying they had concerns about the 3-story building on the fuel dock. Ms. Johnston said she spoke to 30-40 people and not one had any positive feedback about a wedding chapel and bar. She and Mr. Barbatta don't think the haul-out facility will be a haul-out facility.

Sheri Seybold spoke saying she had some questions. She doesn't understand that in the original RFP/RFQ introduction on page 1 says the purpose is to increase the lease rent to the State and improve and upgrade the harbor fuel dock and haul-out/repair facilities. It said to improve and upgrade. It didn't say to make it smaller or take it away. Ms. Seybold read under qualifications it says qualified applicants will be invited to submit developmental proposals that provide for any improvements and uses that are permitted under applicable laws, ordinances, rules and regulations provided that the proposal must include improved upgrade fuel dock and haul-out facilities to be open to the public. On page 2 under permitted uses it says the uses and facilities that are permitted under applicable law. On page 3 under the Waikiki Special District Public Precinct it states any proposed uses must comply with the City and County of Honolulu's regulation and requirements for this zoning district. On page 7 under developmental objectives – the applicants will comply with all laws, rules, ordinances, regulations, restrictions applicable to the subject property. The latest proposal includes a letter from the director of the City and County, Department of Planning and Permitting to Ed Underwood stating that the purpose of the wedding chapel, retail establishment and banquet facilities are not permitted within the public precinct of the Waikiki Special District and requires a use variance. This is not to give a recommendation to what you want to do and we'll make the laws fit noting that Brian Barbatta would have fit this, but was told he would have to stay within the rules. Now, staff is saying to ignore the rules. She continued reading the City & County, Director of Planning and Permitting (DPP) letter to obtain a variance and said Honey Bee has no land or any building so Honey Bee's proposal is to come in and

change the uses for this property which will change the fuel dock and haul-out facility. The reason the haul-out facility wasn't profitable was it was extremely poorly run. The equipment was not up to date, it was terrifying to have your boat hauled-out there, the original haul-out was always late on making payments, and they didn't carry proper insurance when they dropped boats. If they had ran a good proper haul-out yard they would have done much better. Ms. Seybold is the bookkeeper for Magic Island Petroleum, the fuel dock, and it is a profitable business. It's not greatly profitable because they don't have a wedding chapel which was proposed before and DLNR told Brian Barbatta he can't have that there because the use permits don't allow it. Now, someone else comes in DLNR says we'll change the use permits whatever you want instead of allowing someone to come in to bid on the proper uses for these properties. Ms. Seybold asked to explain all this to her.

Bill Kruse introduced himself saying that he has lived in the harbor for 40 years and suggested keeping it simple that all the boaters need is a gas dock and a haul-out, end of story.

Chair Thielen asked staff to explain the procedure whether this Land Board is approving these proposed uses or is there a different process the developer has to go forward with. What exactly is being asked of the Board today?

Keith Chun from Land Division explained what staff is asking from the Land Board is to approve the selection of Honey Bee to enter exclusive negotiations of the development agreement. The development agreement will set forth all the development terms that the applicant must meet in order to be issued a lease. It's subject to negotiations, but at a minimum it requires Honey Bee to get the use variance that the City says is required. If the applicant is not successful in getting that, it's over. The use variance also has a public hearing requirement in their five month process which is by the City's Department of Planning and Permitting director. If the applicant is successful, another requirement they must obtain is the SMA approval that the City Council will also require Chapter 343 compliance, EA/EIS, which has its own public comment/public review period that goes into more detail on traffic, parking, height, etc. It's approved by the City Council and all public hearings are before the City Council. With respect to the question about the public precinct, the Department got a letter from DPP saying the applicant needs a use variance or DPP won't allow it in the public precinct. Staff is not asking the Board to approve that use, but is asking the Board to go negotiate this and let Honey Bee proceed to see if they can get the entitlements. It is a Waikiki Special District and there are design permits for that as well.

Member Edlao asked if the variance is not approved will there be changes. Mr. Chun requested that the Board also authorize changes by height that may be required during the entitlement period whether or not the Board wants this to come back to the Board. For example if the variance process requires downsizing the chapel or something, that would be an agenda item.

Member Pacheco asked about the request to follow the rules where Mr. Chun said he can see that, but what the Department of Planning and Permitting has said if the applicant gets the variance they will allow it in the public precinct. DPP has their standards and it is stringent to get a variance. But, looking at the harbor and knowing the Department's needs the applicant has proposed to improve these facilities and Mr. Chun thinks it's worth it to give them a chance.

Member Morgan asked if Honey Bee, the applicant, understood that the proposed uses weren't permitted without a variance and would have to go through the variance process. Presuming, other applicants understood this and chose not to go through with the process. Mr. Chun said after the committee did the evaluation they circulated the letter to the various agencies for comment.

Member Morgan noted that the seasoned developer understands that kind of dynamic and it's good to have that because they know what they are getting into. Mr. Chun said that you can lay a bunch of stuff in the RFP/RFQs, but the key is to get qualified people who have experience in development and getting entitlements. The proposals that would come in don't always fit to the "T" but what the applicant sees as their project to make it financially feasible and fit within whatever applicable State or County Planning ordinances there are. Often time applicants are required to go through the extra step. Member Goode stated the applicant must feel confident that they are going to get the easement based on the criteria read earlier. Mr. Chun said one of the discussions by the committee is that Honey Bee would pay a development fee during the time that they are seeking the variance to make the State whole for keeping this property off the market. Given that and the due diligence Honey Bee put into this it's worth it to give them a shot. If Honey Bee can't convince the City who is the overseer of the public precinct, the zoning codes and with the public input and public hearing process then that's it, which the committee is ok with.

Member Goode asked whether the haul-out facility will be upgraded and will it be able to handle the type of boats in the Ala Wai. Mr. Kiuchi explained that the haul-out facility will be upgraded with a new travel lift as part of its budget to handle boats up to 50 plus feet. It will be downsized only in size, but upgraded in terms of facilities. One of the concerns expressed was the previous operator couldn't get a NPDS permit which is the National Pollution Environmental Discharge permit. Honey Bee has contacted four different vendors on the mainland on a storm filtration system which are required in boat yards on the mainland and is state of the art. On the fuel dock, Honey Bee is aware of the issues on the apron and they will hire a structural engineer to look at those issues and the land fill. Mr. Kiuchi reiterated the upgrades and that there is no back-up per Member Goode's questioning.

Member Pacheco asked about the reduction in size. Mr. Kiuchi said the reason the current operation wasn't profitable was because it took too much land and not enough boats per square foot. Member Pacheco inquired whether the apron and land fill is sufficient. Mr. Kiuchi said Honey Bee decided to scale back the fuel dock to two stories because of their concern with the height limit and they wanted to stay below 25 feet

where there is no bar. It is DPP director's discretion on the height limit. Member Pacheco asked about the height limit on the 3 story building which is 40 feet per Mr. Kiuchi.

Member Edlao asked if the variance goes through would the Board see this again. Mr. Underwood explained that the way the recommendation is written staff would work with the Chair on the development agreement as well as the final lease. Member Edlao queried as far as what will be built will the Board see that. Mr. Chun said what staff provided for during the SMA or EA process if a FONSI is issued, the way it was contemplated, staff would continue to move forward, but if it was determined that there was significant impact and it went to the scale of an EIS staff would present that. Member Goode asked who was the approving agency on the EA. DPP is per Mr. Chun because it would be running concurrent with the SMA, but staff would come back and present it. Chair Thielen noted that the accepting agency is the agency with the discretionary permit. The management area permit would be reviewed by the County while State lands would require an EA/EIS and the accepting agency would be the permitting authority. Mr. Chun also noted even though staff asked to delegate authority to the Chair staff did provide that. If this thing hits the point that the impacts are such that an EIS is required staff will bring it back to the Board.

Mr. Chun noted the primary objective was to have these facilities upgraded with private dollars and not on the tax payer or increasing fees further in the harbor.

There were some discussions regarding Honokohau Harbor when the applicant did not get beyond the general plan.

Chair Thielen raised the point about commercial uses in the harbor and that this needs to be clarified before staff goes to the Waikiki Neighborhood Board who were concerned about commercial boating operations in the small boat harbor because under State Law all the slips have to be non-commercial. But, these two sites have had commercial operations on the fast lands for many years and this is to replace and upgrade them. Staff will get that clarified from the Board whether their position is the water or includes the fast lands, but the Chair believes it's only the water. The philosophy always was to generate more revenue from the fast lands to support improvements to the small boat harbors to continue providing those services to take some of the burden off of the slip holders. The Chair asked how long has the haul-out facility and fuel dock been operating in the Ala Wai. Mr. Underwood said the haul-out goes back to 1953 and Mr. Kiuchi said the fuel dock since 1963. Honey Bee did their due diligence and knows when these properties were filled and what they were filled with.

There was some discussion about a presentation to the Waikiki Neighborhood Board on the SMA. Mr. Chun said it's required under the zoning, but he wasn't sure about the SMA where Mr. Kiuchi said the SMA requires a presentation to the Waikiki Neighborhood Board.

Member Goode stated that he is sensing that there will be a lot of public input on this in the next year or so. Member Pacheco asked if the Board did want to bring this back what is the appropriate place in the process to do that. Mr. Chun replied that the big hurdle is the variance which takes about 3-5 months and he thought after that. The Chair reiterated Member Goode that it would be better to come back if it triggers an EIS as opposed to an EA and the hope to bring it back to the Board if the plans scale up in scope or size that would make the facilities more intrusive or reduced that is one way of looking at it.

Member Goode said he respects the amount of work Honey Bee has done, he respects the people who live there and he understands the Department's predicament in regards to Recreational Renaissance Plan B. He was amendable to the suggestion that it requires an EIS, if you go through the variance use process and is successful and the scope is larger or if the haul-out is smaller the Board should look at it again. Otherwise, he thinks the other review process between the SMA and use variance review by the Waikiki Neighborhood Board is adequate. Member Morgan asked whether that would be a caveat to a motion.

Member Pacheco asked if the approval goes forward, but the focus changes to the chapel business and the haul-out is downsized or become second priority is there a way the Department and the Board can have input in the process of the plans to be finalized. Chairperson Thielen said the requirement is still in place for Honey Bee to provide a haul-out and fuel dock referring back to Member Goode's explanation to come back to the Board if the scope or scale of the project is increased, if it requires an EIS or the haul-out is decreased and that provides a vehicle to the Board under those circumstances.

Member Edlao summarized that the Board is only approving the selection of Honey Bee who still has to get the variance, RFP/RFQ and that will determine whether the applicant can proceed. Chair Thielen noted that the Board is approving a recommendation to delegate to the Chair certain authorities to negotiate and move forward. Mr. Chun said he was comfortable with the Chair's discretion. Member Edlao agreed saying but for the interest of transparency the Board may need to get more involved where Mr. Chun agreed and said there is a fine line, but those types of scenarios which would make it come back to the Board would be in the development agreement. Right now, staff is authorizing the Chairperson to negotiate that agreement. The Chair added based on the direction of the circumstances. Mr. Chun remarked that the haul-out and fuel dock are major objectives and if Honey Bee downsized or decreased it staff expects that to be in the development agreement if that happens. Any major modification it comes back. Same for the EIS requirement, if there is no FONSI in the CIS then the government agreement would also provide that it come back to the Board. So, to see the impacts disclosed in the EIS that would be after all the public comments. Chair Thielen said in the interest of transparency, but the balance is people want these slips fixed. A lot has been done at the Ala Wai, but a lot more needs to be done in other places. Boaters don't want to pay double the fees; people don't want commercial boats outside their bedroom windows in the Ala Wai. You cannot have everything and expect these places to repair themselves and this is Waikiki, an urban area, and what is being proposed is relatively low grade. It's got some revenue streams attached to it, it's not 100% guaranteed that it will go

through; there is an extensive public process and review. If it works out you've got a revitalized area that has been a blight for a long time with environmental violations and there is a revenue stream that is reliable and can support debt service to a lot of improvements to the harbors which has to come from somewhere. Mr. Chun agreed and said he was the project manager for the Ewa Marina project and that staff was here before the Board's predecessor's, the council, the general plan, the zoning and went through the issue of the rates. And the rates proposed by Mr. Underwood don't come close to what is needed for the improvements.

Member Edlao moved to approve staff's recommendation and was seconded by Member Morgan. All voted in approval.

Unanimously approved as submitted (Edlao, Morgan)

Item K-2 Conservation District Use Application (CDUA) MA-2515 for Nuu Pond Habitat Restoration by Maui Coastal Land Trust, Located at Kaupo, Maui, TMK: (2) 1-8-001:001 (portion)

Mr. Lemmo said he had nothing to add.

Unanimously approved as submitted (Pacheco, Edlao)

Item L-1 Certification of Election and Appointment of South Oahu Soil and Water Conservation District Directors

Item L-3 Approval for Award of Construction Contract for Job No. B71DO73A, Ala Wai Small Boat Harbor, Sewer Infrastructure Improvements, Honolulu, Oahu

Item L-4 Approval for Award of Construction Contract for Combined Projects: Job No. J00CF82B, Waimea State Recreational Pier ADA Barrier Removal Project, Kauai, Hawaii and Job No. J00CF09A, Ahukini State Recreational Pier ADA Barrier Removal Project, Kauai, Hawaii

Item L-5 Approval for Award of Construction Contract for: Job No. J00CM61A, Mokuleia Shoreline Access ADA Barrier Removal Project, Kapalua, Maui, Hawaii

Item L-6 Approval for Award of Construction Contract for Combined Projects: Job No. J00CB45A, Maalaea SBH ADA Barrier Removal Project, Maui, Hawaii and Job No. J00CB46A, Lahaina SBH ADA Barrier Removal Project, Maui, Hawaii

Item L-8 Approval of Supplemental Agreement for Contract No. 58129 Job No. F80B662A, Na Pali Coast State Park, Rockfall Mitigation, Phase 1, Kalalau Beach Park, Kauai, Hawaii

Unanimously approved as submitted (Agor, Morgan)

Item D-21 After-the-Fact Consent to Assign General Lease No. S-4297, Miguel A. Ramirez & Valerie S. Ramirez, Assignor, Miguel A. Ramirez, Assignee; Miguel A. Ramirez, Assignor, Miguel A. Ramirez & Valerie S. Ramirez, Assignee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:004.

Mr. Atta explained background that the transfers were never brought before the Board for approval and this consent is to clean up the record. The use is agriculture.

Unanimously approved as submitted (Morgan, Agor)

Item L-2 Approval of Supplemental Agreement for Contract No. 55752 for Professional Services, Kawaihae Small Boat Harbor (South) Improvements Kohala, Island of Hawaii, Hawaii

Written testimony was distributed to the Board.

The Board asked Mr. Hirano about Glenn Shiroma's written testimony. Mr. Hirano asked for some time to go over it and then come back.

Item C-3 Request for Approval to Release the "Kahuku Wind Power Draft Habitat Conservation Plan," Island of O'ahu, Hawai'i.
Attachment materials are available. See bottom of agenda.

Mr. Conry reported that the Habitat Conservation Plan (HCP) is going out for public comments. The HCP was developed jointly with Fish and Wildlife Service and has gone through the Endangered Species Recovery Committee, the need for permitting for impacts on seabirds, waterbirds, pueo and Hawaiian hoary bat. Paula Hartzel was here for any questions. It will be brought back to the Board for final consideration after the public hearing on Oahu with any issues or changes.

Member Morgan asked how the HCP is working with the Maui wind project. Mr. Conry said the HCP is functioning the way it was suppose to that some instances of take had been reported and are complying with the monitoring and reporting what was contained in the HCP.

Unanimously approved as submitted (Pacheco, Morgan)

Item C-1 Request for Approval of the Safe Harbor Agreement for Reintroduction of Nene at Haleakala Ranch, Island of Maui.

Mr. Conry described the reintroduction of nene and long term management which is an accomplishment of the Endangered Species Act.

Unanimously approved as submitted (Edlao, Pacheco)

Item E-1 Request from the Good News Jail and Prison Ministry to use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii for a Fundraiser Luau.

Item E-2 Request for a Special Use Permit from the Federation of American Natives to Hold the Fifth Annual Hilo Inter-Tribal PowWow on Portions of Wailoa River State Recreation Area, Hilo, Hawaii.

Item E-3 Establishment of a Volunteer Curatorship Agreement for Kiholo State Park Reserve, North Kona, Island of Hawaii

Written testimony was distributed to the Board members for item E-3.

Dan Quinn from the Division of State Parks informed the Board that Items E-1 and E-2 have no changes. For Item E-3 he reported that there is some stress due to inappropriate uses and the residents will be helping staff.

Member Pacheco referred to Item E-3, Special Conditions on page 6, number 1 and under Responsibilities of State Parks, number 1 reading them and asked if an entity had a commercial activity that was appropriate. Could they get a permit, is it allowed because he was wondering why State Parks is prohibiting the curator group from doing that? Mr. Quinn said staff wouldn't prohibit, but under this permit the curator group wouldn't be allowed which would be brought back to the Board. He could add language "subject to final review and approval by the Attorney General's Office" and add a provision to clarify under this permit there wouldn't be any commercial activity, but it could in a separate permit.

Chair Thielen clarified that the intent is not to stop somebody from doing that. It means they can't go out and do it on their own.

Member Pacheco asked who the State Parks person designated is. Mr. Quinn said Mary Ann McGray, archaeologist and the West Hawaii State Parks supervisor, but the day to day will be the folks there. The Board said they were glad because help is needed there.

Unanimously approved as submitted (Pacheco, Morgan)

Item D-3 Grant of Term Non-exclusive Easement to Coco Palms Ventures LLC, for Access Purposes and Cancellation of Grant of Easement Bearing Land Office Deed No. S-12850 assigned to Coco Palms Ventures LLC for Road Right-Of-Way Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003:017 (por.).

Mr. Atta reported that the Deputy Attorney General had concerns whether or not staff's explanation for the exemption from Chapter 343 was correct and after further review staff believes if we included past 2 and 3 exemptions from the standard DLNR list as possible justifications that staff would be ok. The Coco Palms project was covered by an EA or EIS and that supports the exemptions staff is citing. There was an issue with the 343 compliance issues and the document will be subject to AG review and analysis in particular with respect to these issues. The request itself is for creation of an access easement over a small state parcel that abuts the Coco Palms Resort. There was an original access easement which ran parallel to Kuhio Highway that is not being used and DOT is discouraging use of that easement. The current easement was realigned to provide access to an alternate footprint on the State's lot and that is what the easement request is for.

Mike Swanson representing Coco Palms Ventures said he didn't have anything to add and was here to answer any questions and requested approval of the easement subject to further reconciliation through the stated issues by the AG's Office.

Unanimously approved as submitted (Agor, Pacheco)

Item F-3 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Native Hawaiian Practices Permit to Mahina Duarte and Matt Ramsey, for Access to State Waters to Conduct 'Opihi Population Assessment Activities

Written testimony was distributed to the Board members.

Mr. Polhemus presented the request and gave background information which is a continuation of work previously permitted and conducted in the Monument to examine the ecology of opihi and to advance traditional Native Hawaiian knowledge. Scientific review and culture review supports acceptance with no comments from the public and DAR staff and the Monument staff are in the opinion that the applicants have met the findings and should be allowed.

Marti Townsend with KAHEA said they support this but was concerned that there was no environmental assessment and cumulative impact assessment hoping that those issues will be addressed. Chair Thielen suggested that we'll give Ms. Townsend a pass of standing concerns so she doesn't have to come up every time and the AG's Office will note that.

Unanimously approved as submitted (Pacheco, Morgan)

Item F-1 Information Regarding two (2) Amendments to Papahanaumokuakea Marine National Monument Permits for a Native Hawaiian Practices Permit No. 2009-039 to Charles N. Thompson, Polynesian Voyaging Society, to Conduct Traditional Hawaiian Wayfinding Activities from April 1, 2009-December 31, 2009 and for a Conservation and

Management Permit No. 2009-020 to Commanding Officer John Caskey, National Oceanic and Atmospheric Administration (NOAA) Ship HI'IALAKAI, to Conduct Shipboard Support Activities from June 1, 2009-December 31, 2009 for Amendment Activities to be Conducted Outside of State Waters

Written testimony was distributed to the Board members.

Mr. Polhemus reported that this is an informational item for the Board because the Board had approved these items. The Kamahale is the support vessel listed on the permit, but it is broken and cannot make the trip instead they will get another vessel and will not name it in the permit. It might be the Napela B. All the vessel information completed inspections will be detailed on a final compliance information sheet before any activities are permitted to occur and before this group goes up to the Monument.

The second one is the Hi'ialakai permit that is allowed to operate support missions in the Monument under the manager's permit. The skipper has a permit to allow sustenance fishing in Federal waters, but not in the Midway Atoll Special Management Area (SMA). During the times since the permit was issued Fish and Wildlife Service completed a compatibility determination that supported sustenance fishing within the Special Management Area at Midway due to this development. Officer Caskey is requesting an amendment to allow the crew of Hi'ialakai to fish within the SMA. Mr. Polhemus noted that this request is still under consideration by the co-trustee agencies and has not been signed off by the Monument Management Board. This only affects the Federal waters of Midway and is not an action for the Board which is just a proposed amendment to an item that the Board previously approved.

Chair Thielen clarified that DAR staff worked with the Deputy and not with the Chairperson where Mr. Polhemus apologized.

Ms. Townsend testified that she had submitted written testimony to clarify that the Board is not taking any action saying that KAHEA is concerned with some of the representations in the amendment. She referred to the bottom of page 3 and the beginning of page 4 which talks about the ship operations and Ms. Townsend was concerned that the ship had not been analyzed which is something the Monument Managers stated they need to review in the future. Ms. Townsend reiterated the need for a cumulative impact assessment along with the Natural Resources Science Plan which was just completed, but hasn't been done. There may be a supplemental draft with a cumulative impact assessment which remains to be seen. In the meantime, KAHEA is concerned with these kinds of statements and want the Board to be in the position of approving that item. Otherwise, Ms. Townsend thinks it's a good idea to bring these kinds of amendments before the Board and the public and wanted to be reassured there was no action on this. The Chair and Mr. Polhemus confirmed there was no action.

Ms. Townsend said her written testimony refers to the rest of the DAR submittals regarding the cumulative impact assessments and encouraged the Board to read their

written testimony noting the on-going concerns of ship operations, ship waste and the risk associated with these trips. The Department is not taking this seriously by granting permits and is not reviewing the cumulative impacts which Ms. Townsend urged the Board to direct staff to do.

Item D-5 Rescind Prior Board Action of May 23, 2003, under Item D-14, Sale of Remnant to Richard Scott and Aren Blake Scott, Portion of Kapaa Town Lots, Kawaihau, Kauai, Tax Map Key: (4) 4-5-12: Portion 03.

Member Agor recused himself.

Mr. Atta asked to amend the refund amount in the recommendation from \$42,000 to \$42,700, excluding fees that were incurred.

The Board:

Amended the refund amount in item 2 of the Recommendations to \$42,700 to correct a typographical error. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Edlao, Goode)

Item D-14 Request for Approval of Special Installment Agreement for Payment of Percentage Rent under General Lease No. S-5721 to Kona Blue Water Farms, LLC, Kalaoa 1st through 4th, North Kona, Hawaii, Tax Map Key: (3) 7-3-43:seaward of Kalaoa.

Mr. Atta asked to withdraw this request.

Withdrawn (Pacheco, Agor)

Item D-18 Issuance of Revocable Permit to Hilton Hawaiian Village for Beach Activities at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portion of 021.

Mr. Atta noted a minor change to include the issuance of a right-of-entry if necessary due to the time constraints of getting an RFP process.

The Board:

Amended the staff recommendations by including an additional recommendation authorizing the Chairperson to issue a right-of-entry for purposes of allowing the subject event to occur as planned, if necessary. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Morgan, Edlao)

- Item D-1** Cancellation of Governor's Executive Order No. 3449 to the Department of Water, County of Kauai and Reset Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife for Remote Automatic Weather Station (RAWS), Together With Easements 1, 2, and 3 For Water Pipeline Purposes and Issuance of Construction and Management Right-of-Entry, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-8-12: 32.
- Item D-4** Forfeiture of Revocable Permit No.S-5274, Michael R. Salling, Permittee, Kapaa Town Lots, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-5-09:10.
- Item D-6** Consent to Assign General Lease No. S-5434, Stephen N. Santos, Assignor, to Oleander K. Csisko, Assignee, Kikala-Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-43:34.
- Item D-7** Set Aside to County of Hawaii; Issuance of Management and Construction Right-of-Entry for Park and Other Community Related Purposes, Kikala-Keokea Residential Subdivision, Kikala and Keokea, Puna, Hawaii, Tax Map Key: (3) 1-2-43: 68.
- Item D-8** Consent to Sublease General Lease No. S-3583, Yamada Consolidated, Inc., Lessee, to Suisan Company, Limited, Sublessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-37:52, 92, & 93.
- Item D-9** Consent to Assign General Lease No. S-3875, Paradise Auction, Ltd., Assignor, to Alternative Energy Marketing, Inc., Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-50:93.
- Item D-12** Mutual Cancellation of General Lease No. S-5965, Chin A. Ho for Intensive Agriculture Purposes, North Hilo, Hawaii, Tax Map Key: 3rd/3-4-03:11, 38 & 39.
- Item D-13** Grant of Perpetual, Non-Exclusive Easement to Hawaii Electric Light Co., Inc. and Hawaiian Telecom, Inc.; Immediate Construction Right-of-Entry for Utility Purposes, Halaula, North Kohala, Hawaii, Tax Map Key: (3) 5-3-010:056 por.
- Item D-22** Sale of Remnant to Dana K. Lum Revocable Living Trust, Brenda M.H. Blake, Wanda L. Hanson and Lana L.L.K. Min; Kaneohe, Koolaupoko, Oahu Tax Map Key: (1) 4-5-038:013.
- Item D-23** Amend Prior Board Action of July 22, 2009 (Item D-14), Grant of Term, Non-Exclusive Easement to George W. Playdon Jr. for Seawall Purposes; Mutual Cancellation of Grant of Non-Exclusive Easement

S-5195, Kaluanui, Koolauloa, Oahu, Tax Map Key: (1) 5-3-008:seaward of 008.

There were no changes or public testimony.

Unanimously approved as submitted (Morgan, Agor)

Item L-2 Approval of Supplemental Agreement for Contract No. 55752 for Professional Services, Kawaihae Small Boat Harbor (South) Improvements Kohala, Island of Hawaii, Hawaii

Eric Hirano of Engineering Division explained Mr. Shiroma's written testimony starting with number 1.a. that is an appropriation to improvements to harbor facilities on a lump sum basis which was similarly proposed during the Recreational Renaissance/CIP proposal and that was to get as much lump sum funding which provides the Divisions' flexibility in moving the monies around to where its needed based on their priorities. What is allowable under this when funds have reached their lapsed dates there is a mechanism where funds can be held within a blanket encumbrance for a period of up to three years after the lapse date. These funds that are held in blanket encumbrances maybe used if there is an open contract you can utilize this blanket encumbrance to supplement an open ended contract. Staff couldn't use it if the contract was already closed. Chair Thielen asked whether this was under the procurement code. Mr. Hirano replied saying it is under Department of Accounting and General Services (DAGS) policies and guidelines.

Mr. Hirano said he doesn't understand what Mr. Shiroma means on number 1.b. The first Act that he is citing, Act 178, Session Laws, Item H-11 which is specifically for the Kawaihae Harbor improvements is appropriate funds for the project. And, Mr. Shiroma is citing Act 213, Session Laws 2007, Item H-16 on his attachment 3 which is a lump sum appropriation for boating facilities for all kinds of things. Mr. Hirano doesn't see where it is inappropriate for Boating to identify the uses of those funds. Chair Thielen asked whether Mr. Shiroma is confused because historically the Legislature has given line item for CIP and when Peter Young was here staff asked for lump sum approval for Parks and Boating. If Parks replaced a waterline and uncovers a burial or historic site it would be more expensive with a bid. It allows staff instead of going back and waiting for emergency appropriations from the Legislature the next year with a lump sum you have more flexibility. And, conversely if it's less expensive you can save the money and put it into other projects. Chair Thielen asked is Mr. Shiroma confused because now we're utilizing lump sum funds. Mr. Hirano said he thinks so. As for the history of how DLNR used to receive their appropriations, many times it was specifically towards a single project reiterating the Chair's comment about receiving lump sum funds during Peter Young's time. Chair Thielen asked whether the Acts Mr. Shiroma is citing are being supplemented by the lump sum funding or is he citing the Acts that are authorizing the lump sum funding. Why he is saying that it's not authorized to go for these improvements? Mr. Hirano replied saying that was where he didn't know. What Boating Division had done was when the appropriation identified specifically for Kawaihae

Harbor improvements was not sufficient after staff opened the bids then staff identified part of the lump sum money to supplement that to move forward with the project. The Chair asked is that what Mr. Shiroma is saying that staff doesn't have the authority to do. Mr. Hirano confirmed that.

Member Pacheco stated he thinks Mr. Shiroma is asking where those monies is coming from and Mr. Shiroma doesn't know those monies are available in the lump sum fund. Mr. Underwood noted that staff has gone over this numerous times with Mr. Shiroma and he may not understand the funding. Mr. Hirano has gone over this with Mr. Shiroma, too. Staff couldn't move forward with the contract if the funds weren't available.

Member Pacheco asked what about Mr. Shiroma's comments about going back to the final plan. Mr. Underwood replied saying that the whole reason to have the redesign to move the launch ramp was to mitigate corals and staff moved it to an area with less coral coverage which is being evaluated now.

Mr. Hirano read Mr. Shiroma's number 1.c. and said when staff comes before the Board for an approval of a construction contract staff normally comes with what was submitted from the contractor. From here, before executing the contract, staff usually adds in a contingency factor and there is a discrepancy there, but that is the typical process. Usually, the contingency factor is about 5% of what the contractor's bid is submitted to. Every agency is different like Department of Water Supply – Hawaii County uses a 10% contingency factor. DLNR normally uses 5%.

Chair Thielen asked when the Board approves submittals is there discussion about contingency factors. Mr. Hirano responded in the negative that they haven't been doing that, but staff could add the contingency factor into the Board submittal. The Chair suggested that staff should to tell people like Mr. Shiroma that this is standard practice.

Mr. Hirano spoke on 1.d. saying that Representative Cindy Evans was successful in lobbying the money committees for this project. What staff submitted for the Recreational Renaissance was a design component of \$460,000, but \$280,000 is good. Chair Thielen explained to the new Board members that the Department had a proposal to do a lump sum with a 5 year spread sheet that Mr. Hirano had put out for design and construction year by year. Each island had a pulsing through of some design some construction for all of the islands each year and what was in design would go to construction the subsequent year which is the proposal under Recreational Renaissance. Mr. Hirano acknowledged that saying later on Mr. Shiroma's testimony in opposition questioned where the funding was coming from to complete phase I which was requested in the Recreational Renaissance, but was denied by the Legislature. That would have included the paved access roadway, security fencing, parking improvements, water system improvements, electrical and lighting improvements, and landscaping improvements. These things were necessary which Boating Division identified because of their conversation with Historic Preservation Division who was concerned with the visual impacts and the nearby heiau. The \$280,000 will go to the design phase to get the project started.

Mr. Hirano noted that if there are more detailed questions on the coral Eric Yuasa has been working closely with State Historic Preservation, Corp of Engineers and DAR. Chair Thielen noted that staff had to do some modification to the design because of the coral in the harbor by re-locating the boat ramp and taking into account all the coral protection laws to protect the resources.

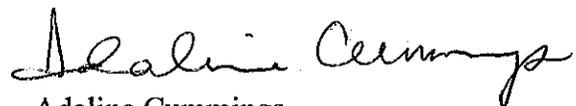
Member Pacheco stated that one of the things Mr. Shiroma was upset about was that the final plans never came back to the users group. Eric Yuasa, Engineering Branch Manager for DOBOR reported that he was part of this project for the past two years. Staff did extensive public community outreach for this project at 7 meetings. He reiterated Mr. Hirano about moving the boat ramp 7 feet to the east which wasn't a major change when staff presented to the community; otherwise, everything was the same. Staff is working with Army Corp, U.S. Fish and Wildlife, DAR and National Marine Fisheries to make these changes and staff doesn't think they need to go back to the community because they are sticking to the plan already presented to the community except for the boat ramp. Until the Army Corp comes with the final permit staff isn't sure whether that is adequate because Army Corp needs to go before other federal agencies.

Unanimously approved as submitted (Pacheco, Morgan)

Adjourned (Pacheco, Agor)

There being no further business, Chairperson Thielen adjourned the meeting at 1:48 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



Laura Thielen
Chairperson
Department of Land and Natural Resources