

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

DATE: THURSDAY, JULY 8, 2010  
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 9:10 a.m. The following were in attendance:

**MEMBERS**

Laura Thielen  
Rob Pacheco  
Jerry Edlao

Ron Agor  
Dr. Samuel Gon

**STAFF**

Morris Atta/LAND  
Bob Nishimoto/DAR  
Dan Quinn/PARKS  
Scott Fretz/DOFAW

Bill Andrews/DOBOR  
Francis Oishi/DAR  
Paul Conry/DOFAW  
Carty Chang/ENG

**OTHERS**

Bill Wynhoff, Deputy Attorney General  
Ron Weidenbach, D-16  
Wally Inglis, D-19  
Tina Prettyman, J-1  
Eric Leong, M-1 & M-2  
Kristie Lee, D-2  
Pete Basube, F-3  
Ron Tubbs, F-3  
Ed Watamura: F-3, F-1  
Tom Tissar, D-13  
Iwa Tolleson/Kalua, E-1  
Gary Dell, F-1  
Frank Hayes, D-5

James Geiger, D-6  
Sandi Ichihara-Ahe, D-11  
Tom Likos, D-21  
Kaliko Chun: J-1, D-5  
Rick Wall, D-3  
Andrew Rossiter, F-3  
Matthew Ross, F-3  
Ray Morioka: F-3, F-1  
Ronald Tam: F-3, F-1  
Frank Carpenter, E-1  
Brock Stratton, E-1  
Alfred Ching, F-1

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

**Item A-1 Amended March 25, 2010 Minutes**

Member Pacheco recused himself.

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

**Item A-2 Amended April 19, 2010 Minutes**

**Item A-3 Amended May 13, 2010 Minutes**

**Item A-4 June 10, 2010 Minutes**

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

- Item D-6**
- 1) Sale of Remnant to Alan Bradbury, Loiloa and Keopuka, Koolau, Maui, Tax Map Key: between (2) 1-1-1:44 and 1-1-1:23.**
  - 2) Approval in Concept for Removal of Approximately 0.25 Acres, More or Less, from Koolau Forest Reserve, Governor's Proclamations Dated August 24, 1906, May 20, 1925 and/or May 2, 1938, Honomanu and Keopuka, Koolau, Maui, Tax Map Key (2) 1-1-001: portions of 023 and/or 044.**
  - 3) Set Aside to the Department of Transportation, Highways Division for Drainage Purposes, Loiloa and Keopuka, Koolau, Maui, Tax Map Key: (2) 1-1-001: portions of 023 and/or 044.**

Morris Atta, Acting Land Division Administrator reported on the sale of remnant pursuant to litigation to the rules concerning a parcel on Maui along the Hana Highway near a hill side leading to a stream, pond and waterfall which has some controversy. This is broken into 3 parts because one is for the approval of the remnant, one for approval in concept for removal of that portion from the Forest Reserve and the third is to resolve a conflict with Department of Transportation (DOT) on a turn out and drainage area that is yet unresolved and calls for a resolution.

James Geiger representing Alan Bradbury testified that this is a settlement of a lawsuit where there were questions of the boundary. The guide books direct people to this dangerous area resulting in injuries. Mr. Bradbury would like the Board to approve the sale that he may control the area since he is the adjacent landowner and he agrees with staff's recommendation.

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

**Item D-16 Issuance of Direct Lease to Hawaii Fish Company, Inc. for Aquaculture Purposes, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-9-001:002, 003, 033, and 036.**

Mr. Atta conveyed that this property has been under use for aquaculture and the applicant has an extensive history in aquaculture development in the State. This area is complicated because a number of different agencies with joint or abutting jurisdictions are next to one another. Staff had discussions with State Parks and Forestry because of the Kealia Trail that is above this operation and a portion of the land is within the State Parks jurisdiction. Also, staff consulted with State Department of Transportation (DOT) regarding the impact of this operation to the Dillingham Air Field. DOT did submit written testimony that they are not opposed to this operation and had concerns with the operation attracting wildlife and possible bird strikes, but that issue has been resolved. Staff's recommendation is to issue the direct lease.

Ron Weidenbach representing Hawaii Fish Company, Inc. testified relating some history regarding this item that without a lease they are not able to get electricity and financing to go forward and asked the Board to allow that. His father and grandfather were aviators and his grandfather died from a bird strike. Mr. Weidenbach related the number of bird strikes statewide that there have been no incidents related to birds at Dillingham Air Field. Wildlife Services who is responsible with managing these issues stated to FAA that they feel there is not an issue and his company has been working with the Wildlife Service to mitigate issues by modifying their cage designs. The bird counts have gone down prior to Mr. Weidenbach's operation from 15 to 0-5. His company is also part of DOFAW's regular monitor for water birds. They feel this issue is resolved and is ready to go forward. They have also been awarded grants to produce new products and he supports staff's recommendation.

Member Gon noted that Office of Hawaiian Affairs (OHA) is in favor and Chair Thielen noted the community support.

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

**Item D-11 Consent to Revocable Permit of Lands under Governor's Executive Order No. 4097 to the Department of Business, Economic Development and Tourism, Honolulu, Oahu, Tax Map Key (1) 3-1-042:portion of 009.**

Mr. Atta communicated that this was a request from our Hawaii Film Office to facilitate production of a new TV show and the representatives are here.

Georja Skinner representing Department of Business, Economic Development and Tourism (DBEDT) testified that this is for a new television series called "Off the Map" and they need little more time to negotiate the rate, but because of the timeline of the production they need to take occupancy quickly. She agrees with the recommendation as questioned by Member Gon.

After inquiry by the Board, Ms. Skinner related more background about the TV shows being filmed here.

Member Pacheco asked whether the rent negotiations were through DBEDT and Ms. Skinner confirmed that.

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

**Item D-19 Set Aside to Hawaii Housing Finance and Development Corporation for Affordable Senior and Multi-Family Rental Housing Projects; Rescind Prior Action dated March 28, 2008, Agenda Item D-12; Waimano, Ewa, Oahu, Tax Map Key: (1) 9-7-019:035.**

Mr. Atta related that the land was originally going to be leased to a non-profit which the Board had previously approved, but because of the need for financing it would involve a for profit entity. It was the opinion of the Deputy Attorney General that staff couldn't issue the type of rent that they were offering to an entity that was not a non-profit. Subsequently, the arrangements were reworked so that Hawaii Housing Finance and Development Corporation (HHFDC) would take control and go forward with this project which is the reason for this request.

Wally Inglis, President of the Coalition for Specialized Housing, testified that he represents the non-profit in question that this Board originally issued the lease to and they concur with staff's request. They will continue to work with HHFDC.

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

**Item D-21 Issuance of Revocable Permit to Fireworks by Grucci, Inc. for Aerial Fireworks Display; Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu; TMK (1) 2-3-037:portion of 021. *Submittal to be distributed.***

The submittal was distributed earlier in the meeting.

Mr. Atta explained that this is a standard fireworks request.

Tom Likos representing Fireworks by Grucci Hawaii testified he appreciates getting on the Board agenda because this is something they found out about on June 30<sup>th</sup>. Sony is having a convention at the Hilton Hawaiian Village who wanted a fireworks display on two nights at the Hilton Lagoon.

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

**Item J-1 Cancellation of Revocable Permit B-03-01 and Reissuance of a Revocable Permit to GKM, Inc. to include an addition of three acres for a Boat/Trailer Storage Facility and Employee Parking at Honokohau Small Boat Harbor, Kealakehe, Honokohau, North Kona, Hawaii**

Bill Andrews representing Division of Boating and Ocean Recreation (DOBOR) requested a cancellation of a revocable permit describing GKM, Inc. as the haul out facility near the boat ramp at Honokohau Harbor. GKM is a good tenant and staff wants to continue them on a month-to-month RP.

Tina Prettyman representing GKM, Inc. testified that she is here to answer any questions and they are in agreement with the recommendation.

Kaliko Chun from Kona testified that the Board should consider the Honokohau Small Boat Harbor area and development as a whole rather than separately. The National Park Service is concerned with this area in terms of its closeness to the park. This area was designated as a National Historic Landmark, but was developed by DOT against the community's wishes in the 1970s. The Kaloko/Honokohau National Park was created to preserve what was left. The County of Hawaii has re-designated from urban to conservation the area along the shoreline back to the State lands. Her position is not to grant this RP until the National Park Service is able to input on its plans. Urban use should not be expanded even if there is a harbor there, but the area should be conserved because it is further degrading the ocean resources. A parking area brings increased use. She suggested DLNR should work with the National Park Service on this.

Chair Thielen noted that the National Park Service was noticed and had an opportunity to weigh in on this since they were here for another item.

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

**Item M-1 Issuance of a Third Revocable Permit to Fourth Mate Productions, Inc. at Kalaeloa Barbers Point Harbor, Oahu**

**Item M-2 Issuance of a Revocable permit to Steakz and Cakez LLC, Kahului Harbor, Kahului Maui**

Eric Leong representing DOT Harbors Property Management presented Items M-1 and M-2.

Member Gon asked whether there was a difference between DOT Harbors, State Lands and other general State Lands with commercial use on them. Mr. Leong said DOT's rates are standard for lunch wagons.

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

**Item D-3      General Lease No. S-3961, Consent to Transfer of 100% Stock Ownership of Parent Company of Hilo Hawaiian Associates, Lessee, to HH Associates, LLC, Transferee, and Consent to Mortgage, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-1-03:05.**

Mr. Atta reported that HH Associates is purchasing the controlling interest in TM Group Hawaii who is the controlling entity for Hotel Hilo LSU which is the actual lessee who is getting financing from First Hawaiian Bank and there is a concurrent request to consent for mortgage.

Rick Wall representing HH Associates was here to answer any questions and was in agreement to the recommendations in the submittal.

Member Pacheco asked whether the lease allows the premium. Mr. Atta answered in the negative that the premium came at a later date because it is an option lease that they cannot change the terms.

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

**Item D-2      Consent to Assignment of Grant of Non-Exclusive Easement, John Martin Davis, Assignor, to Miller Aquino Picardal, Assignee, Olaa, Puna, Island of Hawaii, Tax Map Key: 3rd/ 1-6-13: por.**

Mr. Atta explained that this is an older perpetual easement that required Board approval prior to assignment. Staff is trying to make the easement swing with the land subject to certain conditions. The SMEs were notified in writing to get insurance and eliminates bringing this back to the Board in the future.

Kristie Lee representing Miller Aquino Picardal testified in agreement.

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

**Item F-3      Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Education Permit to Dr. Andrew Rossiter, Waikiki Aquarium, for Access to State Waters to Conduct Coral and Fish Collection Activities**

Written testimony was received.

Bob Nishimoto representing Division of Aquatic Resources (DAR) conveyed that this request is to gather from Nihoa to Kure Atoll which is a renewal of a previously permitted activity by the Waikiki Aquarium (WAQ). The target species are listed on page 2 where he cited examples. Because the Northwest Hawaiian Islands (NWHI) is not accessible to the public the Waikiki Aquarium's display will introduce the Monument to the public by stimulating interest and appreciation. Referring to page 4 of the submittal the applicant pointed out that these signature species are highly abundant around the

NWHI, but are extremely rare or beyond the depths of where commercial divers/WAQ staff can collect around the main Hawaiian Islands. The second concern was for WAQ take extreme care to make sure all non-native organisms do not find their way into local waters. All water discharge goes directly into the sewage system. Staff's opinion is the Board authorize and approve this permit.

Andrew Rossiter representing the Waikiki Aquarium testified that the Waikiki Aquarium has had no accidental releases in its 106 year existence and he hoped that will continue.

Member Gon commented that the Waikiki Aquarium has good containment systems in place and he approves the idea of showing the public living representatives of Papahānaumokuākea to appreciate the diversity that is out there.

Mr. Rossiter said since people can't go to the Monument to bring the Monument to the people and he understands why it deserves to be protected. After Member Gon's inquiry Mr. Rossiter said this permit will be the second and last. The 5,000 gallon exhibit was installed yesterday and hopefully within 6 months they will have fish. They shouldn't have to restock for the next 15 years because their fish live far longer than they do in the wild. Our Big Island Board member asked whether tanks are being installed at the Discovery Center in Hilo where Mr. Rossiter said NOAA is doing that. WAQ may act as a halfway house for the NWHI fishes before they are sent to Hilo where WAQ staff will advise the Hilo staff on set-up and care. After the Maui Board member's questioning Mr. Rossiter said that WAQ has limited staff and Maui Ocean only has fishes from the main Hawaiian Islands and would be excluded from the NWHI collection.

Chair Thielen acknowledged appreciation of WAQ's coral exhibits and education tools. WAQ is a jewel in Waikiki and we will look forward to seeing this new exhibit. Mr. Rossiter thanked the Board and acknowledged his predecessors – Dr. Bruce Carlson and Dr. Leighton Taylor who revolutionized the care of coral in captivity which everyone now uses. Member Gon suggested when the tank is ready the Board should go visit it.

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

- Item F-4      Request for Approval to Hold Public Meetings and Hearings to Adopt Chapter 13-60.8 Hawai'i Administrative Rules, Hawai'i Island Fisheries Rules**
  
- Item F-5      Request for Approval to Hold Public Meetings and Hearings to Adopt Chapter 13-60.85 Hawai'i Administrative Rules, Maui and Lana'i Islands Fisheries Rules**
  
- Item F-2      Request for Approval to Hold Public Hearings for Amendments to Hawaii Administrative Rules Chapter 13-95, Rules Regulating the Taking and Selling of Certain Marine Resources**

Numerous written testimonies were received.

Francis Oishi representing DAR presented Item F-4 which is a rule proposal for minimum size, bag limits and other restrictions for near shore fisheries which he listed. Chairperson Thielen asked him to do remarks for Item F-4 and F-5 because they are similar and Mr. Oishi related background on Item F-5 as well. DAR started this process beginning 2009 with public meetings held statewide on all islands - in Hilo, West Hawaii, Maui and Lanai. There were two sets of meetings – one held in January/February 2009 and June 2009 where staff presented these ideas for rules to the public and the public provided verbal testimony and written comments that staff considered.

The Chair asked Mr. Oishi to report on the status for Oahu, Molokai and Kauai. Mr. Oishi reported that Item F-2 is the proposed rule set for Oahu. Molokai and Kauai are not at this stage yet and staff is working on them. Chair Thielen asked if Item F-2 is the same as bag limit size rules for Oahu. Mr. Oishi confirmed that and said Item F-2 proposes to amend an existing chapter which is an umbrella for most fishing rules to most of the marine fisheries and is the existing rule. Staff proposes to enhance that by island. Big Island and Maui staff, Bill Walsh and Russell Sparks, was here for questions.

Board member Edlao suggested staff do an informational meeting prior to the regular public meeting because people never know what is going on. He asked what would it take to go back out to public hearings for the draft rules after going through one because staff will get a lot of comments. Mr. Oishi explained there are two processes - Chapter 91, Hawaii Administrative procedures and an Administrative Directive from the Governor. When staff asks the Governor to hold public hearings you have to submit to the Governor an approval as to form draft rule from the Attorney General (AG). When the Governor gives her approval to hold a public hearing she has before her to consider a draft rule reviewed by the AG. During the public hearing that draft rule version approved by the AG is presented to the public. The Governor's policy is if there are any substantive changes to the rules the division comes back, reconsiders, re-proposes and then substantive changes require an additional public hearing. Member Edlao asked whether that would be the same procedure for the Board. Would staff come back to the Board if people aren't happy at the public hearings? Mr. Oishi confirmed that staff could do the informational meetings per Member Edlao's question. Member Pacheco asked whether authorizing holding informational meetings require Board action. Chair Thielen said that the staff has been holding meetings with various groups on Oahu, Maui, the Big Island and on Lana'i to get to this point. If the Board wants additional informational meetings prior to the public hearings to have more informal back and forth dialogue on the draft rules that is something the staff can do. She noted that the AG will weigh in and will probably have some technical changes to the versions you have before you and before it goes back out to public hearing to make sure the rules are in conformance with all the legal standards.

Member Edlao referred to the bag limit which is confusing where you have a certain species and have to refer to another section on what is a bag limit. He suggested incorporating a list of the species with the bag limits in the rules to make it clear. Mr.

Oishi explained that staff is confined by the format that they have to follow for drafting rules. In their public meetings staff summarized the rule because the rule is in a legal format and most people have trouble understanding. As preparation for public hearings and public meetings there are table forms and summaries of the rule provision.

Member Pacheco said in the rule making process by the time the rules get out there it goes through public back and forth, goes to the AGs, public hearings and he understands the Department wants those rules as close as possible with all the input and what the Department feels is necessary that when they do go out to the public hearing there aren't any substantive changes that wouldn't require going back out to public hearing and the whole process with cost and time. He asked when does it go out to public hearing for public comments. The rule doesn't seem to change from when they go out to public hearing and when they come back to the Board. Does Mr. Oishi have any comments about that? Mr. Oishi explained what DAR did different from the outset of this process was they didn't go out with what the Board sees today. DAR didn't have a draft rule and say this is what they proposed because the reaction from the public is it's already said and done. Staff held two rounds of publicly noticed informational meetings with the approval of the administrator who specifically emphasized that no draft rules were written at that point. What staff wanted to engage the public and get their feedback on these ideas on the life history information they presented. These public meetings were informational presentations - this is the best information that they have available that these are the trends that they see especially the commercial fisheries and independent surveys. Staff feels the need to protect certain species and that was how it was approached. The first meeting dealt with minimum sizes which a fish has to be before you can take it. Once staff received public feedback subsequent meetings dealt with other management tools like bag limits, closed seasons. At both meetings there were no draft rules shown to the public where staff avoided that appearance that it was already done.

Chair Thielen said she participated with DAR in those public meetings. At one publicly noticed informational meeting in Kaneohe was to pre-draft rules with the information they had about the species and to gather input. DAR has been responsive to the comments that came in. Why have a one size fits all that they should have place based rules especially dealing with species because the habitats vary by island. DAR had rules by island and is working closely with DOCARE on the enforcement because they get a lot of comments on whether staff is able to enforce rules and what happens when you can't. There were meetings with commercial fishers on Oahu to make sure we understood the issues and concerns that they had and how to address those Oahu rules versus neighbor islands where you may not have the commercial fishery to the extent as you do on Oahu for these species. There have been a lot of dialogue and information meetings, but she thinks it would be worthwhile for DAR to do one more round of informational meetings before the public hearings because now you do have draft rules and would be more specific for people to respond to.

Member Edlao noted concerns with fishermen going island to island and are not familiar with an island's rules. He asked if there was a way to require people to carry the rules. Mr. Oishi said that there is one proposal to require the fishermen to carry a rule book and

in the State of Hawaii they have to be licensed. Staff has an information data base to contact them with respect to the commercial license system where it would be no problem getting out information about new rules and if they are different for different islands these are the considerations that we need to be aware of and that is not a problem. Chair Thielen suggested working with the AG's on whether putting those suggestions in the rules or not, but certainly staff will be working with them. The education and outreach is going to be important. Materials could be distributed to stores and other outreach.

Member Edlao asked whether staff is permitting boaters and requiring them to register their boat in the State of Hawaii. Mr. Oishi confirmed that, but there is no requirement for recreational. The Chair suggested having DAR work with DOBOR in getting information out to registered boat owners because many are not fishers, but many are.

Member Pacheco asked regarding stand-up fishers and if staff goes back out again with a change from a bag limit of 20 to 10 who makes that determination, staff or AG? Mr. Oishi replied it's with the AG. He is instructed to submit any changes to the AG for review and it's up to them whether it's substantive or not.

Member Pacheco asked from the science side, with the fishing community how do things line up? Are there big differences or pretty close in or hard to categorize? Mr. Oishi explained some of the measures such as the science behind the establishment of a minimum size are straight forward. It's whether the animal is sexually mature or not. If it is not, you are taking it under size and it won't have a chance to reproduce and replenish the population where in terms of that is closer together. Some other measures don't enjoy that closeness. When you talk about bag limits it is a social thing - what you are used to or what you grew up with, your values and your traditions which is harder to hit or to come closer, but staff will try to use the public's input and science to determine a reasonable limit.

Member Edlao asked once you go out for public hearing and say you got to report back to the Board with the results of those meetings will you do that after the AG looks at it? Mr. Oishi explained before staff has to get Governor's approval to hold public hearings the AG has to sign off on the rule. When staff comes back to the Board they usually report the results of the public hearing. If the Division feels the draft rules can go ahead as proposed that would be their recommendation to the Board to finalize based on the public hearings, meetings and the like. After that it goes to the AG for final review and then to the Governor for signature. Member Edlao asked if other issues come up from the Board members what happens. Mr. Oishi said it depends on what the Board decides to do - if they choose not to grant final approval staff will have to re-examine where they are. Member Edlao asked based on public comments that certain things need to be adjusted and to make that recommendation can they still move forward or does it have to go back out to the public? Mr. Oishi said if it's judged substantive by the AGs. Staff will take what the Board recommends to them, make the necessary changes and it goes to the AG. If the AG feels the changes are substantive the Governor's policy is for staff to go back to public hearing.

Chair Thielen noted and asked Mr. Oishi mentioned the Governor's policy, but it was her understanding its required under Chapter 91 that if there is substantive changes it goes back to public hearing which is a matter of law. Bill Wynhoff, Deputy Attorney General confirmed that. After you go to public hearing and if there are substantive changes from what the public originally considered it would have to go back out for public hearing. The Chair said that the reason she pointed that out was there will be a change in the Governor come January and it doesn't matter whether the policy changes. It's required under law if there are substantive changes it goes back to public hearing. She recommended that people comment on items F-2, F-4 and F-5 at one time.

Pete Basube representing the Big Island Aquarium Association has 25 fishermen as members and he thanked Member Pacheco. His association supports sound management based on sound science and they are participants. There is concern with the kole bag limit which Mr. Basube questioned because per DAR the kole population on the Big Island is doing well and now there is a desire to limit them. Their members will be affected by this limit which he explained where there isn't any sound science which shows there is something wrong in the procedure and they don't support it. About 35% of the coastline is off limits and another 15% is not good for fishing because of terrain. Fishermen are pushed into areas that were never accessible or used before because of closures. Mr. Basube noted that Miloli'i is not involved in this process at all because word doesn't reach them. It hurts that village to have a bag limit placed on them noting an increase in population due to the economy. People are going to the ocean for sustenance and a bag limit like this would be detrimental. He described the limit would affect luaus. He suggested looking at the lack of abundance of kole which influences an area.

Chair Thielen explained the draft rules are large. This item is whether to begin the process to take these draft rules out for public comment. What is important for the Board to hear is a summary of points you may agree or may disagree with that puts staff on notice on what to focus on for the informational meetings and to have a response back when they come back to the Board. It sounds like Mr. Basube's focus is the limits proposed on that one species for the Big Island and perhaps island wide is not small enough that they may need to look at smaller regions. You may not have the same limits in Kona that you have in Hilo and even island wide Mr. Basube is questioning whether that's appropriate to have the same rule within the island itself. Mr. Basube said the lay of the land for the last few years has been no cooperation between DAR and the fishermen and his association is trying to change that. Any hearings or informational meetings that are held, there has to be another way to contact the local population of fishermen because it is weak on the Big Island.

Member Gon thanked Mr. Basube and noted to the audience that the Board won't be making any detailed decisions on the rules that the Board is entertaining whether or not they are going to approve the public hearings to be held. The details of those rules need to be brought up at those hearings and the public informational meetings that will occur before that. He understands getting this out to the fishing community because a hearing is a good way of getting 99% of some folks that need to be involved. The Board is in no

position to entertain any bag limits or size, details of fish or even geographical discussions of limits or even the biology at this point. The recommendation is that the Board authorize and approve the holding of public meetings relative to these rules. And, what the Board hears should be pertinent to that decision because that is the only decision the Board can take up at this point.

The Chair noted that any input at the public meetings has to report back to this Board. Staff will put together a report of comments received at the public meetings – what the disagreements were and how those were addressed, whether there were any changes or not. She suggested at the public meetings to present any issues like the bag limit on that species which puts staff on notice and the Board will expect when the report comes back how were those issues addressed through that public discussion process. It is a constant battle to get information out to people on meetings and hearings. DAR has done a good effort in the last couple years to reach out to people at these meetings, but everybody is busy, too many meetings, can't make that night, but it would be helpful to communicate that information to people because staff is trying and it would be greatly appreciated.

Matthew Ross is a fisherman on Oahu, but his fellow neighbor island members couldn't attend and he is testifying for them. He reiterated the kole issue and they were alarmed because the fishers weren't given the opportunity to participate given that the public information didn't list kole. They would appreciate being invited to the table if rules will affect them. Chair Thielen said a series of informational meetings were held, but much more meetings and process are coming. Member Edlao said consider yourself invited.

Ron Tubbs is a marine fish wholesaler and diver who submitted written testimony and testified reiterating previous testimony of not being informed to attend these meetings. Collectors should be considered in the decision process and reiterated taking the pressure off of limited species. Mr. Tubbs reiterated decline in business and abundance of kole. There is a huge amount of fish around Oahu and he can provide more information. Mr. Tubbs doesn't think there is a need to restrict eating fish right now after the Chair's questioning. There was a demand for Kole two years ago per Mr. Tubbs, but declined since then. He doesn't want to see restrictions because the demand could come back and would be detrimental in the future. If there was a concern with the population than he would be for restrictions.

Roy Morioka from Molokai testified referring to Member Gon's concerns with the public hearing participation and that they don't think we are ready to go to public hearing because of inconsistency in the process where he described meetings held on Oahu. Scientific information was not given at certain meetings on Oahu where Mr. Morioka had to fight to get that information asking the Deputy AG whether that was a fair public meeting. The same happened on the neighbor islands. They understand adjusting to the island, but the presentation should be the same and use consistent information. When going out to the public meeting there was information on 4 species. Why not address all of the rest like menpachi and kole? We are not ready to go to public meetings because we can't do the job up front.

Ed Watamura testified on the public hearing process where 99% of the people who have concerns are not at these meetings and the process doesn't address the people who are concerned. The people holding the meetings should explain what the process is. Why is this public hearing being presented? At these public meetings it should be made very clear it's important to come up and testify where if only 5 testify from a group of 100 and the rest agree or are passive and not say anything that is wrong. There should be a show of hands. The other reason why people don't come to meetings is they have no intention of obeying the rules or don't know and continue fishing in restricted areas because there is no enforcement which makes the rules meaningless.

Ronald Tam testified reinforcing Mr. Watamura's testimony and emphasized that the public should testify for it to show in the numbers.

Chair Thielen noted to the Board that the recommendation is to begin the public hearing process. Board members in the past have instructed staff to conduct informational meetings prior to the formal public hearing.

Member Pacheco asked whether changes can be made to the draft rules. Chair Thielen confirmed that and explained there are 3 sets of draft rules -- Items F-2, F-4 and F-5 which are with the AG's Office now and there will be changes based on the AGs comments before going out for public hearing. The items the Board sees in front of them will change one more time based on the legal comment that they get from the AG's Office. Staff will take those revised drafts to informational meetings and discussion. There maybe changes coming in based on informational meeting discussion. Then they will go to formal public hearings and it's possible that there maybe changes made to the draft based on those formal public hearings. At that point the AG's will weigh in any changes made after the public hearing if substantive. If they are then staff will have to take it back out for another round of public hearings. If they are non-substantive staff will bring it to this Board. This Board meeting would be a public hearing giving another opportunity for people to weigh in to the Board. The Board would have a determination to recommend to the Governor to finalize them or to change them. If the Board recommended changes and are substantive you have to go back out for public hearing again. If they are non-substantive the Board recommendation could go directly to the Governor. People can contact the Governor too and the Governor who will make the final determination on whether or not to sign it. It is an extensive process. Also, in the middle of this are publicly noticed hearings to the Small Business Regulatory Review Board who will comment and make a recommendation as well. This is to start a lengthy, intensive, multi-stage hearing process.

Member Agor said he was concerned that at the informational meeting held that someone testified there was a limited number of fish mentioned where based on the informational meetings more fish were added. The Chair said those earlier meetings were not formal public hearings so changes and modifications up to the formal public hearing are not a legal problem, but they do want to reach out and provide communication for all the meetings going forward including any informational meetings.

Member Gon asked for clarification from staff on the mismatch between the 3 TACs that were mentioned and the results. Chair Thielen noted this is only for information and not a debate.

Bill Walsh, West Hawaii Biologist representing Big Island DAR reported there were 2 rounds of meetings held on the Big Island which focused on 3 families of jacks, goat fish and parrot fish which was to establish the rationale why they are managing. To create the scenario, do we have issues? Why do we have those issues? What is the historical record? What do we know scientifically? Staff presented the case to manage it. From the first course of meetings what staff got clearly from the public was why are you only focused on these? Because they have concerns about this and staff explained this is the first informational gathering stage. The next stage is to take what staff is hearing in the first dialogue and come back to you by addressing these issues. The original focus was on these 3 fishes, but the public said "no" they wanted to see kole, menpachi, etc. During the first meeting, to get quantitative information there was a questionnaire that were available to the meeting participants and was focused on broad questions - should there be bag limits on reef fishes? And the result was 90% were in favor. Those meetings were advertised all around the island with public announcements, radio announcements and a news website. Staff used The West Hawaii Fisheries Council and Sea Grant's mailing lists to get people in. There was a fisherman who went out with that information and gave it to the fishing supply stores to get people to come. At the second round of meetings and that was where they got to the details - size limits, bag limits, what species will be included. Size limit wasn't contentious, but bag limits were. Staff developed a survey for people to fill out where 250 came back. Twenty-nine more were in favor to bag limits so there is a consensus to do specific rules. There were 15 meetings held on the Big Island and 2 meetings were in South Kona. Kole was not on the 1<sup>st</sup> round of meetings and because people wanted it on the list, that is why it is listed.

Member Gon retracted his comment that not all public meetings were well attended. Member Pacheco said during the process aquarium collectors were not there and asked what happened there. Mr. Walsh explained at one of the meetings that was held at the Hawaii Fishery Council where three of the members are aquarium collectors who liaison with other collectors. They had six meetings where size and bag limits were discussed and the collectors should have known because they had aquarium representatives plus the general public. The attendance record says that the aquarium collectors didn't participate which is not unusual. Chair Thielen said that staff is reporting on the process they did go through and now we need to talk about where to go from here in the process.

Member Pacheco asked whether there are specific chapters in the rules for aquarium collecting versus fishing. Mr. Walsh said the only rules that would pertain to aquarium collecting would be a species with a size limit and areas that are off limits. Member Edlao said that the bag limit is too long and needs to get out there. His concern is prior to the public informational meeting to clarify the procedures so there is no confusion and hopefully it will be consistent.

Member Edlao made a motion to approve items F-2, F-4 and F-5 as submitted. Member Agor seconded it. All voted in approval.

Chair Thielen summarized for Items F-2, F-4 and F-5 the Board's direction to staff is to hold one more round of informational meetings. The public thinks all these meetings are public, but a public hearing is a formal hearing under the rule making process. You can have public informal informational meetings with back and forth dialogue. They will have one more round of informational meetings, there maybe some changes and then a round of the formal public hearing. We heard a difference in perspective as far as how much public participation there was and previous testifiers were right. The public informational meetings were held, but people may not have heard those radio announcements or have seen those notices or may not have conveyed that information to people and people are legitimately busy and can't always go to the meetings. For those here representing the different fishers there is a civic responsibility to engage in the process. We have to follow the process to do rule making and people need to make that effort to engage. She encouraged the representatives to go back to the folks they work with and tell them to engage and it is their responsibility to speak up. Go back and encourage people to participate and there will be ample opportunity to participate because there is going to be a lot of meetings held on the various islands. She thanked people for attending today's meeting and look forward to working with them going forward.

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

10:55 AM Chair Thielen stepped out for a phone call and turned the meeting over to Board member Agor.

**Item D-13 Reconsideration of Rent under General Lease No. 5-5468 to Waimanalo Teen Project for Multi-Purpose Community Facility Purposes, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-009:265.**

It was communicated by Mr. Atta that this was a change in policy of rent and how the property is being used to bring the rental in line with the policy. The rent is \$480 per year for non-profits which is a reduction from the previous year.

Tom Tissar representing the Waimanalo Teen Project testified that the last administrative assistant did not report that the sub-lessee had dropped out and their project was paying more when it changed in 2005. He asked to consider paying back the over payment or give credit. Mr. Atta said credit would be given for future rent. Mr. Tissar asked whether reimbursements were possible.

Mr. Wynhoff asked whether this is a reconsideration of rent or are we talking about something different? Mr. Atta explained staff is amending the rental amount on the existing lease based on an amendment effective retroactively to June 1st which will create a surplus that was paid into for rent that could be dealt with as a reimbursement or credit. More likely a credit since the Department doesn't have the money to pay over.

Mr. Wynhoff asked whether the request today is to reimburse the \$480 and Mr. Atta confirmed that.

It was questioned by one of the Board members how the discrepancy in the rent will be handled which is not reflected in the submittal and per Mr. Atta it would have to be worked out under Recommendation C.

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

**Item E-1      Requesting Approval to Issue Month-to-Month Revocable Permits (RP) Pursuant to HRS Section 171-55, to Two Commercial Companies: Adventures in Paradise and Hawaii Pack and Paddle for Landing and Launching Kayaks at Kaawaloa, Kealakekua Bay State Historical Park, to Include Launching and Landing at Napoopoo Landing as Part of a Guided Kayak Tour, on Terms and Conditions to be Negotiated by the Chairperson.      *Submittal to be distributed.***

Dan Quinn representing State Parks distributed the submittal earlier in the meeting reminding the Board that they considered earlier versions in the past for commercial kayak landing at Kealakekua Bay and specifically at Ka'awaloa. This started coming before the Board in 2005 and originally the Board approved for 4 different commercial kayak companies to operate commercial tours. The process ended up going to two different companies listed in the title of the submittal. This recommendation is to issue new permits to those 2 operations which expired about 5 weeks ago. Staff has received documentation represented in the Board submittal from Aloha Kayak and staff is reviewing that. If they meet the same documentation requirements as the others staff will bring it back to the Board for consideration. Subsequent to drafting of this Board submittal staff received similar documentations from Kona Boys. Those are the other 2 companies originally considered by the Board. Similarly, if those documents are in order as requested staff will give it some consideration and take those back to the Board. This is to issue new permits to Adventures in Paradise and Hawaii Pack and Paddle for another year and in addition to allow parking of their vehicles at the Napo'opo'o area.

Mr. Wynhoff apologized that he just saw this and asked whether Chapter 343 is existing use or is it the same thing as they were doing? Mr. Quinn explained the activity has been on-going for a number of years and staff had reduced the number of landings at Ka'awaloa Flats by limiting the number of people who can land individually and have a limit of 10 permits. Mr. Wynhoff asked that the recommendation statement says it will be exempt because there is no change in use? Mr. Quinn confirmed that it's reducing the level of impact on the site. Without permits in place they would be having unrestricted use and they would see some impacts. After Board member Edlao's questioning Mr. Quinn said there is a concern with un-permitted or illegal vendors conducting similar activity, opportunist type people operating on the slide. Some enforcement action has taken place, but continues to be an issue.

Frank Carpenter, one of the co-owners and CEOs of Kona Boys testified that their problem with this proposal is they were promised they would be informed if there were going to be any other permits issued. Upon getting this information they have submitted it. It was their understanding before that there was not going to be any other hearings on permits until there was some kind of concession established. When they got information that this was going to be addressed today they wanted to come to make sure they are included and they did submit their paperwork. He asked to defer to the next meeting until all four original companies be considered for these permits and be presented at the same time.

Member Agor asked whether Kona Boys will be coming back to the Board later. Mr. Quinn confirmed that they are one of the two who receive their documentation. Member Pacheco asked why wait for these other two? Mr. Carpenter said he wanted an even playing field because they were informed that staff wasn't going to grant anymore permits and because of that they did not pursue them.

Member Edlao asked whether Mr. Carpenter's company had the opportunity to apply and why didn't he? Mr. Carpenter explained there was mis-communication and they had a permit for use of a boat ramp that was supposed to carry over, but that changed. Member Edlao said whatever happens here today doesn't preclude him. Mr. Carpenter said he understands that. They wanted everyone to know they are still interested. Member Pacheco said assuming the paperwork is all clear State Parks will bring it before the Board as soon as possible. Mr. Carpenter appreciated it.

Iwa Tolleson (Kalua), owner of Aloha Kayak Company testified reiterating Mr. Carpenter's testimony to defer to next month wanting all 4 companies together to get the permits and run them concurrently instead of staggered. There is lack of enforcement noting illegal activity at Kealakekua Bay with a number of violations daily. He related the challenges he faces working out of a business and not out of a home and the difficulties of getting a permit. Betsy Morigan represented their kayak coalition, but since 2008 his company has been left out of the loop. Mr. Tolleson then related his history in obtaining a permit since then and he apologized because he doesn't want to jeopardize his chances.

Member Edlao commended Mr. Tolleson in starting the process to get the permit and all four companies could help with the enforcement where Mr. Tolleson thanked the Board.

Brock Stratton representing Kona Boys testified backing up Mr. Tolleson's and Mr. Carpenter's testimonies reiterating going from 4 companies to 2 and questioned why action is needed when in 2006 the Board decided the Chairperson could negotiate with all 4 companies? If the Chairperson wants to change this to a month to month agreement that is her discretion.

Member Pacheco explained that the revocable permits these other 2 companies had fulfilled their obligations. Once the permit was approved by the Board the last time it wasn't approved by the time they expired this year. The Board can't approve Kona Boys

and Aloha Kayak because they are not items on the agenda and there are Sunshine Law issues. There is no reason they should further delay these two companies for whatever reason. He doesn't see why they should deny these 2 companies a permit because it doesn't jeopardize Kona Boys and Aloha Kayak's permits one way or another. Mr. Stratton reiterated that he thought in 2006 all 4 companies had a right to the permit. Member Pacheco said they did, but that is why the Division is going to entertain and look at your paperwork and if its approved staff will bring it forward because this Board has approved 4 permitted operators. There are only two permitted operators because your company, Kona Boys and Aloha Kayaks didn't fulfill their obligations. Mr. Stratton asked whether the 2006 permits had expired and that is the reason for this ruling. Member Pacheco said these are annual permits renewed by the Board. If you receive a permit it will expire in a year and will have to be renewed by this Board again. By law revocable permits are only allowed to run for 1 year at a time. Mr. Stratton asked all they are asking is to reconsider.

Mr. Quinn alerted the Board to consider an amendment by adding "This action will have no significant impact." to the recommendation i.e.

Member Pacheco moved to approve as amended and Member Agor seconded it.

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

**Item F-1 Request for Final Approval of Amendments to Hawaii Administrative Rules Chapters 13-74 Licenses and Permits and 13-94 Bottomfish Management**

Mr. Oishi communicated that the amendments are in support of an effort to create similar and complimentary regulations with the Federal regulations for the Bottomfish fishery in the Main Hawaiian Islands. Chapter 74 deals with requirements to increase the reporting frequency of commercial take of bottomfish from a monthly to a per trip interval and this change is needed to accurately track the Federal annual total allowable catch. Chapter 94 amendments deal with removing the requirement for evaluating Bottomfish restricted fishing areas and it adds an annual renewable registration, new seasonal closures, exemptions and other things. Staff held 8 public hearings totaling 171 people where most were opposed to the change in commercial reporting from monthly to trip. Also, the removal of the evaluation language, all the changes to section 13-94-8 and the continued existence of the bottomfish restricted fishing areas where there are 12 closed all year round. They felt the trip reports were unnecessary because the monthly reporting frequency would adequately provide for tracking the annual quota. Another comment was it would be unusually burdensome. Operationally, when the fish are biting the fishermen go out, come back to unload their catch then go back out. If they land a fish they have to spend time reporting rather than fishing again.

Member Pacheco asked how onerous is the reporting process? Mr. Oishi said it's not because they have on-line reporting. There were some minor changes to the on-line reporting system to the monthly catch report. Fishermen are able to sit at a computer and

identify what they caught in 1 trip and in the State of Hawaii for most fishermen it's 1 day.

Member Pacheco asked whether a trip report versus a monthly report is that to get a more up to date catch for the quota to eliminate the guess work. Mr. Oishi acknowledged that reminding the Board that staff reported last month the most recent fishing year which came under the total allowable catch by 20% because of a computer error and the Federal Fisheries cited February, March and April had bad weather periods. If you are relying on monthly catch reports it doesn't capture the effect of weather, but a trip report would. If you are going out on a daily basis for several days during a month you have to report after every trip. Staff gets that data in 3 days as proposed. If you are not going out staff gets an indication there is no fishing going on. The input data more accurately reflects what is going on in the fishing season.

Member Pacheco asked whether there is any precedence for any other fisheries management that requires trip reports. Mr. Oishi said that the Federal government has trip reporting requirements for their recreational fishers. You look at all the intensity managed fisheries throughout the country. They are all on a higher, more frequent period than a monthly catch report.

Ronald Tam distributed his written testimony including 170+ signatures of persons authorizing him to speak on their behalf. He testified that there is not a lot of time between trips and he feels the trip reports are onerous. Mr. Tam read from his written testimony opposing the proposed amendments. The imposition of a requirement for by-trip reporting is not the best solution because it would be burdensome and costly where he gave examples. He suggested establishing a threshold of X number of pounds per month, if achieved require submission of a catch report within X number of days of achieving the threshold. Also, obtain the cooperation of wholesale buyers to submit information to DAR because they already have the data and to look at incentivizing timely electronic catch reporting.

Member Agor asked how Mr. Tam knows what he caught after every trip to make his monthly report. Mr. Tam said if he takes the fish to auction they will record the fish, the amount, the poundage and money collected, but if there is fish the family eats there is no data. Member Pacheco asked whether he is paid per pound and whether he has an idea of how many pounds he has. Mr. Tam confirmed that he does have an idea because they weigh the fish, they get a count of total pieces and total weight, informally, but he depends on the auction house because if some regulatory agency compares his numbers with the wholesale house they will not coincide. Member Agor asked what happens to the fish brought in the first time before he goes back out again. Mr. Tam said he brings the fish to the wholesaler and gets the information. The wholesaler says his 2 fish weigh 4 lbs, but they may sell the fish at 5 lbs. If someone comes later to check how much Mr. Tam caught there will be a disparity. After the fish is sold Mr. Tam receives the information within 2 days. The problem is coming back the second day when he wants to fish some more on the third day to make money. He asked the Board to consider other alternatives.

Member Edlao said like any business there is paperwork to do even if you don't like it. Nothing can happen without that report.

Member Pacheco asked the trip report language is in 13-74-2 (6) is that correct? Mr. Tam said in Chapters 1 and 2 questioning Mr. Oishi. Member Pacheco read 6 and asked you have to get your trip report in within 3 days after a trip? Mr. Oishi said that was after consultation with the Federal government to be consistent. Member Pacheco asked whether they would change that to by the 7<sup>th</sup> day would that be some standard change they could get by with? Mr. Oishi said we'd have to ask the AG. Mr. Tam agreed and preferred 7 days would be more accommodating, but he understands.

There was some discussion between the Board and Mr. Tam about the amount of time to fill out the paperwork. On the computer 15-20 minutes, if by hand about an hour. Member Agor said this is not just to do the paperwork, but it's a contribution to the entire fishery system to better manage it.

Mr. Tam continued reading his written testimony on page 2, 2<sup>nd</sup> to last paragraph regarding bottomfish restricted areas (BFRAs). He asked the Board to disapprove any and all of the proposed amendments to Hawaii Administrative Rules.

The Board had Mr. Oishi explain the bottomfish restricted areas (BFRAs) as not being effective. The BFRAs was set up in the Main Hawaiian Islands as part of an agreement between the Federal and State government to manage for over fishing. But, the Federal government determined the spawning ratio was below a threshold which was the State's response to protecting the bottomfish stocks from over fishing and has been in place since 1998 with 19 established. In 2006, it was modified to 12 areas which were done in consultation with fishermen. Member Pacheco asked whether the Federal government found that wasn't sufficient to curtail the over fishing which is the reason for the TAC and season closure on top of that. Is that correct? Mr. Oishi explained the Federal Fisheries Agencies has their own regulations and have to comply with those requirements. Whether or not they consider closed areas as a management tool is up to the Federal Government. The State decided to close off during that time a percentage of the fishing habitat to protect from over fishing.

Member Gon asked whether the State had the authority to establish BFRAs to extend into Federal waters. Mr. Oishi confirmed that the State did that to protect the habitat. At that time that point was brought before the Federal Fisheries and they did not object.

The Board asked who has jurisdiction where Mr. Oishi said the State has jurisdiction over its waters and the State enforcement would not be able to convict someone caught fishing in Federal waters in a State closed area, but the areas were extended to include the habitat. Sometimes these habitats go beyond 3 nautical miles.

Member Gon asked whether there was any measure of the effectiveness of BFRAs. Mr. Oishi said there were several efforts by the Division to evaluate those areas and was used

for the basis for discussions in the 2006 public meetings where staff changed the process using the results to amend the 19 areas to 12. The Division supported the use of 2 or 3 University researchers to look into how well those areas are doing. The Division is funding under water technology to monitor these closed areas.

11:50 AM Chair Thielen returned.

Member Gon asked to summarize what DAR's evaluation methods were for the 2006 assessment of 19 areas to 12. What information was used? Mr. Oishi replied that they relied on fishing report information by a Dr. Chris Kelly who financed his research to map bottomfish habitat. Basic literature and research had been done and all this was presented to the public before the change was made.

It was asked by Member Edlao whether the closed areas put pressure on the non-restricted areas and whether staff looked at that. Mr. Oishi answered in the negative saying not specifically. How much is that closed area contributing to the open area? Do they protect the fish long enough to grow and spawn? That is not definitively answered. The literature suggests that closed areas assist or help. Member Gon said even reducing the total amount of harvestable area the total allowable catch puts a limit on the remaining area. Mr. Oishi said ever since the Federal Government placed an annual quota that quota has been rising. And what does that tell you about the overall fishing effort? It wouldn't rise if the fish weren't there.

Member Pacheco asked whether the evaluation took place after consultation with the fishermen. Mr. Oishi explained that provision of the rule was part of the original rule when 13-94 was written and that was done as a compromise for the fishermen who wanted an evaluation of the closed areas in a 5 year period. They didn't meet the mark in 2003, but by 2006 staff was prepared to present the evaluation which took the form of public meetings throughout the State where the information to evaluate those areas were presented in conjunction with the general public input which was used to amend those closed areas from 19 to 12. Member Gon queried whether that amendment was to simply remove some of the 19 to result in 12 or was establishment of the 12 an entirely different boundary unit? Mr. Oishi explained that specific boundaries were amended where in other locales they were changed. In Hana, staff went back twice to work it out with the fishermen to where the closed area was going to be.

Member Edlao asked regarding Member Pacheco's suggestion of 7 days whether that is a substantial change from 3 days. Mr. Wynhoff apologized that he couldn't comment. It depends on the response to the change from comments during the hearing. It doesn't sound that substantial, but he suggested asking the AGs to get some level of advice other than just sitting here because he doesn't know anything about the project.

Member Edlao reiterated his question and asked whether that was acceptable and Mr. Tam replied absolutely.

Ray Morioka testified pointing out the proposed language to the trip report in Section 13-74-20, 4<sup>th</sup> page at the bottom underscored paragraph, second to the last sentence. During a fishing trip he may catch ulua, mahimahi, etc. and have to report those on his monthly report separating it from his trip report which doesn't make sense because in the Federal recreational language for trip reports they require reporting of 5 fish of the deep 7 species, but you have to submit a trip report that is all inclusive everything you catch goes on 1 trip report and Mr. Morioka suggested the Board consider that. He appreciated the Board members for allowing the fishermen to allow access to have discussions and dialogue in the process.

Mr. Morioka asked what is a consultation versus an informational meeting. To him a consultation is sitting down to present information and having a dialogue to promulgate a result and it is not a one way information where you take it and leave it and asked the Board to consider deleting that language. Fishermen work in good faith based on consultation - not a discussion, not an informational meeting, not a public hearing, but a consultation of trust. He read a portion of a written transmittal from Dan Polhemus to staff where he left a copy with the Chairperson, noting that copies of petitions were submitted to the Land Board and Mr. Morioka had submitted written testimony in March supporting a lot of what is proposed, but some issues are burdensome asking to consider them.

Chair Thielen said that Mr. Morioka talked about having a monthly report on one hand and a trip report on the other. It was her understanding under their regular reporting that says monthly reporting in the Statute and they asked to strike monthly so that they could do trip reports. The Chair asked DAR staff, Alton Miyasaka, whether they will accept trip reports and he confirmed that. She said if people wanted to do trip reports for everything staff will accept that. Mr. Miyasaka explained the trip reports have to be submitted no later than the 10<sup>th</sup> day of the following month. Chair Thielen explained if someone went on 5 trips in a month they will turn in 5 trip reports. The reason is in the rule because in the Statute it still says monthly report. Staff cannot force people to do a trip report although they are encouraging it and will take it which would be simpler for people, but if they don't want to and will report monthly that is what the law says. Mr. Morioka said his point was what was reported on the trip report. The rule says anything other than the deep 7 you report monthly. The Chair explained staff will take everything. The reason the rule says that is because the way the Statute is. The Board cannot mandate in the rule that somebody does a trip report for the other stuff. The Statute allows us to have rules on those co-managed fishery that match the Federal so for the co-managed 7 they cannot put into rule - trip report, but they can't put into rule anything else until they change the Statute, but they can accept it. If people want to do a trip report for everything staff will accept it. Mr. Morioka agreed suggesting a compliance guide so there isn't any confusion on the part of the fishermen like how the Federal issued. Chair Thielen asked whether staff can do that on the reporting where people can consolidate everything on their trip reports and they don't have to do it separate? Mr. Miyasaka said that it wouldn't be in the format of a compliance guide. It could be as a suggested guidance kind of thing. The Chair said and again that is because they can't force anything. She suggested the fishermen recommend to the Legislature to strike that.

Gary Dell, a commercial bottom fisherman at Kewalo Basin testified that he and some fishermen were approached about the BFRAs with the provision that they be evaluated every 5 years. Changes with Magnus and Stevens required the Federal Government and joint governments to come up with a quota which rendered the BFRAs superfluous. He described fishing in Penguin Banks and where or how much he can fish based on the BFRAs and the TAC. This will throw a false picture to the Feds who will penalize the fishermen because this one area has been excluded. Mr. Dell asked the Division to take this proposal back and review it to find a compelling reason to keep the BRFAs. As for the trip reports, we don't need timely data until March or April when the TAC is due rather than doing hurry up reports throughout the year. There are other methods in reaching the TAC instead of burdening the fishermen.

Ed Watamura testified agreeing with the previous 3 gentlemen regarding the BRFAs. On a field trip to Coconut Island they were presented evidence of genetic connection of onaga and opakapaka with the same fish in the Northwest Hawaiian Islands proving that this is all one fish stock. The reason for BFRAs was to protect spawning areas, but he questioned if spawning was seen occurring whether it can be proved. The quota is based on a model at Westpac which Mr. Watamura related and said providing how much fish is out there has nothing to do with the TAC. He is part of a bottom fish working group and the State has to work with the bottom fishers.

Alfred Ching, a resident from Maui who now lives on Oahu testified fishing on Maui for 20 years and had a restaurant there. He fished at Olowalu which is not a BFRA and he doesn't care where we turn it on and off, but don't do it in his neighborhood which is what everyone says as a fisherman. Mr. Ching suggested changing the language in the amendment for recreational fishermen to be given a number of pounds or fish to catch per trip and not per day. If a fisherman goes out and fishes overnight is that 1 day or 2 days and should he be allowed 5 fish or 10 fish? He related the process when he goes out to fish and comes back to drop off fish and does this for 3 days straight depending on the weather and allow it to extend the days to 4, 5 or 7 days to give more leeway. Mr. Ching suggested 10 days for bottom fishing. He already files 3 to 4 months ahead on the computer. As long as the 2 changes he mentioned were done he agreed to the amendments.

Member Agor summarized amending the 3 days to more days for reporting, to report everything on a per trip basis, possibly changing restriction per trip and not per day and justifying the BFRAs. It's elementary when you close a large area the fish will multiply and grow. Member Gon concurred with that. Closing an area increases the health of that area. Member Pacheco agreed that is a huge policy call and not to take away from restricted areas which is not on the table, but he said he is interested in keeping in language that allows for consultation, evaluation. He assumed the issues fishermen brought today were part of the public process and asked whether staff heard anything new today from what was heard during the public process? Mr. Oishi said what the Board heard today is fairly recent with respect to the TAC. It refocused the fishermen's attention to the closed areas because there is an annual quota the State abides by and why do we need these closed areas? There has always been controversy, but that is how the

State decided to manage this fishery from the beginning. Its not that they haven't been paying attention whether or not they have been effective or not and is on-going because UH is still doing research where the analysis is not complete. The trip report is a recent issue and had been discussed the last several years with the Federal Government who relies on the State's trip reporting. There was an agreement a long time ago that the Feds weren't going to burden the fishermen with another reporting requirement and report only on 1 form which is the State's. This issue of monthly versus trip was discussed and it was agreed that the State would pursue trip reporting, but not in all cases. It doesn't apply to everybody, but it will apply to the bottom fishery today. Staff proposes that so they can receive the fishing data in a more timely manner.

It was asked why 3 days and Mr. Oishi said the Federal government already has a recreational permit and report to file which is centered around 3 days. A Board member asked why not give the fishermen more time if they want to go back out because the 3 days is Federal recreational and we are talking a whole different animal. Mr. Oishi acknowledged staff understands that, but what bothers him is if it changes to 5 or 7 days it's a substantive change and has been his experience with the AG that they will kick this back then staff will have to go to public hearings again. The other reason he doesn't want to modify this today is we don't have the 550 bottom fishermen who have licenses in this room now and they will question if it changes to 5 or 7 days and why not 10 days? Today's item was the result of a public hearing process. Staff did not get opposition testimony on the 3 day requirement only on the trip report requirement. People asked why not allow monthly catch reports up to when the TAC gets close. The language is written to allow the Division that flexibility and they can consider that. This has to be done in conjunction with the fishermen and the Federal Government.

Chair Thielen said that trip reports are not just timeliness of data it is also a question of the accuracy of the data. Some people keep records as they go, but some are not. Mr. Oishi said the way the language is written – should a trip report be required – gives staff flexibility. The other section relative to the commercial fishing license is in addition to the monthly report for species other than bottom fish and to submit trip reports of their bottom fishing activity if requested. Staff allows for flexibility to consider options like requiring monthly catch reports until they reach ½ of the TAC or something like which is an option. If this rule moves forward staff is not going to be constrained upon approval of the Governor. They have to implement this. Member Pacheco asked if you want to implement how do you do that with the fishermen. Monthly reports stop and now turn in trip reports? Mr. Oishi said it would have to be a massive outreach effort.

Mr. Oishi said that if there is a change to the bag limit to a trip limit because the reason staff did it 5 per person per day, non-commercial, that is what is in the Federal regulation now. If you make it different -- Federal versus State -- then Federal and State then the fishermen will say they caught more than 5 fish they will say it's from State waters for recreational fishermen. It was discussed that if a fishermen goes out for 3 days and catches 5 fish each day and comes in with 15 fish he'll have to prove to the enforcement officer why he has 15 fish. The daily bag limit is an on the spot enforceable action and Mr. Oishi noted it has been this way since 1998.

Member Pacheco asked whether there is anywhere in the statutes that gives the Board the authority to do the restricted areas and is there anywhere that requires the Department to evaluate over a period of time? What is an effective trigger that would push it back? The part the fishermen want to get rid of is a mute point because it's already gone. Mr. Oishi said as a general rule that is what the management of the fisheries are for. He doesn't think it should be institutionalized in law. There are other options for the general public when they don't support a rule they can always petition the agency for change that's in law. There are other options.

Member Agor asked if the Board approves the 3 day reporting would staff take the initiative to contact the fishermen. Mr. Oishi said they have to. Options whether to require it at the beginning of the fishing year or half-way through the TAC fishing year staff would have to consult with the Federal agency first. There could be arranged consultations or discussions with the fishermen who would be affected. Member Agor said he would like to see that.

Member Pacheco made a motion to accept staff's recommendation, but amended Section 13-74-2 (6) changing "...on or before the third day..." to "...on or before the fifth day..." Member Gon seconded it. All voted in favor.

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

**Item D-5      Rescind Prior Board Actions of September 22, 2000, Item D-7; December 13, 2002, Item D-38; April 25, 2003, Item D-14; and September 23, 2005, Item D-3, as amended;**

**Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Small Boat Harbor and Related Purposes, Kealakehe, North Kona, Island of Hawaii, Hawaii; Tax Map Keys: (3) 7-4-08: 3, 40, 41, 42, 46, 50 and 75.**

Mr. Atta related some background history on this item which was an attempt to develop Honokohau Harbor and those efforts stayed this action because the transfer to DOBOR was contingent on the final outcome of that development. Since that project has fallen through it was necessary to follow through with the Act 72 directive to transfer and this does that which cancels this from DOT transferring it to DOBOR. There were some adjustments made from the high water mark to the low water mark to facilitate DOBOR's ability to manage areas.

Chair Thielen asked for clarification if the Board were not seeking this action the jurisdiction for managing the area would be with DOT or commercial harbors. What this does is makes it clear that DOBOR is the entity responsible for managing the area. Mr. Atta confirmed that.

Frank Hayes, Pacific Area Director with the National Parks Service testified that the 7.2 acres is currently under a revocable permit with the National Park Service to manage the archaeological and acheline pools which was approved by congress to be within the boundaries of the Kaloko-Honokohau National Historic Park because of the significant historic and natural resources there. Their concern is if this request to set aside goes forward that the National Park's revocable permit stays in place, but it would be preferable to evaluate if a long term lease or arrangement could be made for the 7.2 acres to ensure continued preservation of those resources into perpetuity. Also, it was their understanding to set aside the request included a permission to relocate the Keahole Point Fish, LLC formerly the Kona Blue Aquaculture, LLC to a new location adjacent to Honokohau which the National Park had concerns with visual and resource impacts and they wanted to comment on any Chapter 343 State of Hawaii Environmental and Historic compliance.

Chair Thielen noted that anything that triggers those procedures there will be an opportunity for public comment. As for the RP the first procedure is to place the jurisdiction under DOBOR and there will be discussions with DOBOR which will be a separate Board action in the future.

Member Pacheco asked what happens in the interim if the Board does approve this and the land does get set aside. Will staff take the time to develop an RP to be approved by the Board? Mr. Atta explained that this action approves the rescind decision of existing DOT EO and approval and the issuance of a new EO. The third item gives authority to DOBOR to negotiate and deal with all these issues. This is an administrative shift from DOT to DOBOR so DOBOR can go ahead with the proper authority to handle all these issues. Chair Thielen summarized the above to transfer authority from the commercial harbor to the recreational harbor.

Kaliko Chun from Kona testified that she understood what the Chair summarized and that she didn't disbelieve Mr. Atta referring to Recommendation 2 that didn't iterate the HRS Act 272, but the result of the Act is in the jurisdiction of DLNR transferring from DOT to DLNR. It does not say specifically it transfer it to DOBOR. The perspective is DOBOR is in charge of the area including the harbor in the middle comparing this to someone else making decisions about your personal property. As a resident of Kona we already have the boat harbor that doesn't need expansion where she reiterated her earlier testimony and described the EIS process. The community wants down zoning.

Member Pacheco appreciated Ms. Chun's comments and said that these lands would be better off as DLNR lands rather than DOT. Ms. Chun thought it was DLNR to DOBOR where she was corrected by the Board and Mr. Atta said that the Legislature directed staff to make the transfer, but that transfer never occurred. DOBOR has been in place managing the facility the actual EO was never processed.

Member Pacheco made a motion to approve as submitted and Member Agor seconded it.

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

**Item C-1 Termination of Special Use Permit Issued July 14, 2009 to Mr. Jack R. Hendrickson of Mid-Pacific Communications, Inc., Permittee, Lihue-Koloa Forest Reserve, Kawaihau District, Kauai, Tax Map Key: (4) 4-2-001: 011**

Paul Conry representing Division of Forestry and Wildlife (DOFAW) conveyed that this item is to revoke a permit, take action for the clean-up and get back payment due. He referred to Mid-Pacific's written letter and based on that Mr. Conry distributed revised recommendations to the Board which he went over suggesting adding another recommendation #2 to authorize the Chairperson to negotiate and approve terms and conditions of clean-up and repayment plan. The old #2 will become recommendation #3.

Member Gon referred to Exhibit A, page 5, item 29 which he read and asked whether there were any unwanted changes in the biology of the site during his tenure here. Michael Constantinides (DOFAW staff) said none, but would be part of their close out audit where staff would go up to the site to check whether the site was cleaned up and staff will address that item.

Mr. Wynhoff said it doesn't give the Chair flexibility because there are only two conditions – 1) if they don't clean it up in full by January 31st and 2) if they don't pay in full by July 31<sup>st</sup>. What if from a month from now they decide not to do anything? This doesn't give the Chair the authority to do anything no matter what. Mr. Conry said referring to the letter the intention was to re-organize and staff will have the resources by the end of October. Mr. Wynhoff said if staff is amending the amendment why not amend it to give the Chair some flexibility. It's obvious in the next week or next month we aren't going to meet these goals and no need to wait to July 31<sup>st</sup>. Mr. Conry asked whether Mr. Wynhoff had any suggestions to make it sooner.

Mr. Wynhoff read amended recommendation 3 and Mr. Conry agreed to improvements. The Chair directed him to share those amendments with the Board Secretary.

Member Agor made a motion to approve as amended. Member Gon seconded it.

**The Board:**

**Approved amending staff's recommendations by replacing it with the following:**

**That the Board of Land and Natural Resources:**

- 1. Finds that Mid Pacific Communications (MPC):**
  - a. Is in arrears of the terms of their Forest Reserve System Special Use Permit for telecommunications use of the subject site.**
  - b. Owes the Department unpaid rent for the period beginning August, 2009 to the present, or a total of \$8,625 through the Permit expiration date of July 13, 2010.**

- c. **Has sole responsibility for the removal of all material and equipment from the Permit area, at it's own cost.**
  - d. **Met with Division of Forestry and Wildlife staff on July 7, 2010, and acknowledged full responsibility for overdue rental payments and site cleanup.**
  - e. **In a letter to the Chairperson (Exhibit D), requested a 12 months grace period to re-organize in order to pay overdue rental and clean up the site.**
2. **Authorizes the Chairperson to negotiate and approve terms and conditions of the cleanup and repayment plan.**
  3. **Authorizes the Chairperson to declare MPC in default of the terms of their Special Use Permit and MPC's responsibilities therein, specifically if progress satisfactory to the Chairperson is not made toward site cleanup work or toward full payment of past rent due, and in that event to initiate appropriate administrative and/or civil actions that include but are not limited to:**
    - a. **DLNR staff conducting appropriate and necessary cleanup or contract out such work, and charge MPC any amount owed against the MPC security deposit. Cleanup shall be limited to infrastructure, materials and equipment placed on the site by MPC since June, 2006.**
    - b. **If the MPC security deposit is inadequate to cover unpaid rent and cleanup costs, then MPC shall be billed for the balance and, if unpaid, that amount may be sent to a collection agency.**
    - c. **Should MPC be declared in default of the Permit, the Board instructs staff to notify MPC, other State agencies and other appropriate entities that by law, MPC will not eligible to purchase, lease or otherwise receive any public lands for the next five years.**

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

**Item C-2 Approval to Conduct Public Hearings to Amend Hawaii Administrative Rules Chapter 13, §13-122, "Rules Regulating Game Bird Hunting, Field Trials and Commercial Shooting Preserves," and §13-123, "Rules Regulating Game Mammal Hunting."**

Mr. Conry communicated a correction that Exhibit C was not Exhibit C, but attached a letter informing them of the Board meeting and just to correct the Board submittal. There were no changes and this is to go forward with additional changes to the hunting rules.

Member Pacheco said he is sticking to anything for the Big Island and was glad there was no limit, but he was curious about the Pu'u Anahulu managed area and wondered why a daily limit on goats because he is getting comments from ranchers relating to a massive explosion of goats. Scott Fretz representing DOFAW said that is one of the areas staff is managing for hunting as opposed to conservation and they are looking to putting bag

limits that are sustainable which was based on discussions with the District staff on what was appropriate. Staff will hold informational meetings and public hearings. Mr. Conry noted that this is one of the game management areas sustained for hunting recreation and that is why you don't see dramatic changes in the bag limits, but it is managed so that the animals don't destroy the vegetation base. Member Pacheco reported that the goats wiped out all the naupaka in Kiholo where on one day 300 goats came through the coastal area. Mr. Conry said staff could implement a control hunt. Mr. Fretz said some areas are below the road which is not officially a hunting unit and when this goes in there presumably will be more people going in to hunt and that could make the difference.

Member Pacheco asked about the inconsistency at Pu'u Wa'awa'a where there is good native resource and is that from the same management plan. Mr. Fretz explained it's the same as Pu'u Anahulu which is managed for hunting and there is a habitat conservation plan there and that HCP will follow the conservation recommendations from the management plan by creating management units will staff will further mitigate damage and restore plants following the HCP management plan.

Member Gon suggested staff getting the feedback and he would appreciate that the Natural Area Reserves be managed for their high quality ecosystems and the bag limits be removed from the NARS approving this go forward.

Member Pacheco moved to approve as submitted and was seconded by Member Gon.

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

**Item C-3 Request for Authorization to Negotiate and Sign a Contract to Construct Six Miles of Ungulate Proof Fence on Mauna Kea to Protect Palila Critical Habitat.**

Mr. Conry distributed the Declaration of Exemption of the Chapter 343 process and amended the recommendation by adding #1 and #2 which deals with authorizing the Chairperson to continue contracting for the fence construction which is to repair it. Staff proposed to add the Board approve 1) to delegate authority to the Chair to extend this contract, subject to compliance with state procurement rules, AND/OR 2) authorize the Division to issue an additional RFP or IFB for additional fencing for the Mauna Kea Forest Reserve, and approval to delegate to the Chair the authority to award and sign the contract. Chair Thielen asked whether he had and/or because it could be one and or two? Mr. Conry said it could be because staff could extend the contract for the next segment and they could say we're done and we don't want to do this.

Mr. Wynhoff said he didn't feel comfortable with an agenda item authorizing a contract for six miles to change it to 16 more miles and respectfully suggested coming back again. The Chair asked whether to stick with the original recommendation and Mr. Conry confirmed that. It was decided to disregard the new amendments.

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

Mr. Conry made an announcement that we have membership in the Western Association of the Fish and Wildlife Agency who are coming to Hawaii in 2012. The Board hosts the commissioners from 20 Western states. The Board is welcome to attend joint meetings to plan. This year's is in Alaska and next year's is Montana. Its good to meet other commissioners and get a flavor of what is involved in hosting a meeting.

**Item D-20 Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display, Honolua, Lahaina, Maui, Tax Map Key:(2)4-2-004:seaward of 015.**

Mr. Atta said the applicant is withdrawing because they had to cancel their event.

**Withdrawn (Pacheco, Gon)**

**Item D-7 Issuance of Revocable Permit to MC&A, Inc. for a Beach Activity Event for The Glaxo, Smith, & Kline Pharmaceutical Co. at Wailea Beach, Maui, at Tax Map Key:(2) 2-1-023: seaward of 007.**

Member Pacheco recused from this item.

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

**Item D-1 Resubmittal After-The-Fact Assignment of Sublease of General Lease No. S-3852, Nextel WIP Lease Corp. dba Nextel Partners, Assignor, to TowerCo LLC Assignee, and the Consent to of the Five (5) years Extension of Sublease to TowerCo LLC. Waimea, Kekaha, Kauai Tax Map Key: (4) 1-2-02: por. 06.**

**Item D-4 Amend Prior Board Action of July 11, 2008, Item E-2, as amended, Grant of Perpetual, Non-Exclusive Easement to Department of Transportation, Airports Division, for Remote Noise Monitoring Station Purposes at the Wailoa River State Recreation Area, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 2-2-13:03.**

**Item D-8 Amend Prior Board Action of March 11, 2010, Item D-10 and October 27, 2000, Item D-13, Grant of Term, Non-Exclusive Above Ground Water Line Easement to Keith Scott Douglas and Bonnie May Douglas for Pasture Purposes, Makawao, Maui, TMK (2) 2-9-011:portion of 008.**

**Item D-9 Cancellation of Governor's Executive Order Nos. 2141, 3111 and 3403 and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Manele Bay Small Boat Harbor Purposes, Kamao, Lanai, TMK:(2) 4-9-17: 6, and for Kaanapali Recreational/Commercial Boat Mooring Area Purposes, Lahaina, Maui, TMK:(2) 4-4-1, 6, 8, and (2) 4-5-14.**

- Item D-10** Issuance of Revocable Permit to JTB Hawaii, Inc. for Beach Activities Purpose at Duke Kahanamoku Beach, Honolulu, Oahu, Tax Map Key: (1) 2-3-37:portion of 21.
- Item D-12** Amend Prior Board Action of July 30, 2004, Item D-10; Request for Construction Right-of-Entry and Perpetual, Non-Exclusive Easement to the City and County of Honolulu for Bus Bay Purposes; Diamond Head, Honolulu, Oahu; TMK (1) 3-1-042:portion of 010.
- Item D-14** Sale of Remnant to Elden K. Fernandez and Lawrence J. Fernandez Jr. as Trustees for the Ruth H. Fernandez Revocable Living Trust, Puahuula Tract, Kaneohe, Oahu, Tax Map Key:(1)4-5-044:portion of 009.
- Item D-15** Grant of Perpetual, Non-Exclusive Easement to City and County of Honolulu for Drainage Purposes, Heeia, Koolaupoko, Oahu, Tax Map Key: (1) 4-6-003:seaward of 077.
- Item D-17** Amend Prior Board Action of November 18, 1994, Item F-9; October 22, 1999, Item D-5; March 10, 2000, Item D-5; Perpetual, Non-Exclusive Easement to GTE Hawaiian Telephone Co. for Utility Purposes; Keawaula, Waianae, Kuaokala, Kaena, Mokuleia, and Waiialua, Oahu, TMK (1) 8-1-1:por.14; 6-9-3:por.2 and 5; 6-9-1:por.4; 6-9-4:por.9, and 6-9-5:por.7.
- Item D-18** Amend Prior Action of March 11, 2010, Item D-20; Mutual Cancellation of General Lease No. 5382; Issuance of Direct Lease to Waianae District Comprehensive Health and Hospital Board, Incorporated for Health Care and Medical Facilities Purposes, Lualualei, Waianae, Oahu; TMK (1) 8-6-1:3.

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

- Item H-1** Approval to Proceed with the Financial Audit of the Department's Programs

Chair Thielen conveyed that the State will be having a unified audit between Departments and she thought it would be important to continue that financial audit.

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

**Item L-5 Request for Authorization to Hold Statewide Public Hearings to Repeal Hawaii Administrative Rules, Title 13, Subtitle 7, Chapter 190 and to Adopt Proposed Hawaii Administrative Rules, Title 13, Subtitle 7, chapter 190.1 as Required by the "Hawaii Dam and Reservoir Safety Act of 2007," Chapter 179D HRS - Dams and Reservoirs**

Carty Chang, Acting Engineering Administrator informed the Board that the passage of this new law was the result of the Kaloko Dam breach where he related some history. It would be useful to present to the Board some of the changes that will affect owner responsibility. Staff used the Godbey report which looks at comparative dam legislation in other states that recommends legislation as well as modification to the administrative rules. Staff also looked at the recommended American Model Dam Safety Act (put out by the Association of Dam Safety Officials), existing guidelines and rules at other states.

Mr. Chang reported there will be two new fees: 1) an annual fee for dam owners which is a flat rate of \$500 per year and a sliding scale based on the height of the dam. That amount per foot height is \$170 so higher the dam is the higher the cost. Also, staff is imposing a certificate to impound fee which is to insure the dam structure is sound to hold water. Before an owner can retain water they need to get this certificate to impound. The revised fee is a permit application fee. If you have to do any modifications, repairs or alterations to the dam you need to come in and get an approval from the Board to grant the permit. The current fee is \$25.00 per application and staff is proposing the fee be based on 2% of the anticipated cost of the construction.

Mr. Chang related that the Dam Safety Program is funded solely by the DLNR Land Special Development Fund, but there were budget cuts by the Legislature. As for operational costs \$111,000 per year goes to Engineering's program for prevention of natural disasters for dams and flooding. Fees are necessary for staff to carry out their mandate referring to Exhibit 6 which overviews the fees and what the Department proposed to use those fees for. Also, the rules impose on owners who must come up with an operational and maintenance manual. Staff has been working with owners to develop a template that is consistent and in a form that is acceptable. Owners are required to come up with an emergency action plan such as a contact tree of phone numbers in the event something does happen. Staff has facilitated with the owners to comply with the new law through training sessions. Anytime there is an ownership change there are certain notification requirements the owners need to provide to the Department. There was some clarification on the fines where the old fine was \$500 per violation per day the new fines are up to \$25,000 per day per violation of non-compliance of the chapter.

It was asked by Member Pacheco how the meetings went with the dam owners? Mr. Chang said staff never had any public meetings, but they sent out the draft to all the owners on record and got comments back. One was the fees were too high and that government agencies (County and State) should be waived from fees. There are many joint ownerships – private/public and it came out to about 30% of dams or 41 out of 138 regulated dams under government. If staff waived government agencies it would be a

significant amount which they did not put that in. They did look at the certificate to impound fee which was originally \$12,000 for every 5 years and was reduced to the flat rate of \$500. A lot of times joint owners cannot agree on what needs to be done and it was recommended the Board take action to determine what the cost would be. And working among the old private owners is what should be done and the Board's authority is limited to an event. If there is a public health issue the Board can set a course of action. We fix this if we need to pay for it in the interest of public safety, but how do you pay us back or how it's paid has to be worked out among the multiple owners. We don't have to be in charge of dividing up the cost or telling the owners what to pay. It has to be resolved among the owners themselves.

Chair Thielen said the Engineering Division and the consultant worked on the draft rules and made a presentation to her about the status of the rules. There were a couple issues she had raised which Mr. Chang touched on, one was the fees. They are in alignment to run dam safety programs in other states and she thought what Kaloko taught us was the State (of Hawaii) has not been funding this program and the inspections to the extent it needs to. The Legislature made a policy call that this needs to be a self funded program where they took it out of the general funds. After Kaloko, they cut out 100% of the general fund for this program and they said it got to be special funded. If the Legislature wants to make the call to change that back people need to go lobby the Legislature if they want the fees to go down. What's important is that we make sure that we have the ability to do these dam inspections and to do the intervention where we need to. Staff came up with the concept of an incentive program to get people to expedite the upgrades they need to do rather than waiting because everybody keeps deferring these upgrades. We came up with in the staff submittal saying we are going to credit 80% of your fees to work to upgrade the dams and do it within the first 12 months following the adoption of the rules. They will credit 60% for the second 12 months then 40% and 20% so don't delay, start doing the upgrades and at least put your first set of fees towards that amount. Member Agor acknowledged that is a great incentive.

The Chair said they hoped people will follow that. The second point that's come up since the law was upgraded after Kaloko she thinks what staff has found in the efforts they've done in both the dam inspections - Phase 1, Phase 2 and all the other work that people haven't thought through many of those dams are owned by multiple parties and the parties can't agree. She was concerned with the reaction at the staff level and from the owners that the State has to resolve the ownership issues. She felt it's not the Dam Safety Program's responsibility to resolve disputes between the landowners that staff should be able to go after any individual owner who is jointly and separately liable and they can sort it out among themselves afterwards. The premiere focus of these rules in the Dam Safety Program is if that dam or reservoir is unsafe what are the changes that need to be made?, mandate those changes, get them in place, go after one of those owners and then they can go after each other and sort it out among themselves later. That is that section in the rule 13-190.1-45 where we can do what we need to do and the owners need to sort it out in court later on. That's a real problem with a number of these dams and reservoirs, but it shouldn't be the problem of the Dam Safety Regulatory Program. Ownership issues are for the owners to deal with.

Chair Thielen said that the problem of waiting for government becomes complicated because you have many dams and reservoirs that are co-owned and government is co-owned with most of the private parties. There is some flexibility written into staff's approach in the rules in getting people to focus and certainly these incentive programs. A waiver across the board would work.

Member Agor asked if they did remediation do they put a lien on the property. Mr. Chang acknowledged that and will need to work with the AGs. The Chair said that they could go after other property because you may not want to lien, again. It may not have any value, but if the owners are responsible for it. Mr. Chang said they could recommend fining the violation as well. Staff understands this is a new law that owners never had and that staff wants to work with the owners to get the repairs and maintenance done which is the reason for the incentive credit system. Chair Thielen said it has to be done and even if owners find this a burden we don't want another breach and we don't want any lives lost. These are large public hazards and they have to be taken care of. First and foremost is the public safety and land owners have options that if they no longer want to maintain a dam to go through a decommissioning process. Mr. Chang said that removal is always an option. Staff stands by their submittal.

Member Agor asked in what instance where the artificial barrier is less than 6 feet? Edwin Matsuda an engineer from Engineering Division testified that a jurisdictional limit is for any dam that is higher than 25 feet or impounds more water than 50 acre feet per volume, but staff does not regulate anything less than 6 feet in height or less than 15 acre feet per volume. It was asked by a Board member if staff sees anything like that and Mr. Matsuda acknowledged stock or prawn ponds.

Member Agor asked about the bond, the half a million dollar limit, if anything under half a million needs it? Mr. Chang said that is what is posted in the rules. On the jurisdictional side it is a national recommendation that was in the previous law and was carried through.

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

**Item L-3      Permission to Contract with Consultants and Contractors for DLNR  
CIP Projects**

Mr. Chang noted that all these projects staff is requesting will comply with Chapter 343 and to add that above the recommendation.

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

**Item L-6      Approval for Award of Construction Contract for Job No.  
F78AK41A, Polihale State Park, Earthquake Repairs Waimea, Kauai,  
Hawaii**

Mr. Chang communicated that this was a result of the Kiholo Earthquake subsequent to that the Governor issued a proclamation where certain State statutes were suspended including Chapter 343 which was exempt.

Chair Thielen summarized to add the statement that the project subject to the emergency proclamation is exempt from Chapter 343.

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

**Item L-7 Approval for Award of Construction Contract for Job No. F75AH41A, Hapuna Beach State Recreation Area Earthquake Repairs to Facility, Kohala, Island of Hawaii, Hawaii**

Mr. Chang related the same statement as Item L-6, subject to the emergency proclamation is exempt from Chapter 343.

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

**Item L-1 Permission to Enter Amendment No. 1 to Operations and Maintenance Agreement for the Waimanalo Reservoir Waimanalo Watershed, Oahu, Hawaii**

**Item L-2 Certification of Election and Appointment of Central Maui Soil and Water Conservation District Directors**

**Item L-4 Appointment of Hana Soil and Water Conservation District Director**

**Item L-8 Request for Authorization to Enter Into a Memorandum of Understanding (MOU) between the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) and the State of Hawaii, Department of Land and Natural Resources, Dam Safety Program, to Establish a Structure and Mechanism for Future Cooperation**

Mr. Chang said there were no changes on the rest.

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

**Item M-3 Issuance of Direct Lease State of Hawaii, Department of Defense Army National Guard, Hilo International Airport**

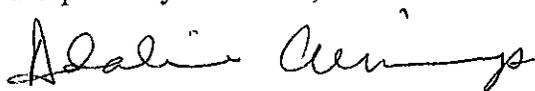
**Unanimously approved as submitted (Pacheco, Gon)**

The Board may go into Executive Session pursuant to Sections 92-4 and 92-5(a)(4), Hawaii Revised Statutes (HRS), in order to consult with its attorney on questions and issues relating to departmental permits, Chapter 343, HRS, and personnel matters, as pertaining to the Board's powers, duties, privileges, immunities and liabilities.

**Adjourned (Gon, Edlao)**

There being no further business, Chairperson Thielen adjourned the meeting at 1:45 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:

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Laura Thielen  
Chairperson  
Department of Land and Natural Resources