

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

DATE: FRIDAY, NOVEMBER 30, 2012
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Jerry Edlao
Rob Pacheco

Dr. Sam Gon
David Goode
John Morgan

STAFF

Dan Quinn/PARKS
Ed Underwood/DOBOR
Randolph Lee/SHPD

Curt Cottrell/PARKS
Russell Tsuji/LAND
Dickie Lee/ENG

OTHER

Pam Matsukawa, Deputy Attorney General
Geoff Hand, E-1
Frank Carpenter, E-1
Iwa Kalua, E-1
Uncle Joe: E-1, J-1
Bob Masuda, J-1
Coline Aiu, J-1
Mitch D'Oliet, D-7
Pua Kaulukukui, D-8

Calvert Chun, M-3
Brock Stratton, E-1
Mendy Dant, E-1
Gordon Leslie: E-1, J-1
Joan Cash, E-1
Kila DeMello, J-1
Sparky Ewing, J-1
Carl Schlack, D-7
Michael Chinaka, E-2

{NOTE: Language for deletion is [bracketed], new/added is underlined.}

Item A-1 October 26, 2012 Minutes

Approved as submitted (Edlao, Morgan)

Item A-2 November 9, 2012 Minutes

Item A-2 was not ready.

Item M-3 Acquisition of Private Lands and Set Aside to Department of Transportation, Harbors Division, for Maritime Purposes, Kapolei, Oahu, Hawaii, 53.948 Acres, Tax Map Key: (1) 9-1-14:26 (portion)

Calvert Chun representing Department of Transportation (DOT)/Harbors requested approval for this acquisition at Kapolei.

Unanimously approved as submitted (Morgan, Gon)

Item E-1 Briefing on the Status of Revocable Permits: SP0063, Adventures in Paradise, Inc., SP0047, Aloha Kayak Company (Iwa Kalua) and SP0075 Kona Boys, Inc. for Commercial Kayak Landing at Kaawaloa Flat at Kealakekua Bay State Historical Park, Hawaii, and Revocable Permit SRP6843, Mary and Roy Teves and Joan and Wesley Cash, for the Breeding and Raising of Cattle at Kawainui Marsh State Park Reserve

Numerous written testimonies were distributed to the Board members.

Dan Quinn, Administrator for Division of State Parks briefed the Board on item E-1 regarding the status of various revocable permits (RP) which he listed that these permits were previously renewed last year by the Board, but will not be included in staff's routine renewals for next year. The Department is moving towards a "kapu" of certain boating activities at Kealakekua Bay while staff pursues some enforcement and management actions to get a better control of what's happening there. The area is being placed completely under the State Parks administration including the bay itself and Napo'opo'o Landing. This is part of that action where the launching of any boat at Napo'opo'o Landing will be under State Parks rules on the water and at Ka'awaloa Flats. These 3 permits will not be part of our regular renewal for next year. Staff previously intended not to renew them at all, but after discussions with the Department and a number of individuals including the commercial permittees. It is our intent to come back to the Board, at the next meeting, and make a proposal for a renewal with special conditions including delegating to the Chair the actual start date for resuming commercial activity at Kealakekua at a time the Department feels it has gained adequate management of the area and whatever other conditions the Chair feels is necessary for that. Normally, our revocable permits have condition changes highlighted in the submittal and he doesn't believe the rest of the RPs we have will change substantially from the previous year.

Mr. Quinn said the other RP is on the edge of Kawainui Marsh on Oahu. The activity was in place prior to the property being purchased by the State some years back. Several years ago it

transferred under Executive Order to the Division of State Parks. The activity there is not consistent with the long term vision of Kawainui and there is an extensive planning process right now. A number of Native Hawaiian organizations are interested in activities at this location and one of our concerns is activities there are not consistent with the intent of the Federal Water, Land and Conservation funds that were used to purchase that area which is for public outdoor recreation activities and not considered for private activity.

Curt Cottrell, Deputy with the Division of State Parks related some history regarding Kealakekua Bay and that the hardest is determining who the community, the commercial interests or the community that represents that interest is. This will be a first in considering a "kapu" there and the difficulty is sifting through people with kayaks. The Department supports guided commercial tours because that is the best way to regulate and reduce the impact of people at Ka'awaloa which is good for business and for the resources. The kapu is the best way to freeze everything and give our enforcement something to work from saying nobody can kayak and let's clean it up. We are not going to get staff to do 24/7 enforcement. An organization called Kai attempted to self-regulate, but without solid enforcement they are just volunteers and have no authority. Under Chair Thielen, there was the idea of a concession, but that takes a long time and the community was opposed to it. Although a concession could pay for staff and regulate kayak tours, but at the end they didn't know if that would work. The best way is to have an on-line permitting system like our camping and lodging system which could be set-up in 2 months. The permit would authorize you to launch from Napo'opo'o, transient Kealakekua Bay and land at Ka'awaloa. Staff is looking at a limit of 30 permits and with the 3 kayak companies that would put us at 70 kayaks per day for Kealakekua Bay and he is confident this permit system will be up within the first quarter of 2013. The challenge is the drift in vessels would also require some kind of permitting process. Staff understands from all the written testimonies how important kayaking at Kealakekua Bay is to the local economy, but the business community has to understand that the Department has a strong fiduciary job to protect the resource. Some in community feel that a concession would create a Waikiki, but a concession would be better than all this other stuff happening now at Napo'opo'o. There were concerns with people come down the Ka'awaloa Trail, but it is though going back up which isn't a concern. This closure will solve this problem and help monitor for a kayak capacity. Staff will bring the RPs as renewals before the Land Board based on how successful the implementation action was and have the Chair set the start date. There were discussions with the 3 kayak companies and they understand the situation and would want a shorter closure period, but since this is the first staff didn't know how long it will take. Forecasting a start date will help their businesses and the conditions will remain the same.

Mr. Quinn noted the multiple written testimonies in support of the kayak commercial tours and was the tour companies' customers. A couple said it's about time we changed it. In the past there were quite a few complaints about the situation and there is no real argument that this is a bad situation.

Member Pacheco asked what is exactly going to be "kapu". Kayaks? SUPs (Special Use Permit)? Mr. Quinn said that staff will move to kapu any vessels other than those that are Coast Guard registered. Our definition of registered in State Parks rules is very broad, basically, no one on the water unless you have a Coast Guard registered vessel.

Member Pacheco questioned whether you are asking for 1 month and a maximum of 4 months. What is uncomfortable for me in this is that commercial aspect of it which is impact, but also that place is very popular with the local residents. Kealahou as a component of the tourist industry for South Kona which is key and that area is especially hard hit during these economic times. It's only beginning to come back and to close that at the beginning of the high visitor season for 4 months will be detrimental not just for the commercial guys, but for the small businesses, restaurants, cafes. He asked what at the minimum that has to happen before we can reopen. What are the steps you need to have in place to start off to begin the kapu?

Chair Aila said the minimum is the illegal activities occurring right now ceases and that is why the focus is on vessels. Illegal activities in terms of kayak rentals, the drug activity, the things that make the area unsavory that is why it's difficult to give you a maximum whether its 4 months, 3 months, 2 months, but they hope it's as short as possible. They have to make sure their enforcement efforts stop all of those actions before we open that back up again. The reason that the State Parks rules on vessels are being used is because we know that people are very resourceful. If you say no kayaks they will switch to something else. It is that ability to shut down everything else except for and people are asking why Coast Guard vessels, but its Coast Guard inspected vessels that operate in an intra-state or inter-state capacity and that is because of case law. But, they will have to be issued the authority to come into the Bay and that is the only way to manage the entire Bay in that process. It is a very complex enforcement situation for many people in the audience we can't explain every detail of the mission because to do so would to give those folks doing the illegal activities hints at how they can get around it. We realize we have to do what is called adaptive management. We have a plan and we will put it into place. We believe people will have to adapt to that. The goal is to bring control. Everybody in Kealahou Bay agrees it's not a healthy situation. People have differences of opinion on how to solve that unhealthy situation, but we've done the analysis and believe this is the only way to go in to solve this situation. He apologized as for a maximum he is extremely uncomfortable about giving a maximum right now until we get all the details under control.

Member Pacheco said he understands what outcome they are looking for and the issues down there and you want to go to an on-line permit system which is taken from the State Park permit system that you have now. When you open it up you want that in. Mr. Cottrell said ideally. Member Pacheco asked what other pieces have you identified in place...that he is trying to get an idea of the complexities you are facing. Mr. Cottrell said comprehensive signs to assist enforcement that you have to have a permit to launch and land and no commercial activity. The enforcement folks have their own deployment plan. The biggest challenge is the on-line permitting and speaking to his website providers they were confident that they could have it ready to launch in 2 months which he will push them on – HIC has the State contract. Whatever we come up with in terms of pieces of paper we're issuing people, folks that are making all of the money which is a substantial amount will try to figure out how to use the permitting system to their advantage. My challenge is to come up with a rapidly deployable system that is easy to install, but has the safeguards where people can't print them out, sell them, whatever and his biggest challenge – and he could set it up easily for the guys that have rental shops. Go on-line and say yes, we have 3 kayak slots left for Kealahou, each visitor gets a permit because it will be based on a permit per boat and not on per person that we are not going to differentiate between single, doubles or triples. For the local residents that go down on a daily basis, I don't

expect them to go down and get a permit every single day and pay a fee to do that. They would have to set up a sub-component by setting up manually for permits or on-line, but he knows that as soon as he says they have special use permits for kayak use for locals he will get a lot of requests from various folks saying I need 10, I need 20 and try to navigate around whatever net we come up with in order to continue this illicit trafficking of the kayaks. Staff is trying to ensure this doesn't happen that enforcement goes down and find all these bootleg permits that make it confusing for enforcement. That is a significant challenge, but is not insurmountable. It just requires him to sit down with the vendor and enforcement to find what works for them.

Member Pacheco said what is key for you is enforcement and this came out of staff's success with Kiholo which he summarized and asked what has happened on the enforcement side that has made a difference there. Mr. Cottrell acknowledged it worked at Kiholo, but that is different that staff closed down access to all vehicles, but you could still walk down. There wasn't rampant commercial activity at Kiholo just illegal camping, driving on the beach - mainly resource damage. There is a hui that lives there with a ranger, but when it was out of control and staff couldn't enforce it with 200-300 people a night and said we have to set up some management paradigms where they shut it down for 8 weeks to set-up the barricades and campsite development. When they handed it back to DOCARE they said they have 8 campsites and narrowed the illegals down to 1 illegal fisherman, 1 illegal camper and the scale of infraction is manageable for our limited enforcement staff that we have. But, the big difference is there isn't millions of dollars of illegal money moving through Kiholo as it is possibly generating at Kealakekua. Mr. Quinn pointed out the key to that is the permit system and previously we didn't have that set-up which they are working towards with enforcement at Kealakekua.

Member Pacheco asked whether everybody who gets on a kayak the goal to disembark at Ka'awaloa because not everyone does and wondered if staff considered landing and non-landing permits. Mr. Cottrell said they could, but every element to make it more challenging for enforcement in terms of whether you have a pink paper for landing or blue or not. A lot of folks go to Ka'awaloa to swim or snorkel around and are still beaching or locking the kayaks. He did think about it, but it's better to keep it simple to 1 permit for all with a total number per day which is something staff could reasonably launch within a 2 month period. Member Pacheco asked and that is separate from the commercial number and Mr. Cottrell acknowledged that is correct. Its 30 boats total. Right now there are 10 boats. There was some discussions with the vendors that they are only using half the capacity that there is 1.3 persons per day on their reports. If the illicit are gone they will be able to fill the rest of their allotted capacity which brings it up to 48 where the market will adjust and they will get more tours to fill that gap.

Member Pacheco asked what staff will do during the closure of Napo'opo'o. Is it going to be gated...Mr. Quinn said the proposal is to physically close the access that it does have a gate.

Member Pacheco queried that one of the key issues is sifting through the people. He understands the mess down there now to implement what staff wants to do to make it effective we are going to have to have good enforcement and good engagement with DOCARE. If we are going to do that DOCARE is going to have to be down there to make sure everyone is following the kapu why wouldn't it be possible for DOCARE with the 10 permits we have now through State Parks

with the commercial guys and let those things run and have DOCARE enforce those daily permit levels.

Chair Aila said the answer to that is the illegal guys come down and are acting as a recreational and rent kayaks offsite. They come down there well trained that when DOCARE does ask them these guys have the verbage down and so DOCARE is unable to write a citation. During the closure it's anybody on a kayak is a violation. That is how effective this is going to be. If you are in a kayak during that closure or on a stand-up paddle board during the closure its real simple. It doesn't matter if you rented the kayak illegally or however you got the kayak. It's going to be closed so enforcement during that time period is going to be very easy. The desire is for a period of time to shut down all the free money that is occurring and also supplying the drug habits of the people that are around there. If it seems like this is a very severe step to take, but it is the only way that we can legally address all of the problems that associated not just with paddling kayaks to Ka'awaloa, but the issues that surround Napo'opo'o as well and as well as the issues impacting the community. And this is community driven that when he went down there and spoke with the community they wanted us to do something about the drug problem, the extortion, the impacts at Ka'awaloa. The amount of toilet paper and trash we are finding in the area has really improved over the last 6 months and part of that was people were aware staff is thinking of taking some serious action so people responded to that which is why they aren't shutting down land access to Ka'awaloa right now. But, if it changes we will take a look at it. The Department has a responsibility to manage its resources and as Board members we all have the responsibility to manage those resources. This is the only plan that we see as viable in achieving success. It is rather stringent for some folks, but making the enforcement easy and efficient is the only way we can do it. It worked in other places like the Sandbar in Kaneohe.

Member Pacheco related how his company vehicles are recognizable by DOCARE and DOCARE has a piece of paper showing that they have a permit. Mr. Cottrell noted the difference between the commercial and non-commercial is if they shut it down you can only have access if you take a commercial tour which was discussed before that they could have a phasing approach issuing the 10 and reinstate the RPs and have a much lower level and as the Chair indicated at this point initiate a kapu for a while will show that staff is serious about taking care of this resource. But, at this point the goal is when staff rolls it back out with a realistic non-commercial access rather than a reinstated commercial access with a balance between the two. The advantage would be for the commercial with 10 permits and he wouldn't want to artificially provide an advantage to the commercial sector for access to public land that everyone should have an equal choice to whether with or without a tour.

Member Pacheco asked about a user fee for the State Park on the commercial boats or even the float in guys what kind of process would staff need to get there and what opportunities are there for the public to have a dialogue in implementing the user fee. He understands staff would have to come before the Board to set the rate and would be further down the road. Mr. Quinn acknowledged that the user fee would have to come before the Board within State Parks administrative rules and there is opportunity for public input when they take that before the Board. Member Pacheco asked when the system is in place with user fees in Kealakekua how do we capture those funds and use those funds to help the resource because we would want to be able to manage to fund that resource for the visitors. Mr. Quinn said that's correct and the

concept of some of that being released for multiple divisions have a responsibility there. Staff doesn't anticipate a huge amount of revenue and it will all go into the State's special fund for Park's operations. We all agree having increased enforcement out there. Having additional money doesn't mean additional officers. Mr. Cottrell related how it works at Kiholo through the camping revenue. He would like to redirect any new revenue toward enforcement. Staff is not doing this for revenue generation, but to protect the resource. There is value for charging for permits because those who do tend to clean up after themselves and are more compliant as opposed to those getting in free and trashing the place. Member Pacheco said that there are studies that confirm this and he agreed implementing a user fee will create healthy revenue. He asked whether staff could hire a ranger or positions or will there be employment issues. Mr. Quinn said that we have positions referred to as rangers, but they don't have enforcement authority like the DOCARE officers. They can be a presence which Member Edlao referred to the ranger at Ahihi Kinau. Mr. Cottrell agreed that a 24/7 presence at Ka'awaloa with a satellite phone would be a deterrent.

There was some discussion that this plan (fees for the permit system) will have transparency with the community and staff said they would go there with public hearings and that is what the Chair would want to do.

Chair Aila asked other than having a few more recreational permits at the end of the process, having one less kayak opportunity, when we are done with enforcement there is no significant change and Mr. Cottrell agreed. Member Pacheco said except that anyone who would want to go out into the Bay would have to have a permit.

The Board members had some discussion about the duration from 1 to 4 months possibly 6 and the Chair said he doesn't think it would be longer than 3 or 4 that he would be happy with less than 1 month, but first they have to get it under control in order to start up again. He understands that is the concern of the commercial operators out there, but it is what it is. There was more discussion on whether 30 days is sufficient, but the Chair is reluctant to say that it could be 45 days. There were some Board discussions about the illicit activity that vehicles and kayaks have been confiscated, but as soon as things quiet down the illicit activity is back. Chair Aila said we are trying to solve that problem.

Geoff Hand representing Adventures in Paradise testified summarizing his written testimony that he supports State Park's plan, but the time is a concern that 30 days is fine that 45 days is pushing it. Two months will put all of them out of business and asked the Board members to consider that they live month-to-month. They would like a drop dead date to ensure this won't extend 6 months. The kayak tours are a good management tool. Mr. Hand asked when the Bay is closed what the fines would be for people who break the rules under State Parks. What kind of fines would keep these guys (illicit) from coming back? Without a presence it's a question whether this plan will work. Chair Aila said that enforcement will be down there to check more.

Member Pacheco asked whether enforcement would be able to confiscate boats and the Chair confirmed that saying yes, and if there is a continuing problem they will bring it back to the Board with a civil fine. They could take it through the County process under criminal or it could go through a single penalty process through the Board to issue a significant fine through a civil

process which is less restrictive. It is through preponderance of evidence beyond a shadow of doubt.

Mr. Hand testified that he had concerns with the number of unsupervised kayaks that the kayak companies were put in place to educate people about this wildlife park and to not stand on coral or chase dolphins that more guided tours would bring less unsupervised kayakers. He would advocate for a much lower number of unguided activities in the Bay that they get blamed for any problems.

Member Pacheco asked about Mr. Hand's written testimony on page 2 that illegal kayakers have gate keys and whether the gate is opened and locked. Mr. Hand acknowledged that and he isn't there when it's open and closed. Mr. Kalua said the gate is open at midnight and Mr. Leslie noted it is closed at 8:00pm. Chair Aila said that no one will have a key because the lock will be changed.

Brock Stratton representing Kona Boys testified thanking staff that he supports the plan, but couldn't get his head around that we have existing rules – 10 permits a day for people to land at Ka'awaloa and we have 3 companies with guided tour programs. As of now there is zero enforcement on any existing rules. Why not enforce those rules and see if the plan in place now works instead of making new rules that are more restrictive and his concern is those who are following the rules are being penalized by having their permits not renewed. The illegal guys know how to get around the rules and will go to the beach. They know how to get around the DLNR officers who are either family with them or who may feel threatened and would rather not enforce against the illegals because it is more difficult to enforce something against the illegal drug users than it is with legitimate business people and those officers come after the business people relating being fined for not having a whistle and going to court. He reiterated why they can't enforce with existing rules. Chair Aila said that DLNR officers have written citations and have not held up in court.

Mr. Stratton related the poor economic situation in South Kona and how all the businesses are affected. Small businesses are the life blood of the community, but their permits are being taken away. Suspending their permits is not in the best interest of Kealahou Bay and asked to reconsider that guided tours are part of the solution and not the problem.

Frank Carpenter representing Kona Boys testified and read a statement from Kai which is the Kayak Alliance of the Island which reiterates previous testimonies to keep the permits for guided kayak tours and who supports it and who are affected. They commend the Department for addressing the problems, but closing the Bay will cause undesired consequence into the Bay and the surrounding areas. Concerns with many people coming in uneducated and many tours already booked for January. Mr. Carpenter related putting into this business for 12 years, he is a steward of the area and has a relationship with the community and feels he is being penalized for operating a successful business. He doesn't see how enforcement not changing will make any difference and will be back again in 6 months that they need effective enforcement.

Mendy Dant, Vice-President of Fair Wind Cruises distributed her written testimony and testified from it giving some background history on her company and the process for the moorings that

there was always a dead end when trying to implementing a management plan for enforcement. All agreed rangers were needed there referring to Maui where they can call DOCARE if they need back-up. All the commercial boats were to put in the fee to make that happen, but it never did. Commercial permit applications were accepted by Laura Thielen for some of the rafting companies, but none were ever approved to her knowledge. They are the only boat with mooring down there and something needs to be put in place. More and more companies are getting rafts and going down there and we need to do something soon. Having 70 kayaks at Ka'awaloa is a lot and suggested 50 guided kayaks.

Member Pacheco asked when she got her mooring permit from DOBOR did they added a ½ percent DOBOR ocean fee. Ms. Dant said at that time it was State Parks and confirmed that amount. The Chair said 3% is for the ability to conduct ocean operations out of ...Ms. Dant said out of Keahou. Member Pacheco asked for how long and Ms. Dant said since 1990. It is easier to have a flat fee percentage to do the bookkeeping.

Iwa Kalua representing Aloha Kayak Co. testified reiterating previous testimonies of not having a limit on the closure that 2 months could be detrimental to them and they feel like they are being punished. All the kayak owners agree that something has to be done in the area, but suggested after 30 days allow the commercial entities to come in to do partial business maybe in the afternoon to have enforcement see how it will be with the permittees there which is fair rather than keeping them completely out through the process and maybe do a gradual thing. Come back to the Board at the end of the 30 days and see how this process would work and reanalyze this.

Chair Aila asked say it goes beyond 30 days are you not taking any kayak tours any place else. Mr. Kalua said no, that as of yesterday he took Honaunau Bay off his list of activities reiterating that no matter where you go you should have a guide (comparing to Galapagos Islands). He understands the enforcement issues suggesting splitting Big Island to North and South Kona because the island is so large and park a DOCARE trailer at the gate (of Kealakekua Bay) and have an officer sit there for half a day. Just the trailer office would be a deterrent to the illegals with cameras. Maybe when the funds are generated allocate those funds toward something like that. The objective is to stop the affect this will have towards all businesses. Maybe allow 5 permits after the 30 days and have DOCARE work around that.

Chair Aila asked besides out of Honaunau where else should they permit. Mr. Kalua said out of Keauhou, but that is not the safest area and half the clientele would not be able to go. Kealakekua Bay is the safest on the island to operate this type of business. If the surf is up he may be out of business the whole month of January.

Member Pacheco asked what percentage is guided versus rentals. Mr. Kalua said he has been phasing out of rentals for years that every customer is guided as much as possible because the education they give the customer would never get on their own. The knowledge, the culture, the history, the protection, etc., but once the customer leaves the shop there is no guarantee that they listened to what they said. The illegal operations have been advertising not to go to the legal operations up the hill and directed customers to the illegal operations in the Bay and the legal operations can't compete with that. His goal is to have every customer go out on a guided tour.

Gordon Leslie testified that he is Chairman of the community association, Malama Pono Kealakekua and since 1971 has been involved with DLNR's plans for Kealakekua Bay relating some of the past history that every time there is a new governor, a new chairman they start another new plan every time. The 2005 plan was the best, but there were last minute changes to the plan without anyone knowing about it which is what is causing us problems today. He related things the organization KAI did at Napo'opo'o and the defecation problem at Ka'awaloa where Mr. Leslie rented porta potties using his own money and the problems with that. He doesn't like the term "kapu" and would rather use "moratorium". The Chair should take as long as it should and he shouldn't be pushed by economics into doing a rushed thing that the community waited all these years and want him to create a good plan. Mr. Leslie related how DOCARE parks their car down at the pier by the intersection and put up a sign that says no kayak renting here, but go around the car there is all these trucks with kayaks for rent. It's an embarrassment and business is going as usual. Not all are doing illegal activity that there are some kanaka maoli from the village working there. When he was on the committee he advocated that all permits be issued – 6 for the people already in business and 6 for the kanaka maoli of the village because everywhere you go in Hawaii where there is open ocean recreation activity it's operated by a foreigner. You rarely see a Hawaiian business in the area. The people that everyone is calling illegal, they live right across the street all their life. What is illegal is every single operator who operates from that pier is illegal. The permits they have are not to operate from the pier or on the Bay their permits are only for landing at Ka'awaloa. Even if you take the permits away they are still going to come down that we should have a permit to operate from the pier. We should wait on the permits until we satisfy the archaeological inventory is preserved and documented before we let people go in and defecate on these areas. Mr. Leslie suggested having volunteer docents. They knew the user fees were under reported and the Board knows that. He can't feel sympathy for these businesses when they can't be responsible to the State. Closing Kealakekua is opening a can of worms, but that what matters is the desecration at Ka'awaloa. The Fair Wind used to carry 50 passengers per boat. Today they carry 150 passengers and there is another boat they have that takes the mooring when the other boat is gone. The original plan in 2005 was no one was to ride kayaks, only Hawaiian canoe.

Uncle Joe testified that he lived at Kona for 20 years before moving back to Honolulu and asked whether we knew the meaning of the proper names of the area, the name of the last ruling chief of Kona where he related his ancestors from the area. It disappoints him to see all the 'opala (rubbish). He showed the Board members some pictures from the 4th of July of the 16 people on the tour that Tyler Madoff was never found. One photo shows 3 people on the papa (ledge) and the next photo shows them gone. One photo shows how big the wave was that day and the next photo shows 3 people in the water where one person, Tyler Madoff was under water. A person on the boat got 2 of the 3, not Tyler Madoff. Uncle Joe said that people should not be allowed to come down that pathway because it's for the God's of the Hawaiian people during makahiki. To allow the kayakers to go from Napo'opo'o to Ka'awaloa to kukae (defecate) is not righteous that they should learn the history. Uncle Joe is afraid someone would go down the trail and dig in the burial cave.

Mr. Kalua disputed the photos presented and questioned when they were taken relating that there were no boats out there that day and what happened because he was there.

Mr. Quinn clarified on what was discussed earlier of having too many kayaks at Ka'awaloa the concept was and still remains to stagger the commercial tours so that not everybody is there at the same time. This was a schedule that worked out at the time of the 4 permits. We will need to restructure that so that not all the commercial tours are there at the same that staff recognizes the physical and it's practical to limit landing should be at Ka'awaloa.

Mr. Quinn reported on Kawainui Marsh where the use was in place when the property was purchased and remained there when it came to State Parks. He pointed out Quarry Road on the back side of Kawainui Marsh which is mostly flatlands while in ancient times would be fast lands. Most is under the jurisdiction of State Parks. This area was used under an RP for raising cattle and horses, but is inconsistent with the Division moving forward for the Master Plan use here. A number of Hawaiian organizations are interested in activities there and a cultural type center, but that is in flux. At this point it needs to be consistent with the Land and Water Conservation Fund intent to purchase the land or the future issuance and is something staff recommends is not renewed at the end of this calendar year.

Joan Cash distributed her written testimony and testified from it and related her family's horse stable history at Kawainui Marsh for over 40 years and that they acquired a lease from Kaneohe Ranch in 1964. They always knew the property was not theirs, but to respect it as though it was. She related how her family has been the eyes and ears of the Marsh and assisted many times during car accidents and calling police when needed. They would be considered caretakers in the LWCA Handbook. They were told to vacate by December 31, but she asked for an extension of 1 more year because of the hardships they experienced this year – husband was in the hospital and savings depleted due to hospital bills, but their taxes and insurance are paid up for the coming year. There is a lot they need to do to bring everything back to its natural state. Although, they were cited for different things there is an answer that justifies it. Mrs. Cash has been involved with the Master Plan team and when they were told no horses or cattle they turned to the cultural and related the cultural knowledge of a woman's group.

Member Morgan asked that as landowners it is understood and would you characterize the permittees as good stewards of the land with a big clean up in December and costs associated with that. Mr. Quinn confirmed that there will be costs and explained the removal of ranch type structures. Member Morgan asked whether they could do bench marks in doing a clean-up. Would something like that be possible? Mr. Quinn acknowledged that it is possible, but the waste disposal (cess pool) has to be rid of. This is a non-action item and should the Board ask staff to come back at the next meeting which they will with the routine renewals and should there be a desire of the Board to reconsider to put into a submittal than they will.

Member Edlao said that we should work with the permittees to do some of the clean-up to minimize the cost to staff, set a timetable and come back with a plan to reconsider.

Member Pacheco pointed out that revocable permits (RP) are month-to-month permits and don't extend to a year.

Item J-1 Petition of Gordon Leslie for the Issuance of a Regular Mooring Permit for Kealakekua Bay, Hawaii

Written testimonies from Edward Teixeira, Hana Like, Inc. and Joseph Spencer were distributed to the Board.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) related some history on item J-1 where DOBOR continued issuing the same conditions on the mooring permit as the special use permit. In 2007, an attorney called asking to transfer the corporation into another individual's name as well as all use permits. Staff said they couldn't because that would be in violation of the Hawaii Administrative Rules (HAR) and there was an opinion written by one of our Deputy Attorney Generals (AG) regarding the transfer of fishing corporations. May 9, 2012, staff received documentation that Hana Like, Inc. was transferred into Gordon Leslie's name and became the owner of the Hana Like corporation and staff informed them that they cannot allow this to transfer because it's in violation of the rules. Staff gave Charles Leslie who was running the business an opportunity to change everything back to what it was in the mooring permit. Charles Leslie e-mailed that he had transferred out his interest and is no longer a part of it and doesn't want anything to do with it any more. Staff cancelled the regular mooring permit to Hana Like, Inc. for the commercial fishing vessels moored at Kealakekua Bay. There really hasn't been any commercial fishing vessels moored at or actively run out of the Bay either. The last they saw an outrigger canoe was moored in the Bay, but he doesn't believe it belonged to this corporation and belonged to another individual. In light of recent events the Department is transferring the jurisdiction of Kealakekua Bay back to State Park's jurisdiction and would be more prudent for State Parks to come back before you if they deem another special use permit should be issued to this corporation for commercial fishing. Staff is asking to uphold our decision to cancel the mooring permit for Hana Like, Inc. because they transferred the business.

In conversations between Member Morgan and Mr. Underwood on whether there is no commercial fishing with this boat. There is no boat in the Bay and that there is a mooring, but no boat attached to it. If they lost the mooring what would happen to the boat which is the hard part with the way the Boating rules are written that regular mooring permits are non-transferable and once they are lost they go to the next person on the wait list. We do not have a wait list for Kealakekua Bay because this was a special permit that was issued. Because the jurisdiction is transferring the petitioner could come back and work with State Parks with what is going on in the Bay to determine whether another mooring should be offered for there.

In discussions between Member Pacheco and Mr. Underwood on whether there are any other moorings on the Napo'opo'o side of the Bay besides Fair Wind. Those are the only 2 authorized permanently in the Bay.

It was questioned by Member Gon whether in 2007 action to transferring the mooring permit was denied was it staff or Board action and Mr. Underwood said it was staff action.

Member Pacheco pointed out that we didn't have a copy of the cancelled mooring permit, but there is the SUP that the conditions will roll over for 2 fishing vessels and Mr. Underwood acknowledged that is correct. There was more discussions between Member Pacheco and Mr. Underwood that in the second paragraph of the submittal that last sentence where you are quoting the word "permittee" which Member Pacheco read an heir of the permittee that if he died it would be bequeath to his son. What does it mean by heir? If you were the permittee and

passed it would only go to your wife decreed in a will or your personal partner. Since the EO is going over DOBOR will no longer administer that mooring and would that be the same with the other mooring which it is. DOBOR will be working closely with State Parks on the management of that and will give State Parks the conditions in their permits to mirror. Staff will have to bring the Fair Wind back to the Board too. State Parks would have to do a SUP which is correct.

It was asked by Member Gon that by the advice of the Attorney General's office we cannot legally transfer the permit which is correct per Mr. Underwood who said the statute needs to be amended. Staff put it through, but it never made it out of committee at the Legislature.

Member Pacheco related a similar situation with a family at Honokahau where the father was ill and wanted to transfer to the son and asked that was when the opinion came out. Mr. Underwood said that people were forming these fishing corporations as a means to selling their slips. They weren't engaged in fishing at all and staff had complaints why they are allowing this to happen and that was when they got the formal opinion. The rules allow for a one time change from a personal to a business entity. A corporation to protect themselves, but doesn't allow it to continually change after that for boating.

Gordon Leslie apologized that he wasn't able to get his hard copy of testimonies to the Board until now. Setting up for his video presentation.

Bob Masuda testified that he is a friend of the Leslie family. Gordon Leslie is here for the continuance of the SUP that State Parks rules and DOBOR's are 2 different things. The Board should deal with only the SUP and not the administrative rules today. The regulations have to do with commercial harbors like Honokahau and not with this culturally significant place. There was some discussions between Member Pacheco and Mr. Masuda that the Board member agrees with him, but one of the things they are charged as Board members is that we have rules and statutes and cannot contradict those that the solution may not be the right solution, but we have rules...The Board has the authority to grant SUPs having done so in the past and to continue that. It has nothing to do with the DOBOR regulations that DOBOR is quoted. The Board member is fine with the permittee coming back for an SUP, but what is on our agenda today is DOBOR's decision to uphold the transfer from. The DOBOR mooring permit can't happen because it is a separate issue which is what Mr. Masuda is saying. A SUP is one issue and one jurisdiction and the DOBOR regulation quoted is another issue in another jurisdiction. Member Morgan pointed out that will come back to the Board in a different submittal. Mr. Masuda said the Board can make that recommendation for staff to come back for the SUP. Have the mooring continue because the rules have a different set of circumstances.

Mr. Leslie said that the video is a condensed version of the packet before you and he started the video presentation. In the video, this is not just a DOBOR mooring permit, but a continual mooring system since 1911 where the presentation related Mr. Leslie's family history and background to Kealakekua Bay. The mooring system was created by his grandfather and the family fishing business changed to be fishers of men. The video mentioned the CDUA proposal, DOBOR's suggestion, the Adhoc Committee, creating the management plan for the area, the reconstruction and RP at Ka'awaloa and the Department's changes to the plan. There were

numerous operators in Kealakekua Bay. His team pleads for the Board to continue this process and wants some dialogue with staff.

Mr. Masuda introduced himself as the former First Deputy for DLNR having worked on the issues concerning the Kealakekua area and became a friend of Gordon Leslie. Mr. Leslie was one of the most responsible, culturally active community leaders that engaged staff to improve public safety, cleanliness and atmosphere of the area and Mr. Leslie coordinated with the community elders encouraging their participation in public hearings for the planning of and protection of Kealakekua Bay and surrounding areas. Mr. Masuda is grateful for Mr. Leslie's unselfishly volunteering who loves Hawaii and can connect young people to nurture our environment to give us sustenance with the Hawaiian belief of stewardship. Mr. Masuda asked to support the continuation of the Leslie and Kaniau 'ohana to continue as responsible stewards with the aid of a continuing special use permit allowing of such vessel critical to their work and service.

Kila DeMello testified that she is from the village of Napo'opo'o and is part of the Leslie 'ohana. Other than the recommendation of staff, Hana Like was born as a family entity/corporation in 1979 noting that Gordon Leslie is an heir to Hana Like and the mooring belongs to Hana Like and it's all inter-related. She doesn't think you can apply your Western principles here saying there is no paperwork saying he is an heir, but he is an heir – it is a family corporation. It's the matter of the wording.

Member Pacheco said even if they were able to transfer the mooring permit that permit is for a fishing vessel and Ka'awaloa is not meant for a fishing vessel and is meant for a different purpose. If you wanted to have a legitimate permit to operate Ka'awaloa then you would need a different permit than the one Hana Like has. Ms. DeMello agreed and asked even with a new SUP, a new permit and somewhere in there they need to continue the legacy of the Kaniau/Leslie 'ohana because it's been 101 years that the same family has used the same mooring system. It shrank from 9 down to 2, but it's still part of the same system. It's a legacy and Native Hawaiian thing and shouldn't be allowed to drop by the wayside.

Member Gon said he appreciated that and pointed out that it not only includes heirs, but executors and administrators and wondered if any 'ohana considers themselves administrators of Hana Like. He sees the administrator as one possible mode of continuity of the legacy although the purpose of the SUP needs to be adjusted and a good opportunity to do that under State Parks. Ms. DeMello said Chuck was the administrator.

Mr. Leslie said on the transferability, from 2005 he did all the paperwork for the boat at Ka'awaloa and used to mark it commercial fishing. Two years ago he marked it commercial tours, but the district manager said your commercial fishing, but he said they only fish for the table and she checked it pleasure and he left it at that. Year later the district manager said you cannot transfer a pleasure boat and that is why they are here now. He explained the situation with that his brother felt up against the wall and he said do what you got to do. Chair Aila said it had more to do with the procedures under the DOBOR rules and the district manager had no other alternative, but to do that which brings us to the measure today which is to act on the DOBOR rules. You are asking us to consider under State Parks, right and Mr. Leslie

acknowledged that. He wasn't aware of the DOBOR rule verbage because they were under State Parks before, otherwise he would have looked into it.

Member Pacheco asked that he had the Ka'awaloa mooring since 2005, but it's not there now and is in dry dock. Mr. Leslie acknowledged that.

Uncle Joe related some history with Gordon Leslie on Sea Flight and Hokuleia. When we change the way we look at things affects the way we look at change. When you see there is no fish in the Bay does that mean there is no more fishing in the Bay? No, there is still fish in the Bay, but not as much as before. Sugar and Pineapple was under agriculture and taxed as such and not big business that these are things we need to consider when coming up with our rules and regulations. Consider your beneficiaries of Hawaii. Uncle Joe supports putting back the mooring.

Iwa Kalua testified that it would be wrong to take away their mooring because of the family history that it brings tears to his eyes that a family will lose their permit.

Coline Aiu testified that she is a hula person and not an ocean person, but her family is from Kailua-Kona and they spend a lot of time there that they know Gordon's family. The longevity of a practice really establishes its validity. Rules are important, but the most important because we call this home is we maintain the values, the system of regulation that our kupuna used. Not just the Hawaiian, but for others who came here recognize the excellence of it that they were willing to incorporate it and call Hawaii home. She enjoys the fish. Mr. Leslie is a hard worker and puts himself beyond that line which gets him into big trouble, but where there is a need, a life or where there is endangerment this man is first. This is a process and there is great responsibility, but there is great wisdom in the people who are here and the backgrounds you come from. Things will work out for the best.

Sparky Ewing testified that she is Gordon's classmate from Kona when her father was captain of the Captain Cook boat that took tourists from Kailua Bay to Kealakekua Bay. So much of what they have will be lost if we don't keep it good. Keep it safe for the next generation. Kona is a small place and everyone knows the Leslie 'ohana and this village would not be the same if not for this family. She thinks it prudent to allow this stewardship to continue.

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

12:05 PM EXECUTIVE SESSION

12:33 PM RECONVENED

Member Pacheco said that directed to the recommendation action that is before us about transfer of the mooring permit with our Deputy AG we have a strong opinion about that. The permit cannot be transferred. He moved to approve the recommendation. In light of the cultural and

traditional use of that mooring area we would like to see State Parks with Hana Like work on a solution to allow families to continue to use that mooring in whatever manner is appropriate or available under our rules and statutes. Member Gon seconded that.

Member Pacheco related it's between DOBOR and State Parks knowing that the boat is still in dry dock and asked how does temporary mooring permits work or is it feasible to issue one for that mooring or is it highly unusual. Mr. Underwood explained with the boating rules they could issue temporary mooring permit to vessels out there longer than the 3-day rule for 72 hours, but asked what are we issuing it for, just for a mooring? Member Pacheco said he sees that and said he will let his motion stand.

Member Gon said that his seconded of this makes it clear that he supports the Board's direction of the Division of State Parks to work with Hana Like towards a solution that maintains the legacy of the mooring there.

Member Goode asked approximately how long with State Parks with the EO finalizing? Mr. Quinn said that they wouldn't have the authority to issue until before the EO becomes executed and the permit would last as long as the EO is still with State Parks. The pattern of the earlier ones for special use permits (SUP) along the same lines of a revocable permit (RP) which is not to exceed 1 year and they would not do much different in this case. The Chair summarized assuming the EO gets done by January 1, State Parks gets the jurisdiction back and asked is it possible for State Parks to come back with a submittal sometime in January? Mr. Quinn said with a submittal he wouldn't know how fast they can get a permit executed. Chair Aila said a submittal or SUP and Mr. Quinn said yes, I think we can.

Steve Soares said but the vessel could still be banned. Member Gon said that the vessel is in dry dock. Chair Aila said that the vessel will not be banned. Only vessels that don't have permits would be banned during that time per the proposed rules.

Chair Aila asked whether they will be finished with dry dock before January. Mr. Leslie said he can wait. Member Goode said that his question was that he would want to work it out with you right away so that when your boat is ready. Mr. Leslie said he is ready, but he does have some commitment burials this year and he was going to ask the Board if he could get a temporary permit to be on mooring. If in the event everyone says "no" then he will pull it out and that when he hauled out in March he didn't know he wasn't going to go back. If can, can, no can, no can. Chair Aila said that Boating Division has jurisdiction and would be willing through some temporary mooring permit or some miscellaneous permit because we have the ability to do so to take care of those commitments to people to scatter ashes.

Member Pacheco said he didn't want to box State Parks into any type of SUP or anything like that. We take a look at it and the whole context of everything that is going on there and do what is right for the resource. Chair Aila said that the Board is clear in the motion in the cultural legacy in this part of the history of Kealakekua.

All voted in favor of the motion.

Unanimously approved as submitted (Pacheco, Gon)

Item D-9 Issuance of Direct Lease to Hawaiian Electric Company for Electrical Substation Purposes, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-17: Portion of 110.

Russell Tsuji, Administrator for the Land Division explained that this originally started as a request to purchase lands out at Kapolei, but when the State sells fee simple there are a lot of hurdles prior with Legislative requirement with majority approval and he did talk to them about a lease and learned the reason they want to build this substation is for a DHHL (Department of Hawaiian Homes Land) project. Under our Statute they are allowed to get a direct lease for a nominal consideration which is before the Board. The HECO representative is here. Also, there is a provision at some point in the future where the substation will be used for other than a government project staff will revisit the rent and maybe prorate it for the amount of the percentage that they serve the private landowner.

Unanimously approved as submitted (Morgan, Gon)

Item D-7 Retain Prior Board Action of May 25, 2012, Agenda Item D-13, Acquisition of Private Lands and Set Aside to Division of Forestry and Wildlife for addition to the Hamakua Wildlife Sanctuary at Kailua, Ko'olaupoko, O'ahu, Tax Map Key (1) 4 -2-003:017, by Denying a Request by Grantor to Revise the Current Deed Document Form.

Written testimony from Kaneohe Ranch was distributed to the Board.

Mr. Tsuji conveyed staff's recommendation is to stay with the prior Board approval referring to page 1 which itemizes 3 things that Kaneohe Ranch requested the Board consider. Staff is looking out for the best interest of the State citing the funding source is a combination of about \$900,000 Federal and \$300,000 State, the appraised value was about \$1.4 million which is fair market value. He had a concern with the environmental indemnification language which is limited in the deed which Kaneohe Ranch is concerned about. It is pasture land.

Member Morgan asked that the recommendation is to deny it and whether the State had granted these in the past to other entities where they accepted a quit claim deed and have they done as requested here. Mr. Tsuji said he can't recall one that granted these 3 requests that there might have been some modification of language in the past, but are worked out with staff and the Attorney General's office. Here it's the title portion general warranty deed and the complete deletion of certain conditions, but they've never done that. The indemnification is caused by the grantor.

Member Gon asked if there is any likelihood to conduct further environmental assessment. Mr. Tsuji said the provision they are referring to is the lender may require it, but that may not happen. The indemnification is something they discover later.

There was some discussion between Member Morgan and Mr. Tsuji over what the appraisal amount was. That there was some discount.

Mitch D'Oliet representing Hamakua Wildlife Sanctuary testified saying that they are trying to transfer 65 acres to the State to create a reserve for the people of Hawaii and he described the area. DOFAW has done a great job carrying out the plan where there are endangered species in the marsh that wasn't there 10 to 15 years ago. He thinks he is getting 1.167 million and looking at the transaction they are paying all closing costs, for all the title work and they are buying title insurance for the State of Hawaii. Their trustees warranty deed goes back to 1916 which covers most of the time where there was exposure and since 1971 haven't done anything different from the County side. On the environmental side, they could sell more for residential purposes on one side of the property and commercial on the other side of the property, but that is not what this is about. It is creating an asset for the State that it is possible that the Castle Foundation could invest some of the enhancements for State owned property. They don't see after paying for Phase 1, Phase 2 has to do with water and soil testing and ensure there was no contamination and do the Department of Health action on whether there is a need for an environmental indemnification if the State says so. Mr. D'Oliet doesn't have the authority to give the property to the State that you could go through a million dollars fast if there was significant environmental work which is their concern. Some examples are the downtown post office, the Aiea Library land and Kapolei lands from Campbell the State didn't get waived the environmental indemnification requirement. In a recent deed of a Kawainui lot from the City, the State accepted a limited warranty deed that they didn't think they are asking the Board to do something for the first time that they thought it was something consistent with our practice that the State had done before. They look forward to working with the State to get this done.

Carl Schlack testified regarding the indemnification Kaneohe Ranch is not being released from any hazardous materials liability that they have because they own the property and are not asking for a release. For something done on the property that would be liable under State law and Federal law.

Member Goode asked whether there is a purchase of sale agreement or limited warranty deed. Mr. Schlack said they were attached at the time. Kaneohe Ranch was given a limited warranty deed.

Member Pacheco asked to describe the difference between a warranty deed and limited warranty deed. Mr. Schlack explained in a limited warranty deed what the grantor is saying to the grantee is I will be responsible in the chain of title in anything I did while I own the property which goes back to 1960. The title insurance component is the State is protected while Kaneohe Ranch owned the property. Kaneohe Ranch is buying the State's title insurance policy which covers any other risk that you would have beyond what they did on the property. Mr. D'Oliet said they are paying for title insurance for the State. Mr. Schlack said they feel there is no potential risk or liability to the State given those 2 factors.

Member Morgan said referring to 1960 and deeds in the 1800s that it looks like the limited warranty deed covers everything. He asked whether Mr. D'Oliet has the background on the

things Mr. D'Oliet cited and he said he didn't, but spoke to former DLNR staff and AGs (attorney general). Staff gave him the transactions, but didn't have the background and why.

Member Goode asked if there was something our Deputy AG had on anything on risk to the State in accepting their suggested changes. Deputy Attorney General Pam Matsukawa said they are purchasing title insurance for the State for the protection that they are talking about. She hasn't been involved in this transaction, but what they are offering is reasonable. If she were to look at it she would consider it. On the title...we have to look at exactly what language they are proposing with regard to indemnification. Mr. D'Oliet noted that they are not asking to be released from their State and Federal liability or indemnification by you like in a commercial transaction. Ms. Matsukawa said that is something they can propose and put it into the lease. Mr. D'Oliet said they would be happy to talk to someone about that.

Mr. Tsuji said as suggested the responsible regulatory agency and this Board should be aware that the regulatory agencies have come against this Board and gave examples of DOH, EPA. By them saying they are complying with the Federal and the regulatory agencies has nothing to do with the Land Board.

Chair Aila asked what responsibilities they would have under the Federal and State statutes. Would we be able to hold them accountable under State or Federal law? Mr. Tsuji said no, not on the EPA and the regulatory environmental laws. Whatever is law is the law.

Member Morgan said he understands Mr. Tsuji's point is to protect the State. On the other side the State is adequately protected through the title insurance policy, Phase 1, Phase 2 and the law on all 3 points. It's a good project and we would want to encourage this type of transaction. If we make it onerous for organizations to get into something like this we might not occur as much. This is a good thing for the community and to me it's moderately ok, just scrubland, but it could turn into something better and there is a great plan for it. But, if we put all kinds of roadblocks when it seems to be adequate protection for the State he is inclined to accept Kaneohe Ranch's requests. Ms. Matsukawa recommended proposing language that does come up with language to be proposed to the State where they will not being released from this transaction, their environmental responsibility under the law. Mr. D'Oliet said that is fine.

Member Pacheco asked what you are releasing in terms of the indemnification. Mr. Tsuji said that is an affirmative obligation to step in and take care of it.

Member Gon wondered whether they should make it more explicit in their Board motion and asked our Deputy AG to repeat what her desire was. Ms. Matsukawa said that there should be language in the deed clearly indicating Kaneohe Ranch is not being release from any of its responsibilities, obligations and liabilities in Federal and State environmental laws. Mr. D'Oliet said he was fine with that.

Member Morgan moved to accept #1 which is to retain private lands, delete staff's recommendation #2 and adopt what the Deputy AG just said for #3.

Mr. Tsuji asked the Deputy AG to be clear she meant not just the environmental regulatory laws because he doesn't want it to be just the regulatory scheme of it claiming tort action or something. A civil action is not a regulatory matter, but a civil action. We are not releasing them. Ms. Matsukawa agreed.

Member Morgan said he didn't think Kaneohe Ranch would escape responsibility because of either they or their tenants are responsible for. It's toward that lack of control to someone that wants to say to do another Phase 1 or whatever. Ms. Matsukawa said the idea is they are not being released of any laws that apply to them now. The exact language will have to be reviewed by the AG's office.

Member Gon seconded Member Morgan's motion and was voted in favor.

The Board:

Approved as amended. The Board agreed to the changes requested by the seller/grantor, but upon the advice of counsel, made clear it was not waiving and was reserving any and all claims it now has or may have in the future related to the subject land to be acquired as against anyone in the world including the seller/grantor. Therefore, Recommendation No. 2 was replaced with:

2. The seller/grantor and the State, with advice of counsel shall mutually agree on the appropriate language to be inserted into the Deed (any other closing document deemed appropriate) that reserves all claims in favor of the State/grantee as against anyone or entity in the world related to the land to be acquired.

Unanimously approved as amended (Morgan, Gon)

Item D-11 Re-submittal: Grant of Perpetual, Non-Exclusive Easement to Ernest J. Freitas, Jr., Trustee Under Revocable Trust Declaration dated December 20, 1990, for Access and Utility Purposes, Waimea, South Kohala, Hawaii, Tax Map Key: (3) 6-4-030: Portion of 014.

Written testimony from Ernest Freitas was distributed to the Board members.

Mr. Tsuji said this is regarding a request for an easement over the Hamakua Ditch that there is an existing bridge and can't be used currently. Mr. Freitas asked for an additional easement and Mr. Tsuji related what staff said that the existing 35 year term from Department of Agriculture (DOA) if a perpetual easement was granted at some point they will cancel that 35 year term. The requirements are standard, but the one Mr. Tsuji wasn't sure about was to ensure that the perpetual easement holder actually owns the property. He referred to recommendation C. and read that a bridge or highway built across the Ditch will first be reviewed by DOA prior to the work. Normally, we would have the exact location of the bridge, but we don't have that here.

The Board members and Mr. Tsuji commented that they wish Mr. Freitas was here to explain his written testimony. Mr. Tsuji thought he was complaining about the requirements. Mr. Freitas is

the one asking them for the easement and Mr. Freitas has to pay for it. Member Pacheco read he asked that a one-time payment be waived or dismissed...Mr. Tsuji said and he added the survey and where it's going to go. Member Pacheco said he says that he doesn't need the title because the land is his and Mr. Tsuji agreed that he thought that too. But, they disagree with that because if that is the case then they wouldn't get an easement from them. Member Gon pointed out he requested the easement. Mr. Tsuji said yes and clearly he wants the perpetual. But, DOA's lease is 35 years and they intend to cancel it.

Unanimously approved as submitted (Pacheco, Goode)

Item D-10 Approval in Principle for Acquisition of Private Lands and Set Aside to County of Maui for Expansion of Maui Veterans Cemetery, Makawao, Island of Maui, Tax Map Key: (2) 2-4-002: por.007.

Written testimony from Paul Laub – Maui County Veterans Council was distributed to the Board.

Member Goode recused himself from item D-10 and left the room.

Mr. Tsuji briefed the Board some background on item D-10 for 10 acres on Maui assisting the Department of Defense (DOD) and Department of Accounting and General Services (DAGS) in acquiring these lands for an expansion of the existing Maui Veterans Cemetery. The Department is buying it from an individual that has a contract, but doesn't have title. The idea was he was to subdivide and take out those 10 acres. The subdivision is pending with the County right now. Mr. Tsuji added the Department will assist the applicant with the applicant requirements and appropriate to procure. DOD and DAGS representatives are here.

Member Gon said that an approval in principle is something that we will unlikely oppose.

Member Edlao approved as amended and Member Gon seconded it. All voted in favor.

The Board:

Approved as amended by staff at the meeting. Recommendation No. 3 was added as follows:

3. Authorize the department to assist the Applicant with the Requirements noted above, and if necessary and appropriate the actual procurement of one or more of the Requirements.

Unanimously approved as submitted (Edlao, Gon)

Item D-8 Amend Prior Board Action of March 24, 1988, Item F-9, Acquisition of Land for Kukaniloko Birth Site Situate at Wahiawa, Oahu, TMK: (1) 7-1-001:004, as previously amended, by Changing the Recipient Agency of Set Aside by Governor's Executive Order from Division of State Parks to Office of Hawaiian Affairs.

Mr. Tsuji conveyed that the Board previous approved an EO (executive order) to State Parks and OHA (Office of Hawaiian Affairs) was willing to manage it and all they ask is the EO be amended to OHA. The Department hasn't acquired the property yet and they are working with Land Court and all the lawyers to get everything documented appropriately before they can acquire it.

Pua Kaulukukui representing Office of Hawaiian Affairs (OHA) testified in support where Member Gon asked whether she agreed to the recommendations and she said it is a special place and expects it comes with conditions.

Unanimously approved as submitted (Gon, Morgan)

Item E-2 Issuance of Revocable Permit to Young Men's Christian Association for Outdoor Recreation Purposes, Kaena Point State Park Reserve, Kaena, Waialua, Oahu, Tax Map Key: (1) 6-9-004:005

Written testimony from Michael Chinaka – Y.M.C.A. was distributed to the Board.

Mr. Quinn conveyed item E-2 that this is the area adjacent to Camp Erdman, Kaena Point that this is the property just past Camp Erdman on the makai side of the road heading out to Kaena Point. There was RPs in earlier years when the area was under the Land Division, then put under Executive Order (EO) to State Parks, then RP to the YMCA which was not renewed that our Land manager discovered and a key item is the amount of the RP which is not spelled out in this. Staff asked that the Chair work with the permittee.

Michael Chinaka testified that he is Vice-President of the YMCA, Chief Financial Officer introducing Tom Rapine, Branch Executive who runs the camp. Mr. Chinaka pointed out that the YMCA for the past 22 years has been a responsible steward of the property and complied to all the terms of the permit. This area acts as a buffer zone between the beach and the road that has no permanent structures and on occasion they plant native foliage in that area in coordination with the University of Hawaii. Mr. Chinaka said a rent of \$595.00 was offered which is a significant increase from the \$49.00 they were paying which is less than the assessed value of \$1,800.00. Camp Erdman has been in net deficit and is projected as such this year and next. It is costly to run a camp and will be difficult to balance the budget relating these are older structures, open to the environment and nothing lasts. They asked for a more equitable amount of \$150.00 per month be considered.

Member Morgan asked what happens to the Kaena Point side of the property. Mr. Quinn clarified the yellow portion of the map and described the neighboring properties that the YMCA only uses the property adjacent to theirs. Much of it is used as a public beach park. Member Gon pointed out that there is an archery range, exercise course...Mr. Chinaka said they weren't sure where the boundary was.

Member Morgan asked what the alternative uses were for the area and Mr. Quinn said that State Parks has no plans for alternative uses for the area. This provides managed public use of the

land and the rest is open to the public. Member Morgan said having the YMCA there as a tenant is a good thing.

Member Morgan made a motion to approve staff's recommendation with a rent of \$150.00 per month which Mr. Chinaka agreed to. Member Gon seconded that. All voted in favor.

The Board

Amended the rent amount from \$49.00 per month to \$150.00 per month. Otherwise, staff's recommendation was approved as submitted.

Unanimously approved as amended (Morgan, Gon)

Item I-1 Request Approval to Authorize the Chairperson to Issue, Execute and Extend a \$103,454.00 Contract on Behalf of the Japanese Cultural Center of Hawai'i to Create and Develop a Teacher's Guide and Curriculum Materials to Accompany the Film Documentary, The 1800: The Untold Story of the Internment of Japanese in Hawai'i, for Distribution to Hawai'i Public and Private High Schools

Randolph Lee representing SHPD (State Historic Preservation Division) said that staff requests approval of item I-1 where this allows staff to enter into a contract with the Japanese Cultural Center to develop educational materials in support of a documentary film that already has been made regarding the internment of Japanese in Hawaii to be used in Hawaii's high schools.

Unanimously approved as submitted (Gon, Morgan)

Item D-4 Clarification of On-Site and Off-Site Conditions Related to the Sale of Lease at Public Auction for Pasture Purposes Amended and Approved by the Board Action of April 13, 2012, Item D-5, Waiohuli-Keokea, Kula, Makawao, Maui, Tax Map Key: (2) 2-2-004:001, 002, 029, 031, 066, and (2) 2-2-005: 047 & 053.

Mr. Tsuji said to make it clear on item D-4 that property is being leased out as is. No warranties. He had no changes for the rest of the items.

Item D-1 Issuance of Grant of Perpetual, Non-Exclusive Easement to Peter Sperry for Access and Utility Purposes, Por. Kapaa Rice and Kula Lots, Kawaihau, Kapaa, Kauai, Tax Map Key: (4) 4-5-005:por. of 012.

Item D-2 Grant of Perpetual, Non-Exclusive Easement to the Department of Accounting and General Services for Waterline Purposes, Keauhou 1st, North Kona, Hawaii, Tax Map Key: 3rd/7-8-07: portion of parcel 28 with Issuance of an Immediate Right-of-Entry for Construction and Management Purposes.

Item D-3 Issuance of Right-of-Entry Permit to MC&A Inc. to Conduct a One Day Kayak Race Beach Activity Event for the Brocade Company on February 7, 2013, at Wailea Beach, Maui, Hawaii: Tax Map Key:(2) 2-1-023: seaward of 007.

Item D-5 Assessment of a \$500.00 Fine Against Steven N. Hirsch, Trustee of the Aleiki Nominee Trust dated August 13, 2001, for Concrete Rock Wall / Revetment, Stairway, and Yard Encroachment; Grant of Term, Non-Exclusive Easement to the Steven N. Hirsch, Trustee of the Aleiki Nominee Trust dated August 13, 2001, for a Concrete Rock Wall / Revetment, Stairway, and Yard Encroachment Purposes, and Assess Administrative Costs of \$240.00; Kuau, Makawao, Paia, Maui, Tax Map Key: (2) 2-6-012: Seaward of 026.

Item D-6 Request for Deferred Payment of Rent under General Lease No. S-5488; New Town and Country Stables, Inc., Lessee; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-008:059.

Unanimously approved as submitted (Pacheco, Morgan)

Item L-1 Request Authorization to Select Consultants and Authorize the Chairperson to Negotiate and Execute Agreements with Consultants for a Makaha Valley Flood Study on Oahu, as Authorized by Act 283, SLH 2012

Item L-2 Approval to Amend Construction Contract No. 54554-Job No. F00CF32A, Individual Wastewater System Improvements at Iao Valley State Monument, Wailuku, Maui, Hawaii

Dickie Lee representing Engineering Division said he had no changes to items L-1 and L-2.

Unanimously approved as submitted (Edlao, Gon)

Item M-1 Issuance of a Concession Agreement for the Management and Operation of the Automobile Parking Facilities at Kahului Airport and Kapalua-West Maui Airport, Maui, Hawaii

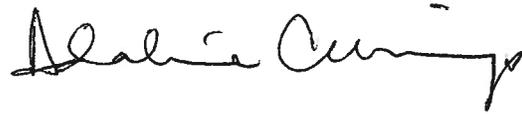
Item M-2 Issuance of a Revocable Permit to Aloha Agricultural Consultants, Inc. dba Niu Nursery, Ke'ehi Industrial Lots, Kalihi-Kai, Honolulu, Oahu, Tax Map Key: (1) 1-2-23:73 and portion of 33.

Unanimously approved as submitted (Morgan, Gon)

Adjourned

There being no further business, Chairperson Aila adjourned the meeting at 1:30 p.m. Recording(s) of the meeting and all written testimonies 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