

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

DATE: FRIDAY, JULY 8, 2011
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:19 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Ron Agor
Rob Pacheco

Jerry Edlao
John Morgan

STAFF

Ed Underwood/DOBOR
Russell Tsuji/LAND
Paul Conry/DOFAW
Charlene Unoki/LAND
Curt Cottrell/ PARKS
Carty Chang/ENG

Russell Tsuji/LAND
Dr. Bob Nishimoto/DAR
Lisa Hathaway/DOFAW
Dan Quinn/PARKS
Steve Soares/PARKS

OTHERS

Pam Matsukawa, Deputy Attorney General
Randy Teruya, D-4
Sidney Fuke, D-5
Marti Townsend, F-1, F-4
Judith Lemus, F-2
Dave Squire, F-4

Dennis Niels, J-1
Sandi Ichihara, J-2
Dr. Chris Winn, F-1
Rob Tonen, F-1
Florence Thomas, F-3
Greta Aeby, F-4

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

Item A-1 May 13, 2011 Minutes

Member Morgan recused himself from this item.

Approved as submitted (Pacheco, Edlao)

Item A-2 May 27, 2011 Minutes

Item A-3 June 9, 2011 Minutes

Item A-4 June 23, 2011 Minutes

Were not ready for this Board meeting.

**Item J-1 Petition Of Red Dolphin LLC For Issuance Of A Commercial Use
Permit To Operate Within Waikiki Ocean Waters And Authorization
To Use/Install An Exclusive Use Offshore Mooring System**

Ed Underwood, Administrator with Division of Boating and Ocean Recreation (DOBOR), related what this petition was for and the vessel is a large catamaran style. He reminded the Board that this came in last year, but wasn't successful and is currently moored at DOT (Division of Transportation) harbor. They will also be shuttling passengers from the Kewalo Small Boat Harbor and they are asking to issue the commercial use permit as well as permission to moor in Waikiki ocean waters. The Boating rules changed about mid-2000 to say any commercial activity taking place on Waikiki Beach or Ka'anapali Beach or ocean waters requires a permit issued by the Board which is why staff is coming to you now. Boating has no issues with this permit that there is already this type of activity going on now for years. Staff has come before the Board for the Ka'anapali Beach and ocean waters and they will be coming in the near future to address the rest of the activities taking place on Waikiki Beach. The recommendation would be to ask the Board to authorize the issuance of the commercial use permit.

Member Morgan asked whether they are operating right now and Mr. Underwood said they are operating outside the designation for Waikiki waters explaining that there are existing moorings in Waikiki ocean waters and petitioner would like to use those existing moorings and they will contact the Army Corp of Engineers to get any permitting they need.

It was asked by Member Edlao that there were existing mooring and Mr. Underwood confirmed that there are existing mooring blocks. Member Edlao asked how will you prevent it from drifting. Mr. Underwood said it's a single point mooring where the catamaran will drift depending on the seas.

Dennis Niels representing Red Dolphin LLC answered that the swing is not that deep because the water is 30 feet deep and the swing will be roughly 60 to 80 feet and it will

be manned all the time which is required by the Coast Guard. They will be secured everyday by the mooring. His company is excited about the project having been out about a month now and have been well received using all the operators on the water front. It is a different operation from what it was before working with existing jet skis and parasail as their vendors.

Member Edlao asked why he would want to come inside since they were working outside of the limits of Waikiki. Mr. Niels said it's a lot calmer which is a safer operation in transferring their passengers.

Unanimously approved as submitted (Morgan, Agor)

Item D-3 Set Aside to Department of Agriculture for Agricultural Purposes, Kawaihau, Kauai, Tax Map Keys: (4) 4-3-4:1, 14, and 9; 4-4-4:4, 51, 5, 43 and 44; 4-6-5:11.

Item D-4 Cancellation of Governor's Executive Order No. 2413 and Reset-Aside to the Department of Agriculture for Non-Agricultural Park Lands Purposes, Waikoloa and Lalamilo, Waimea, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-6-05:28.

Russell Tsuji representing Land Division conveyed these items' backgrounds relating for item D-4 that a couple years ago there was an action passed by the Legislature that the plan asked that the DLNR transfer some agricultural leases and certain ag lands that were classified as the higher level of ag lands over to the Department of Ag to handle the management and this is following through with what the Legislature passed. Staff pointed out in the submittal that it is a number of acres and eventually, the number of acres managed by DLNR will go down and the number of leases and lease revenue will go down also.

Randy Teruya representing Department of Agriculture (DOA) said they had no comments and support the Board's consideration.

Member Agor moved to approve as submitted Items D-3 and D-4. Member Edlao seconded that. All voted in favor.

Unanimously approved as submitted (Agor, Edlao)

Item D-12 Consent to Revocable Permit of Lands under Governor's Executive Order No. 4097 to the Department of Business, Economic Development and Tourism, Honolulu, Oahu, Tax Map Key (1) 3-1-042:portion of 009.

Mr. Tsuji conveyed that Department of Business, Economic Development and Tourism (DBEDT) asked the Board's consent to be issued to ABC Television.

Unanimously approved as amended (Morgan, Pacheco)

Item J-2 Delegation Of Authority To The Division Of Boating And Ocean Recreation (DOBOR) To Issue Miscellaneous Use Permits, Marine Event Permits, And Film Permits For The Temporary Use Of Waikiki And Kaanapali Beach And Near Shore Waters

Mr. Underwood said this is similar to Item J-1 that it goes back to the rule put in place in 2000 requiring a Board permit. We didn't think you'd want staff to come before you every time they needed to issue a use permit every time for a helicopter to put in an air conditioner needed on a hotel. These are everyday permits that staff does and film permits is one of them.

Member Edlao asked whether this includes everything like he said with the helicopter and Mr. Underwood acknowledged that. Member Morgan said he thought it was a good idea. It'll streamline the process and he supports this. Member Pacheco asked whether other divisions already have this and Mr. Underwood confirmed that. Staff modeled it after Land Division who helped their staff.

Sandi Ichihara representing DBEDT said she agreed to the presentation when asked by Chair Aila.

Unanimously approved as amended (Morgan, Edlao)

Item D-5 Sale of Remnant to One Puako Bay Associates, LLC, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 015.

Mr. Tsuji reported on this item that he had no changes to the submittal.

Sidney Fuke representing the applicant testified that the applicant had a chance to review the report and the conditions are acceptable. He asked for the Board's favorable consideration for the sale of remnant.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Christopher Winn and Dr. Samuel Kahng, Hawaii Pacific University, Oceanic Institute for Access to State Waters to Conduct Ocean Carbon Research Activities

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) presented item F-1 that the area ranges between Nihoa Island to Kure Atoll from July 15 to August 31, 2011. The intended activity proposed is to collect ocean water from various depths in the ship to implement a long term monitoring program. It would assess the impact of ocean acidification in Monument waters. They will collect water samples from the research

vessel from the surface down to a 1,000 meters starting at the 60 meter contour. The scientific community supports the activity. The Native Hawaiian community and public had no comments. The exemption determination is for a class of scientific research with no serious or major environmental disturbance applies here. The cumulative impacts of actions will not be significant. Staff's opinion is the applicant demonstrated valid justification for their application and should be allowed to enter the Northwestern State waters to conduct this proposed activity. The Monument Management Board (MMB) concurs with special conditions recommended by DAR and he read DAR's recommendation which was to approve the permit.

Member Morgan asked whether this has happened before and Dr. Winn said this is year three.

Marti Townsend representing KAHEA distributed her written testimony on Items F-1, F-2 and F-3 that her comments are the same ones she has been raising emphasizing the basis for making a determination on whether if something has cumulative impact is an environmental impact statement (EIS) and the EA that was done for the Monument Management Plan doesn't include research. Permits being issued now for research don't have an assessment for environmental impact so you don't have the basis for saying whether something has cumulative impact or not. On top of that, the bases for issuing exemptions are for places that aren't meant to be the most highly protected area. The way the rights are written particular sensitive environments are an exception to the exemption. If there is any place that is particularly sensitive and highly protected it's the Northwest Hawaiian Islands (NWHI). I don't want to discourage important research, but I want to implement and uphold cautionary principle as high as possible. Environmental assessment should be taken up as part of the research process. The grant writing, thinking about what research was going to be done type of process and she is here urging that to become part of the way you think about these issues.

Rob Tonen representing the Hawaii Institute of Marine Biology (HIMB) commented in terms of an EIS is a policy that is driven by a government official process. We've done an environment assessment that was presented to the Board previously, it has been through international peer review and in Journal of Coral Reefs and included an environmental impact assessment and cumulative impact statement that has been held to a much higher standard than the actual policy that Marti talked about and he has additional copies. It was found that there were no significant cumulative impacts of the research that's been done or proposed within the boundaries of Papahānaumokuākea which he wanted to clarify. Member Pacheco asked so it's an EI process and not an EA process. Mr. Tonen confirmed that.

Unanimously approved as submitted (Morgan, Pacheco)

**Item F-2 Request for Authorization and Approval to Issue a
Papahānaumokuākea Marine National Monument Education Permit
to Judith Lemus, University of Hawaii, Hawaii Institute of Marine**

**Biology, for Access to State Waters to Document Fieldwork and
Conduct Researcher Interviews**

Dr. Nishimoto related item F-2 background reiterating the same area and duration from item F-1 which involves either still or video photography both the natural resource under study and the scientists conducting the research. The purpose of the activity is to develop a multi-media resources needed for an under graduate distance learning course at U.H. where he related in more detail. The scientific community supports with some procedural questions. The Native Hawaiian community supports this application and there were no comments from the public. This is data collection with no serious environmental disturbance appears to apply here and cumulative impacts of actions will not be significant. Staff's opinioned that the applicant's properly demonstrated justification for the application and should be allowed to enter the NWHI State waters to conduct proposed activities. The MMB concurs with the special conditions recommended by DAR's staff and staff's recommendation is that the Board authorizes and approves an education permit to the applicant with special conditions attached.

Judith Lemus representing HIMB testified that staff accurately presented and its something needed in Hawaii to spread our knowledge to a broader audience which furthers the mission of the Monument to access it without physical access. A distance learning course would benefit their students as well as nationwide of how the Monument is managed and the science that goes into management could benefit those students studying that. After the Chair's inquiry Ms. Lemus said that they are considering this as an undergraduate level, but could later be considered for graduate level.

Member Edlao asked that the videos and photos will be shared and not be sold and Ms. Lemus said that is right.

Unanimously approved as submitted (Morgan, Edlao)

**Item F-3 Request for Authorization and Approval to Issue a
Papahānaumokuākea Marine National Monument Research Permit
to Dr. Florence Thomas, University of Hawaii, Hawaii Institute of
Marine Biology, for Access to State Waters to Conduct Nutrient
Productivity Research Activities**

Dr. Nishimoto conveyed background on item F-3 reiterating same area and dates. The intended activities are to collect samples of water, common reef algae and small bivalve species by hand in the water either by snorkeling or by scuba on nine of the islands. They plan to collect up to 27 tissue samples less than 1 gram dry weight of three alga species per island. The second is to collect up to 4 liters of sea water per island for a total of 36 liters of water. And, up to 20 bivalves of each species of arch shell and spiny oyster per island for a total of 360 specimens. The purpose of this collection is to determine the relative role of terrestrial sources primarily guano resulting from sea bird droppings of nutrients to primary productivity along the archipelago. The scientific community supports this. The Native Hawaiian community supports acceptance of the

application and the public had no comments. No major disturbance applies here. Cumulative impacts will not be significant. Staff's opinion is to allow the applicants to enter the NWHI State waters and the MMB concurs with the special conditions recommended by DAR's staff who recommends approval of the permit with special conditions attached.

Member Edlao asked whether collecting will occur in water or on land. Dr. Florence Thomas representing HIMB said in the water and explained that the bird guano runs into the water that there are isotopes in the water and organisms which is why they are using algae because it is fast growing.

Member Edlao asked with regards to the productivity of the NWHI you are talking about the algae and other things in the water. Dr. Thomas confirmed that the bottom of the food chain is controlled by some kind of nutrient input and they think there is potential that the terrestrial sources have been modified over time because of loss of seabirds that they are interested in the role seabirds play, but these shifts have impacts to the coastal productivity in the water and the algae which she described in detail and this is the first time.

Member Pacheco asked whether this research has been done in the Main Hawaiian Islands. Dr. Thomas said they have not that they are collaborating with people who have done it in New Zealand. They have some projects starting in Kaneohe Bay. She explained what the New Zealand project did. Member Pacheco asked whether she would be able to identify isotopes of nitrates. Dr. Thomas acknowledged that and they are proposing less detail, but you could do specific facts explaining that it could be tracked back to birds, humans and other animals. Member Pacheco asked if there are any direct management implications that she foresees from the data she will collect. Dr. Thomas said it's important to understand what the basic food chain is and what is controlling productivity near shore in these islands and how have human shifts in bird population impacted the basis of the food chain in the NWHI. The primary management implications are to understand the importance of the basic food chain and how far off shore it impacts. There are links to different parts of the environment that affects one another.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Greta Aeby, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Coral and Fish Disease Research Activities

Dr. Nishimoto reported on Item F-4 background in the same area and time frame mentioned earlier. This is work previously permitted in the Monument. The purpose of the activity is to examine coral and fish disease occurring within the Monument. For coral disease it's to compare the incidence from the 2005 and 2006 data researching

several sites within the Monument. Growth anomalies that affect the growth of coral, the removal of growth anomalies off of table corals and enhance the reproduction of affected colonies to find solutions of these problems. To collect 50 samples about 3-5 centimeters each square from each island where new disease is encountered. For fish disease, the objective of the activity is to determine the travel of fish disease by visual diver survey. The affect of the disease and the condition of the fish of which require the collection of 20 fish per species per island for two species – kole and miko as well as other surgeon fish and butterfly of up to six species. The third is to determine the distribution and prevalence of parasitic diseases zoo plankton. The scientific community approved acceptance of the application with questions about he fate of the samples after analysis where the applicant proposes that all samples will be preserved and kept at HIMB. All slides for diseases will be kept at the USGS Wildlife Center in Honolulu. The Native Hawaiian community supports acceptance of the application with the applicant to provide reviews on the impact of her project on native resources. The applicant said she will do everything possible to minimize impacts and will only do research that will cause impact to the knowledge to be gained. The public had no comments. For the exemption, there is no serious environmental disturbance appears to apply here. The cumulative impacts will not be significant. The MMB is of the opinion that the applicant has met the requirements of findings 1-9 has not yet reached consensus on finding #10. But, the MMB concurs with the special conditions proposed by the DAR staff. Staff recommends the Board authorize and approve research permit to Dr. Greta Aeby, HIMB with special conditions listed in the permit.

It was asked by Member Agor whether MMB will reach a consensus. Dave Swatland (representing Papahānaumokuākea Marine National Monument) said there are no unresolved Federal or legal issues at this time. With regard to the policy issues finding 10 of the Monument regulations provides the Monument managers some discretion to whether or not to approve a permit after findings 1-9 are met. What the MMB did not reach consensus on is the interpretation of how much discretion finding 10 allows us in approving or not approving that permit. NOAA Monument managers are currently in discussion with our policy and legal experts back in DC to determine what the boundaries of that discretion are. It is not likely we will reach consensus prior to this permit being issued or the activity taking place in the NWHI. Member Pacheco asked this is the issue concerning the previous violation. Mr. Swatland said yes, among other things. It has to do with the previous violation that the fine was paid and that technically is resolved now. Also, the applicant was placed on probation for a violation of NOAA dive policies and that probation has ended and that person is clear to participate in NOAA dive operations. There were some other concerns, but he had no personal knowledge of them and can't speak to them.

Member Edlao asked since it's been cleared and she has been approved to do dives as a principle because right now she is the actual researcher here. Mr. Swatland acknowledged that she has been cleared to be the actual researcher.

Dr. Greta Aeby testified referring to Dr. Nishimoto's presentation of Hawaii's coral reef stressors one of which is coral disease. She distributed a brochure with some photos of

coral bleaching and disease – Eyes of the Reef Program to educate the public of the threats to the reefs in the Hawaiian Islands. Dr. Aeby explained the acropora white syndrome on table coral at French Frigate Shoals (FFS) and it is spreading. She referred to Dr. Nishimoto's presentation regarding growth anomalies or tumors. One table coral started with five tumors and after a year there were 23 tumors. They found that these tumors progress and repress reproduction of these coral. At this time besides doing more research is to try some management actions to minimize these diseases before it's too late. They will do a pilot study where they will remove the tumors off of five colonies, mark five others; compare their growth and survivability through time along with management actions. For the fish disease, the kole has a skin cancer where there is an obvious discoloration. Butterfly fish in the Main Hawaiian Islands get these tumors which are true cancers, but what we don't know is how widespread these diseases are in the NWHI and she proposes going out there and visually see how widespread these diseases are. The plankton study is on a parasite brought in with taape and how it is spreading up to French Frigate Shoals through other fishes and cocopods. This is to look at plankton to see how prevalent this disease is up at the NWHI and compare to the Main Hawaiian Islands.

Member Agor said he had strong reservations about this permit because of the past violation and should this Board approve this he would like the end report on her performance out there.

Chair Aila asked in addition to the kole what other fishes are you seeing out there. Dr. Aeby said they did the same visual survey techniques off Maui, Molokai and Kauai and found that kole and blue line surgeon fish, but couldn't catch any blue line to confirm. She listed a number of butterfly fish that they saw in clusters where they would see clusters of healthy fish and then a cluster of diseased fish. Disease could be infectious and not environmental that they want to do more surveys to determine which and usually due to toxins.

Chair Aila asked whether they have seen the disease in all age groups and Dr. Aeby confirmed they have.

Marti Townsend distributed written testimony from Dr. Stephanie Fried who couldn't be here today and who had strong reservations about this permit being issued. Ms. Townsend emphasized from Dr. Fried's testimony the ethicacy of the one strike rule, lack of management actions as a result of this research, consequences of the methodology proposed and Dr. Fried recommends modifying the permit application to better sift out the information that the Board needs to make an informed decision and urged that the Board be more critical of the methodologies to ensure that we don't undermine the quality of the resource noting how heavily visited FFS is and has the greatest threats that the convergence of all this research done at FFS is having a negative affect. Ms. Townsend referred to Mr. Tonen's testimony on academic research each in its own silo and didn't look at the convergence of all of that over time in one place. That document did not go through public review allowing researchers to be the guard on its own activities. It's up to you as the regulatory community to provide a safeguard and to

maintain those high standards. Ms. Townsend referred to her written testimony on page 2 that they fought real hard to have these regulations include the one strike rule and not to be discretionary to deny if you want to. If you interpret a one year limitation on the one strike rule it undermines all the regulations. Even if the other trustees clear this researcher the State has higher standards and can't do that and don't have the discretion to do that. The one strike rule is working and there is no reason to back down now. Ms. Townsend was concerned with the number of proposed samples to be taken by Dr. Aeby and that clipping off the tumors would spread the disease or make it worse. The Board has the discretion to not issue this permit and the researchers of the NWHI know that risk. Don't water down the one strike rule.

Ms. Townsend highlighted the contested case hearing that was held over the enforcement action that resulted in the \$1,000 fine. The Deputy Attorney General questioned whether the researchers' judgment reflected the work of a careful and responsible researcher and supported the maximum penalty in this case because we would never know what the harm is for years. This is the time to stand by the Precautionary Principle outlined in the State regs. for the Refuge and endorsed in the Monument Management Plan as well as the Memorandum of Agreement with the other co-trustees. If there were any doubts about whether to issue this permit, it shouldn't have been issued. You don't have the legal justification to do it and there is not enough certainty about the consequences of this research to make a sound decision.

Member Edlao asked whether Ms. Townsend was opposed to having Dr. Aeby out there as principle or being at there at all. Ms. Townsend said even with the way the permits are written even people listed under someone else's permit she would interpret that they are also being permitted and since you cannot issue to someone who has previously violated you can't issue even if under the advisement of someone else.

Member Edlao asked with regard to taking of samples do you feel the research is supported. Ms. Townsend said understanding coral diseases is an important thing to do. I question the techniques being employed in this research proposal. I don't understand why we can't have this research done more thoroughly and tested in the Main Hawaiian Islands before we experiment on the NWHI. I don't see why another person couldn't do it. Why not have another person go up to the NWHI on behalf of HIMB and then the researchers back in the Main Hawaiian Islands to do the research that needs to be done to assess the coral disease. There is no reason why they can't divide the work in such a way to comply with the law and get the research done. This technique needs to be better vetted.

Dr. Aeby pointed out that the reason why it can't be done in the Main Hawaiian Islands is there is no acropora here and the type of tumors here are different. Her staff has worked on a lot of acropora in American Samoa, Palmyra Atoll and she has been all over the Indo-Pacific doing this type of research. The tumors pop off easily from acropora. The prided tumors are imbedded and are difficult to remove and wouldn't recommend it and they've done all this work in the Main Hawaiian Islands. Aside from the tumor removal they will take 2000 samples only if they find new diseases. Dr. Aeby already has done

the histology for most of the diseases. If a new outbreak occurs, like the new one that just occurred in Palmyra Atoll and the FFS acropora disease was not at Palmyra. As to the statement that FFS has all these people impacting it. Midway has more human presence and does not have severe diseases. She can answer to their methods, but if we do not take management action the reefs will die and we will loose them referring to what is happening to acropora in Florida.

Member Edlao asked there is no doubt in my mind your research is important, but how is she curing the disease. Dr. Aeby explained she is proposing a cure for this cruise doing surgical removal to see if that can cure or slow down the diseases, but in order to get to the place where she is now she had to do the basic research to understand that disease. They understand what happens with this disease. Besides surgical removal of tumors they are also developing ways to minimize the tissue loss diseases caused by pathogen bacteria like the one in Kaneohe Bay and now they know what is causing it and can start to propose methods to control and minimize the damage. It's similar to diagnosing human disease. Chair Aila asked so your research is leading to manage. Dr. Aeby acknowledged it is. Ms. Townsend reiterated her testimony to test first in Palmyra and not in the NWHI referencing to page 13 of her application and it's not a peer reviewed research article. Not knowing if the tumors are contagious. We need to be cautious and there is no reason why another person can't implement this research after the methodologies are viable. Chair Aila said if another person should come forward they will consider that.

Member Pacheco made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Agor seconded it.

10:23 AM EXECUTIVE SESSION

10:32 AM RECONVENED

Chair Aila said the Board was advised by our attorney that the Board has the ability to issue the permit or not.

Member Pacheco asked the Board was advised on what their scope was and he wanted to hear from Dr. Aeby on what this meant to her, any lessons learned and anything she can give the Board anything to encourage us that we can trust her in going out and handling these resources. Dr. Aeby related the permitted experiment on board of live healthy acropora, but didn't know of the change in the cruise itinerary from FFS to Gardiner Island and went back. When they changed the plans she was not aware that was between the captain and the chief scientist. As for responsibility, I lacked communication with the chief scientist and what they were doing. When they changed the plans and the shipped went from FFS to Gardiner that is what she was charged with carrying those fragments out of state waters even though she didn't know it was happening. Ultimately, I was

responsible and she will accept that. It was certainly a lesson in communication and human nature.

Member Edlao asked has she'd known would she have had the authority to say "no, you are not going to move the ship." Dr. Aeby said no. At that point had she known at that point she would have asked him (chief scientist) what to do with these corals – sacrifice them right now, what to do with them because they were slated to stay there and then put back if they stayed healthy. She wanted to know whether you could keep acropora on board for future experiments in the future. I would have had the opportunity to say "wait, what do you want me to do with these?" It wasn't an important part of my research. It was for follow up for future stuff. She would have been happy to sacrifice them had she known. She will take responsibility for not keeping the doors of communication open and a lot more aware.

Member Pacheco asked how has your line of research been able to progress since the violation, specifically at the NWHI. Dr. Aeby said they were following up on the fish parasite work that fish were sacrificed for other reasons. They focused on the natipa white syndrome which is a bacterial infection and acropora white syndrome in other areas of the Pacific is also a bacterial infection. The thinking was if she could do the learning about the white syndrome here in the Main Hawaiian Islands and start developing the treatment then later when she is allowed to go back to the NWHI they could apply it. There are various types of table coral around the Pacific and she can apply what she learned to various regions.

Member Pacheco asked who her peers were in this research. Dr. Aeby said coral disease research is in its infancy in the Indo-Pacific and she has students she is training. She named various people in various areas of the Pacific with whom she is working with. When she started studying diseases in the NWHI in 2002 that was the first time it was ever done.

Member Pacheco asked if I vote to approve this permit will you assure me that you will follow a 1000% ...Dr. Aeby said I will assure you a 1010%. The focus is the research. I certainly learned my lesson.

It was asked by Member Edlao who the chief scientist will be on this cruise. Dr. Aeby said Scott Gautley. There will be very strong communication.

Member Edlao asked in your submittal analysis of this permit was the violation a non-issue because it already happened or was it a tough decision no brainer for you guys because it's already past history. Dr. Nishimoto said because of the past history and she paid the money as well as the fine because from a scientist's perspective time is important. Research like this with solutions is something that is going to help us as a State.

Member Edlao said he would like to see next time some cures with regards to your research. It is a tough decision. It was a major fine even if it wasn't your fault, but I can

understand why. It is important research and time is the essence with the disease showing up in Hawaii something needs to be done. You need to be more vigilant with what goes on up there otherwise I will not see you again. Dr. Aeby said I understand. Rob Tonen said that they've been trying to find someone else to go up and do this research. The MMB and all the co-trustees have recognized that coral disease is one of the primary management concerns in Papahānaumokuākea and we've been unable to find anyone else who was able to do this research without Dr. Aeby's input. The last survey done in the NWHI was done by her and we have had no information on any of the coral diseases since she was found in violation and has not had a permit.

Member Edlao said he hoped the MMB would come up with a more decisive recommendation as opposed to a very loosely type thing. It would make our job easier.

Member Pacheco made a motion to approve as submitted. Member Edlao seconded that.

Chair Aila said Dr. Aeby you are going to be under a microscope so understand that and understand the next time you come back we are going to be looking at the behavior prior to issuing any new permits.

Member Edlao said ever since he has been on the Board and seeing her here has always been a positive thing, but that one incident and I was upset when that whole thing happened that he thought it was for life. After that he always looked for her name because he was concerned for her. I will support this, but like the Chair said you will be under my microscope as well and would like to see results of a cure instead of reports of diseases because we don't want this happening in our environment here in Hawaii.

Member Morgan said I think the past violations is a serious thing, but coral disease is serious and like the previous testimony this is the only game in town. I think DAR is closer to the subject than I am and he places a lot of weight on their recommendation.

Member Pacheco said one of the things as a Board for himself, I am not a scientist and much of the stuff that comes before us is not science and Sam (Gon) is the only trained scientist on this Board. As responsible Board members we need to be careful in conveying that scientific information from the process of science. We have our own staff who is charged with that job. We have our Federal partners. The NWHI is an important place and it's a huge process in place with a lot of dedicated and expert people. He will forward this to his fellow Board members a paper recently came out of situations like this of public perception of science in making management decisions citing bio-control of strawberry guava and mangrove eradication on the Island of Hawaii. It's an enlightening study from researchers how the public process can derail good science and lead to poor decisions in the public process.

All Board members voted in favor except Member Agor.

Unanimously approved as submitted (Pacheco, Edlao)

Item C-1 Request to Extend the Closure of Kahauale'a Natural Area Reserve, Island of Hawai'i, to the Public Pursuant to HAR § 13-209-4.5 for Public Safety Purposes

Paul Conry representing Division of Forestry and Wildlife (DOFAW) introduced Lisa Hathaway, NARS Branch Biologist and Manager for Island of Hawaii will brief the Board on the Kahauale'a Natural Area Reserve and the proposal is the continued closure of the entire NARS for public safety purposes. With the continued eruption there is a public safety risk of uninformed and unprepared tourists which would expose our State and personnel to additional risk and liability if they have to go out and rescue them from harms way. What was done in the past was staff closed the entire NAR for a period of two years which is allowed under the rule and there is the option to extend it for another two years if the conditions warrant it. Staff is asking to continue the closure that began in 2007 and to extend it for another two years through July 24, 2013. At that point staff will come back if conditions calmed down it could be re-opened or continue to request a closure.

Lisa Hathaway presented a slide show and video of the NARS and volcanic activity on the Big Island and where Kahauale'a NAR is giving some background history on it and the current volcanic activity at Pu'u O'o and the Kamoamoia eruption that affects the boundary of the NAR. She described cracks in the area and how a rescuer looking for someone fell 80 feet into a crack and was almost killed, but survived. How tourists are learning about trails in the area from local publications. Staff has issued a few special use permits for those interested in filming and research that all pass through Hawaii Volcano Observatory (HAVO) for their thoughts. Some hunters expressed interest in the area which is restricted to an area. Also, OHA had requested for cultural and customary practices, but there have been no formal requests. She thanked HAVO for all the pictures and video.

Member Pacheco asked whether Big Island Rebuild is the only publication that has that trail or is it. Ms. Hathaway said she got word from other publications that they are competitive and wanted to add it in. She thinks it's the Trail Blazers and she hasn't seen the latest edition of Big Island Rebuild. Member Pacheco said he knows both publications has a website updating their publications and suggested staff sending them a formal letter from the Chairperson's Office to remove it. Has the rescues increased? Ms. Hathaway said there is increased eruptive activity and you can see the lake glow there.

Chair Aila asked whether we have prosecuted anyone for trespassing. Ms. Hathaway said that she has had DOCARE pursue folks who have been rescued, but the issue is a lot of people who are rescued are visitors and by the time DOCARE gets to it they are usually gone. Staff did cite a party of two who were locals that got lost in 2008.

It was asked by Member Pacheco whether we have ever charged for rescues and Ms. Hathaway said no that the County felt that if they started charging for rescues people wouldn't call until they were worst off. It is costing the County thousands of dollars. She mentioned a letter from Big Island Civil Defense that made a difference in the

numbers. Staff checked signage and replaced the fence where it gets cut, signs get shot or pulled out.

Member Pacheco asked about fencing across the road, but Ms. Hathaway said that road is not ours but will look into it. She said that the sign does say violators will be prosecuted and she described where the signs are placed on the trail. People have blogged saying how they went past all the signs and read in the book that it was fine to go there.

Unanimously approved as submitted (Pacheco, Morgan)

Item C-2 Request for (1) Approval of the State of Hawai'i Conservation Reserve Enhancement Program Agreement with the National Tropical Botanical Garden and (2) Approval of a Chapter 343, HRS Declaration of Exemption from the Preparation of an Environmental Assessment Per Chapter 343, HRS and Request for Delegation of Authority to the Chairperson to (1) Negotiate, Approve and Execute State of Hawai'i Conservation Reserve Enhancement Program Agreements with Eligible Applicants; and (2) Determine and Approve Chapter 343, HRS Environmental Compliance Requirements, Including Approval of Declarations of Exemptions, for Hawai'i CREP Projects

Mr. Conry related some background on item C-2 that they previously had the authority for the Chairperson to execute those that our Office of the Attorney General clarified what execute means. Staff is back to clarify that and to ask the Board to approve that CREP Project and also to approve the Chapter 343 declaration of exemption specifically for the Hawaii Tropical Botanical Garden. Also to set up the process to process these agreements, have the Chair sign the agreement, negotiate a crew and make the declaration compliance with Chapter 343. This is a delegation of that authority. It's for a project at the Botanical Garden that the State's commitment is they pay \$17 per acre enrollment fee, total is \$510 and the Board will see a bunch of these and that is why the delegation. There will be some fencing of native species, restoration efforts and that falls under some of our division's exemption list. Staff asked for that exemption. Mr. Conry recognized Melissa Sprecker who is the CREP coordinator.

Member Agor asked whether the fencing was described in the submittal. Mr. Conry said they ended up attaching the agreement. How this program works is NRCS is entering into a project agreement with USDA. DOFAW is making a rental payment on the acres they are doing and he explained the process.

It was asked by Member Agor whether this will affect Hawaii and Mr. Conry confirmed that it will in the future. This is a USDA Farm Bill Program and under the CREP Program will enter into lands to plant native species, control invasive species, fence out cattle, and improve water quality that it could be for any state. Staff will come back with an annual report.

Unanimously approved as submitted (Pacheco, Morgan)

Item D-2 Set Aside to Agribusiness Development Corporation for Agricultural Purposes, Wailua, Kauai, Tax Map Key: (4) 4-2-1:3.

Written testimony from Kanaka Hui Lands was distributed to the Board.

Ms. Unoki read the written testimony since she did not see it.

Member Pacheco asked that they (Kanaka Hui Lands) aren't really saying in the written testimony how they...are they actually saying they own land because of sovereignty issue. The Chair said it appears to be a sovereignty issue. Also, it appears to be a request for a contested case hearing.

Ms. Unoki confirmed that and read "set aside to Agribusiness Development Corporation" then said unfortunately, we forgot to include this piece of property, but what we can do is...we have to allow these people to submit their paperwork for the contested case hearing. Ms. Matsukawa asked the property was not included in this submittal. Ms. Unoki and Chair Aila said it is. Ms. Unoki referred to the last paragraph of the written testimony which she read. She said she could go and notify these people to submit the paper work.

Member Pacheco asked didn't we go through this. Wasn't the same issue brought up for...? Ms. Unoki said the same for Kulani. Member Pacheco said no and asked isn't this the one they are doing the energy one, right? Ms. Unoki acknowledged that there was a recent one that they are requesting a cancellation of a set aside and reset aside to Department of Defense (DOD) for the Kulani Prison site that there were requests for contested case and they had three. Member Pacheco said and they were denied. Ms. Unoki confirmed that saying eventually we went through the process. They submitted an application for materials, the AG reviewed it, it came back to the Board, and the Board at that time based on the review denied that the applicants had standing. We would probably go through the same process on this one here. The applicant has a mailing address and we can contact them and give them the form to fill out. Ms. Matsukawa said I think that would be appropriate.

Member Agor made a motion to approve as submitted. Member Edlao seconded that. All voted in favor.

Member Morgan asked whether there has to be a name. Can an anonymous person submit something like this? You have an organization, but doesn't a person have to be... Ms. Enoki explained what normally happens is staff gives them the forms to fill out and it's their responsibility to submit everything within 10 days and whether or not they submit any back-up paperwork with the forms we'll refer to that.

Member Edlao clarified what John is asking shouldn't there be a live person there to say verbally. Member Morgan said or just here that says "Joe Smith." Ms. Matsukawa said

it's imbedded that they are allowed to submit something in writing their actual written request for a contested case in meeting all the requirements and at that time determine if it is a valid entity or not.

Member Edlao said he assumed this Manini is a person.

Unanimously approved as submitted (Agor, Edlao)

Item D-8 Amend Prior Board Action of November 22, 2010 (D-6) Issuance of Term, Non-Exclusive Easement to Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Mathew Ballenger, Trustee of the Revocable Trust Agreement of Mariana Van Blom dated March 16, 1983, for Deck Purposes; and Authorize a One-Year Holdover for Lease of Non-Exclusive Easement S-5217, Patrick J. Ballenger, Trustee of the Patrick J. Ballenger Revocable Trust dated October 10, 1988 and Walter Van Blom and Mariana Van Blom, Trustees of the Van Blom Family 1995 Revocable Trust, Lahaina, Maui, Tax Map Key: (2) 4-5-001:seaward of Parcel 4.

Ms. Unoki said the parties are asking that you delete recommendation 1. D., 1.E. and 1.F. that originally the parties thought they could handle a one time payment so staff put that into the submittal, but Mrs. Ballenger called and said that Mathew and Laura can't qualify for a loan at this time and are asking that be deleted. Staff is okay with that. Ms. Unoki spoke to all three and it would be a financial burden on Mathew and Laura at this time. Member Morgan asked whether you want to delete D, E and F. Ms. Unoki confirmed that saying that she did offer to them that later on if they chose to and Mathew and Laura can handle qualifying for a loan they can come back to the Board if they so wish.

The Board:

APPROVED AS AMENDED.

DELETE Recommendations 1.D., 1.E. and 1.F. which currently are on the July 8, 2011 submittal:

- D. Delete Annual Rent and Rental Reopenings, and replace with One-Time Consideration.**
- E. Date of valuation should be August 1, 2012.**
- F. Authorize the Chairperson to negotiate an installment agreement for the one-time payment for the easement to be paid over time, with interest, as may be necessary or appropriate.**

Unanimously approved as amended (Edlao, Pacheco)

- Item D-1** Cancellation of Revocable Permit No. S-6024 to Masaichi Ajimura and Issuance of Revocable Permit to Clyde Ajimura for Home Garden Purposes at Lot 15, por. of Hanapepe Town Lots (1st and 2nd Series), Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-05:38.
- Item D-6** Issuance of Revocable Permit to Eric Miller for Pasture Purposes, Waiohonu –Kakio, Hana, Maui, Tax Map Key: (2) 1-4-012:003.
- Item D-7** Consent to Assign General Lease No. S-4519, David Kapralik Assignor, to David Kapralik and Rodolfo V. Dieguez, Assignee, Former Kaupakalua School Lot, West Kaupakalua, Makawao, (Hamakualoa), Maui, Tax Map Key: (2) 2-7-015:026.
- Item D-9** Issuance of Revocable Permit to Oahu Hawaiian Canoe Racing Association for the Duke Kahanamoku Long Distance Race Event to be held on August 21, 2011, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portions of 021.
- Item D-10** Issuance of Revocable Permit to Na Wahine O Ke Kai for a Canoe Race Event to be held on September 25, 2011, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portions of 021.
- Item D-11** Issuance of Revocable Permit to Oahu Hawaiian Canoe Racing Association for the Molokai Hoe Long Distance Race Event to be held on October 9, 2011, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portions of 021.
- Item D-13** Amend Prior Board Action of November 12, 2010, (Agenda Item D-9), Continuation of Permits; Revocable Permit No. 7430, Kahala Hotel I Investors, LLC., Permittee, Kahala, Waialae, Oahu, Tax Map Key: (1) 3-5-023:041.
- Item D-14** Set Aside to Department of Health for Public Health Purposes; Issuance of Management Right-of-Entry; Waipahu, Ewa, Oahu, Tax Map Key: (1) 9-4-008:017.
- Item D-15** Consent to hire a consultant to develop a comprehensive public land trust inventory system, pursuant to Act 54, Session Laws of Hawaii 2011 (SLH 2011). (Information Systems) Art

Ms. Unoki had no changes.

Unanimously approved as submitted (Morgan, Agor)

Item E-1 Request for Approval of the Placement of Act 82, SLH02, Warning and Management Signs at selected locations of the Na Pali Coast State Park Wilderness Park, Kauai

Dan Quinn representing State Parks that this follows our awards this morning for our Team of the Year efforts at Kalalau Valley where he read the agenda item and reminded the Board that back in August 2008 they approved Act 82 warning and management signs along the Kalalau Trail and at the camp ground. Subsequent to that the Department bid on a rock fall mitigation project which changed the situation at the camp ground area. Moving into the circulation pattern and changing the way people could occupy the site. This new signage plan includes consultation with the Risk Assessment Working Group which is established by Statute. The process is these signs go the Land Board before they can have legal affect. Although it is not mentioned, staff would also like the Board to find that this activity would have minimal or no significant impact to the environment. The posting of signs is one of the items which is specifically included in the State Park's exemption list for activities exempt under Chapter 343 so exemption Class 310 which is construction of park's directional identification, safety and interpretive signs. Mr. Quinn related the situation during rock fall mitigation, warning signs along the shore and up mauka. Includes signs on the trail and trailhead along Kalalau Beach.

There were some discussions between the Board and staff about the number of signs which is better than closure. Mr. Quinn said it's unfortunate that staff has to do this, but there have been legal decisions that make it informed. If we have these posted staff meets their legal duty to warn.

Mr. Quinn pointed out the Kalalau Trail in one of the Exhibits, similar signage for the trail head, the locations of each sign and how each will be coded. That the signage were approved by the Board some time back and are installed in areas statewide – state parks, forestry areas and some County areas. He related a rock going through a camper's tent.

Member Pacheco asked whether staff could look into delegating authority to the Chairperson rather than the Board for placement of signage. Mr. Quinn and Curt Cottrell said it is in the Statute and the Rules. Member Pacheco said let's do it.

Mr. Quinn said other than asking the Board to also find that this will have little or no significant impact on the environment. Staff recommends approval.

Unanimously approved as submitted (Agor, Pacheco)

Item E-2 Consent to Assign General Lease No. SP-0153 Phyllis Tokita, Assignor, to Phyllis Tokita and Francis P. Mission, Sr., Assignees

Item E-3 Forfeiture of General Lease No. SP0162, Lisa Wood, Lessee, Waimea Canyon State Park, Waimea (Kona), Kauai, Tax Map Key: 4th/1-4-002:053

Mr. Quinn said no changes to either items E-2 or E-3 that these are Koke'e lease issues and noted written testimony from Ms. Wood on item E-3 who is encountering financial difficulties and requesting staff waive all her financial burdens might be, but our legal advisors suggests that is not a good idea and instead allow the Deputy AGs follow up with the whatever appropriate legal recourse they may have on this. This cabin burned down completely. Most of it is cleaned up that only apple sized chunks of ash are left. The Chair asked that she is also requesting to terminate and Mr. Quinn confirmed that staff concurs with that and there is no agreement on what her financial burden might be, but staff is asking that the Deputy AG follow up with that.

Member Agor asked to remind him the right for assigning a lease is that written into the lease or is that policy. Mr. Quinn asked their property manager Steve Soares that there is a provision that allows the assignment of a lease and Mr. Soares said there is and there is language for any premiums. Member Agor asked whether it would take the Legislature to change that. Mr. Quinn asked to prohibit it. He can't answer that. Member Agor said he will follow up on that. Mr. Quinn related that there were a number of new leases, but it was to the next generation in the family and some were to friends.

Member Agor said he knows some monies were exchanged. Mr. Quinn acknowledged that they did get a couple like that and the staff got half the money that was exchanged.

It was questioned by Member Pacheco that people are not allowed to live in the cabins full time and Mr. Quinn confirmed that, but it's difficult to police. They are only suppose to be there 180 days a year, but unless you're looking every day...Member Agor said that is why we need an entrance fee and that is why they are fighting it.

Mr. Soares pointed out that the Board did adopt a policy on these assignments on December 15, 1989 and that policy was attached to the leases for those folks who negotiated for their leases in 2009. If we did change the policy on assignments the Board could do it and it would apply to the new leases that are coming up with the cabins that are going to auction. It's the Board's prerogative to change the assignment to policy and the Board has the right to approve it. Member Pacheco asked retroactively to existing leases. Mr. Soares said that is more a legal question, but the Board did adopt a policy in 1989 and the Board does have discretion to allow the assignments in place. Member Agor said he will follow up.

Member Agor moved to approve as submitted items E-2 and E-3. Member Morgan seconded it. All voted in favor.

Unanimously approved as submitted (Agor, Morgan)

Item J-3 Approval For Contract IFB-M-2011-08, Buoy Inspection Services For The Islands Of Maui, Lanai And Molokai

Item J-4 Approval for Contract IFB-M-2011-05, Furnishing Janitorial Services for Comfort Stations at Lahaina Small Boat Harbor and Kihei and Mala Boat Launch Facilities

Mr. Underwood described item J-3 which involves inspecting all the buoys to scope out work for repairs and there are no changes. For item J-4, staff has been advised that the language is exempt for staff to hire janitorial services although they've done it in the past. Staff has to confirm that the Chair has the ability to that because there could be some service issues. For some reason, they don't have that exemption you are not going to get any janitorial services on weekends and holidays because they just don't have the staff to do it. He related the situation on the Big Island where they only have one laborer left for the entire Hawaii Island and they just can't cover and staff is talking to the unions as well.

Member Pacheco said he spoke to the Chair that he remembers this coming in this past January because of the Big Island issue and asked what happens that this was already awarded and now we are doing it again. Was it the person who got it more than what they envisioned? Mr. Underwood said exactly that staff awarded it and before they signed they backed out of the deal and they didn't want to do it. They never did any janitorial services and staff tried to get their harbor agents to do it. Staff was receiving the complaints, but they had to follow the procurement process and now they are back putting it in place. We have the exemption to hire which he'll check.

Unanimously approved as submitted (Edlao, Pacheco)

Item J-5 Delegation Of Authority To The Chairperson Of The Board Of Land And Natural Resources (Board) To Award Service Contracts At State Small Boat Harbor Facilities

Mr. Underwood said staff listed all the various contracts so they don't have to keep coming back, but they wanted to pull it from today. Staff wants the delegation to start the process to solicit the contract as well as approve the contract and they will bring back item J-5.

Member Pacheco asked all these things that are approved would go through a procurement bid process and Mr. Underwood said absolutely and the Office of the Attorney General. Probably the same process...Member Pacheco asked there will be no direct contracts. Mr. Underwood said no.

WITHDRAWN

Item L-1 Application for a DLNR DAM Safety Construction/Alteration Permit, Permit No. 48-Wahikuli Reservoir (MA-0055) DAM Alteration and Removal, Kahoma Valley, Maui, Hawaii

Carty Chang representing Engineering Division requested approval of this application for the permit and the land owners are State of Hawaii, DLNR along with West Maui Kahoma Land. This is considered a high hazard structure and both land owners agreed for the removal where Mr. Chang gave details on the removal process. Staff is also asking that the dam be removed from the requirements of Chapter 179(d), HRS. A Chapter 343 analysis was done and this project is exempt for the preparation of an EA under the current land management citing 1986 list, exemption class 9 as designated by the Hawaii Preservation Historic Act of 1966.

There was discussion about the size of this reservoir.

Unanimously approved as submitted (Edlao, Morgan)

Item L-2 Permission to Contract Professional Services to Assist the Mineral Resources Section

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

Item L-4 Declare Project Exempt From Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. J45CO41E, Moanalua Rockfall Mitigation Ala Noe Place, Honolulu, Oahu, Hawaii.

Mr. Chang said there were no changes to items L-2, L-3 and L4.

Unanimously approved as submitted (Agor, Edlao)

Item M-1 Amendment to Prior Board Action of March 14, 2008, Item M-2, Amendment No. 2 to State Lease DOT-A-78-0009 Hawaii Island Air, Inc., Honolulu International Airport, Oahu

Unanimously approved as submitted (Agor, Pacheco)

Chair Aila thanked the Board members for the approval of the Ahu O Laka emergency rules. It made a huge difference. There were many compliments and people haven't been there in 5 to 10 years and are taking their families. There were some Board discussions on it.

Adjourned

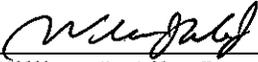
There being no further business, Chairperson Aila adjourned the meeting at 11:40 a.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



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