

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

DATE: FRIDAY, APRIL 26, 2013
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 9:06 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Rob Pacheco
Jerry Edlao

David Goode
John Morgan
Dr. Sam Gon

STAFF

Dan Quinn/PARKS
Russell Tsuji/LAND
William Tam/DAR

Sam Lemmo/OCCL
Ed Underwood/DOBOR

OTHERS

Julie China, Deputy Attorney General
Nanette Napoleon: E-1
Lela Hubbard: E-1
Kealii Makekai: E-1
Claire Steele: E-1
Chipper Wichman: K-2
Bill Spencer: K-3
Tom Kapp: K-3
Ewa Tolleson: E-3
Phil Hauret: D-11

William Maioho: E-1
Kai Markell/OHA: E-1
Lancelot Kaili Lincoln: E-1
Kaanohi Kaleikini: E-1
Dana Naone Hall: E-1
Hartwell Blake: K-2
Carl Bernhardt: K-3
Frank Carpenter: E-3
Geoff Hand: E-3

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

Item A-1 March 22, 2013 Minutes

April 12, 2013, 2013 Minutes

Item E-1 Request for Authorization for the Construction and Use of a Burial Tomb on the Grounds of the Royal Mausoleum State Monument for Abigail K. Kawananakoa and Delegation of Authority to the Chairperson to Issue a Construction Right-of-Entry for said Tomb at Mauna 'Ala, Kawananakoa, Nu'uuanu Valley, O'ahu, TMK: (1) 2-2-021:012 (por.)

Dan Quinn representing Division of State Parks (SP) conveyed some background on item E-1 and shared whose remains rest in each of the tombs (attached in Exhibit C1) and summarized the Discussion and Chapter 343 considerations. Mr. Quinn disclosed Ms. Kawananakoa's request of the costs of design, engineering and construction as well as maintenance costs in perpetuity will be borne by her. Mr. Quinn cited the proposed outline in Exhibit B envisioning a new tomb mirroring the existing Wyllie Tomb in appearance and location. Upon entering the grounds, the Wyllie Tomb (left) on mauka side and new tomb proposed (right), or makai side. Exhibit B included renderings, a site plan and size comparisons of various tombs and photos. Mr. Quinn recommended the Board declare the project exempt from Chapter 343 and authorize construction of the burial tomb with a construction right-of-entry permit for the improvements. Projects undertaken to date at Mauna 'Ala in partnership with Hawai'i Maoli, Hawaiian Civic Clubs, and the Ali'i Trust have been limited to replacing, restoring, or renovating existing features. This proposal is different as it introduces new element to the grounds.

Chair Aila had William John Kai'ehe Maioho testify to share his valuable thought process of his Hawaiian cultural and Kahu perspective.

Mr. Maioho aka "Bill" or "Kahu", a curator of Mauna 'Ala, came forward to testify and shared some history of Mauna 'Ala and his cultural family tradition as Kahu. In 1946, his grandfather was appointed as Kahu and his mother was also Kahu for 28 years. He shared his family's genealogy of the two high Chiefs named Hoapili and Ho'olulu who were brothers, chosen by Kamehameha to care for his iwi. Mr. Maioho's ancestors descend from the younger Chief Ho'olulu. In 1947, the gates were opened to the public and in 1953 was the last burial at Mauna 'Ala. During the late 1970's, his mother predicted that Abigail K. Kawananakoa would want to be buried at Mauna 'Ala and when the Chair requested to see the Kahu about the subject, the Kahu was thrilled by his mother's prediction. The Kahu shared Ms. Kawananakoa's historical lineage and that of her grandmother who adopted her which then made her become the senior line of the family genealogy today. With her adoption, her grandmother's daughter (Ms. Kawananakoa's biological mother) became her sister. Ms. Kawananakoa's uncle was David Kalakaua Kawananakoa (biological mother's brother), who was also of the blood line of Prince David and Princess Abigail. Being adopted by her grandmother (legal mother), gave her inheritance of double mana (power) which gave her the right to request being buried at Mauna 'Ala because her grandparents (parents by adoption) and also uncle (brother by adoption) were also buried there at Mauna 'Ala. The Kahu pointed out that Ms. Kawananakoa is a descendant of Kaumuali'i, an Ali'inui of Kaua'i whose grandchildren were Queen Kapi'olani, Kekaulike, and Po'omaikelani. The distinction of being a descendant of Kaumuali'i, an Ali'i bloodline, and

Queen Kapi'olani, as Queen Counselor and descendant of Kaumuali'i, carried the mana. The Kahu supports Ms. Kawananakoa's request to be buried with her family at Mauna 'Ala.

The Board Members thanked the Kahu for sharing his perspective and kuleana. Mr. Quinn felt that it was appropriate for the Kahu to speak with the Board Members to express and share his experience and knowledge which is why Mr. Quinn did not include the Kahu in the submittal, but rather have the Kahu explain everything in person.

Member Pacheco was concerned with the lack of procedure for future internments and the government rules at Mauna 'Ala. The Kahu said hopefully there won't be any future internments. The Kahu was uncertain of the modern world's rules being applied to the former ali'i at Mauna 'Ala and the rules interfering with Hawaii's Sovereign State because Mauna 'Ala is the only recognized Sovereign aina (land) by the United States. He shared the history of Mauna 'Ala and how Queen Lili'uokalani and Robert Wilcox submitted to the United States Congress a request for the removal of Mauna 'Ala's public domain. Unfortunately, both Queen Lili'uokalani and Robert Wilcox and down to Prince Kuhio did not create any government rules for Mauna 'Ala. On May 25, 1900, a resolution passed and on May 31, the United States passed the Organic Act. The Queen's vision was to remove Mauna 'Ala from the domain and have an appointed royal family overseer of Mauna 'Ala. The State of Hawaii cared for Mauna 'Ala's beautification and desired the Kahu's knowledge to be passed down to the public. The Kahu believed that in today's world, no one has the mana (power) to create the rules and regulations for Mauna 'Ala, but he can only encourage, share and live the culture on a daily basis.

Member Goode asked if designing a new tomb at Mauna 'Ala would be suitable for Ms. Kawananakoa to be buried in or perhaps she'd rather be buried with her family. The Kahu said the remains peacefully rest in each tomb. In past history, Mauna 'Ala was an ancient battleground for warriors and was concerned that iwi may be present during excavation for a new tomb site. He was also concerned whether it was proper for Ms. Kawananakoa to be buried alongside, below or above her family and the proper procedure of her burial since the Kalakaua tomb was full, but he felt positive about the archeologist from State Parks who oversees the projects that were held in Mauna 'Ala.

Member Gon wondered if there were other lineages besides Ms. Kawananakoa who would also be interested in being buried at Mauna 'Ala. The Kahu said that the only family would be those of the Kawananakoa family and that there was no direct link to the Kamehameha ruling family. The future generations in 20-30 years may have someone from the Kawananakoa family and he or she could again make a request. He feels certain that several family members of Ms. Kawananakoa won't make that request, and if rules and regulations were applied, Ms. Kawananakoa could create restrictions. He cannot predict the future, but can only hope for what is right.

Member Goode said he was curious of the Kahu's lineage and succession. The Kahu shared his personal background and that of his son, name Kai'ehekai after his grandfather. After the Kahu's brief marriage, his son was groomed by Kahu's mother. His desire was to retire in three years at the age of 70 and will continue to live at Mauna 'Ala with his son and share his succession of a Kahu lineage.

The Chair thanked the Kahu for his testimony. The Kahu felt honored to share his knowledge, experience and the history of Mauna 'Ala. Member Morgan said that it was rare to be impacted by an agenda item compared to the four years being on the Board. The Kahu again thanked the Board for their kind words.

Nanette Napoleon testified that the Kahu made a powerful testimony which affected her emotionally. She was not prepared to hear that. She read her written testimony and stated her strong opposition. She said there were no criteria for the admission of any new burials at Mauna 'Ala and DLNR do not have trained staff to determine genealogical lineage for each family and which family took precedence over another family. She also said that there were a number of Kawananakoa who were buried at O'ahu cemetery (nearby Mauna 'Ala) who's relatives may want to be removed and reburied at Mauna 'Ala. Ms. Napoleon read the Chapter 343 Environmental Assessment (EA) in the submittal of item E-1 and read that a Chapter 343 exemption does not address burials of human remains and the requested item was a separate issue and should be addressed carefully and fully. If the request was granted, the project would be open to scrutiny, debate and litigation in regards to the burial of human remains (equal to the Rail Project and Burials at Kawaiaha'o Cemetery). Ms. Napoleon recommended "no" to the Board upon request and recommended of draft rules and regulation that state no additional burials be allowed at Mauna 'Ala in perpetuity. The Kahu should mention if iwi were found during the construction phase of this project in the future. She requested to have the Kahu and community have more discussions on the item and asked the Board not to rush the approval of Ms. Kawananakoa's request. She received an email from a friend, related to the Wilcox family, who suggested that criteria for burial include limiting burial to descendants of members of the Chief's Children School who were the highest Ali'i children of the land trained by the missionaries to become leaders and kings and queens of Hawaii. Unfortunately, most of Chief's Children School descendants passed away at a young age without being married and no children, but shared that there will be a few that will come up to testify.

Member Gon said he appreciated Ms. Napoleon's testimony and supports the Hawaiian community's involvement in discussions regarding to Mauna 'Ala. Member Morgan said he has known Ms. Napoleon for a long time and thanked her for her passion and knowledge.

Member Pacheco asked Ms. Napoleon what is her desired outcome pertaining to her written testimony to create criteria to satisfy everyone. Ms. Napoleon wanted an open discussion and mentioned that she's been involved with many controversial Hawaiian issues for the last 25 years. She dealt with protestors in the past so she knows there will be many people who will come forward with their compelling arguments of wanting their relative to be buried at Mauna 'Ala, on the otherhand, she desires Mauna 'Ala to remain a Sovereign and peaceful land having no controversial issues.

Kai Markell, compliance manager of the Office of Hawaiian Affairs (OHA) testified concerning the lack of administrative rules governing the exercise of jurisdiction over Mauna 'Ala. In absence of those rules, there is a piecemeal process but without defined procedure on who can or can't be buried at Mauna 'Ala and requested being notified ASAP to begin a process. He said that there should be a process to advised DLNR pertaining to Mauna 'Ala as it qualifies as an impact to Native Hawaiian Burials (Chapter 6E, Hawaii Revised Statutes (HRS) jurisdiction of

the Oahu Island Burial Councils). He said the process should be as such: burial council is allowed to have public input, closed meetings and present genealogy information, descriptions of vocation of schools and for the Kahu to share his knowledge. The Supreme Court in Kapa'akai case should also mandate the State entity of the Board to be responsible for addressing Native Hawaiian Practices and for the Burial Councils to share testimonies and discussions in a cultural manner. Mr. Markell's last request was for the Kahu, OHA, and the Burial Council to work together to resolve the construction excavation process. Contrary to his position on the rules, Mr. Markwell shared his love for the Kahu and Kahu's mother and suggested others to be mindful of the Kahu's daily burdens.

The Chair said that the Board is the decision maker and has been tasked with applying Western laws to a Hawaiian concept. He pointed out that Mr. Markell's testimony is asking the Board to give more credence to the application in a Western context. The Chair asked for clarification if that was OHA's request.

Mr. Markell said that the Kahu is in the Western context of being employed with SP, housed and provided medical insurance by the State and the Land Board is the Kahu's employer. The Chair emphasized that the Kahu was there as a person with traditional and genealogical background and was culturally appropriate. The Chair asked Mr. Markell if it was proper in the Hawaiian concept to ask for administrative rules and procedures. Mr. Markell said that many Hawaiian lineages will be looking at their own genealogy and will come forward. In regards to rules, he disliked litigation, which would be OHA and Burial Council's responsibility. The Chair addressed the conflict he was dealing with between the Western contexts with the Hawaiian context. Both Mr. Markell and the Chair agreed that the decision was not easy and that they were all in this together.

Lela Hubbard testified and shared her family genealogy. She came from the family of Leoihi, raised to be wed to Kamehameha and of the highest ali'i order. Her great grandmother Jean Clark was the first lady in waiting imprisoned with the Queen. Ms. Clark wrote on her family tree daily so Ms. Hubbard has documented proof of her genealogy. Ms. Hubbard opposed Ms. Kawananakoa's request and said that it was not right and the monarchy was finished so no one should be able to decide on her request. She suggested that those of the highest rank, a group of 15, should make the decision and the family members who supported the monarchy. Ms. Hubbard said that Ms. Kawananakoa's family tree was dubbed by the Ali'i. Her grandmother said to never bow down to a Kawananakoa because the Hubbard's bloodline was higher than the Kawananakoa's bloodline. On the contrary, she said that Ms. Kawananakoa had done many great things for the Hawaiian community, but refused to speak in public because it would add dissention to the Hawaiian community which is currently divided.

Lancelot Kaili Lincoln testified and said that he did not know the Kahu or the Kahu's lineage, but he briefly heard the Kahu state that there were no more of the Kamehameha lineage descendants. Mr. Lincoln said that he was of Kalaniopuu descendant, Kamehameha's brother. He desired to be cremated and his ashes be spread at Mauna 'Ala and Makaha beach. He opposed Ms. Kawananakoa's request whether it was a Hawaiian or Western perspective. He disliked anyone being buried at Mauna 'Ala but suggested be buried someplace else. He hopes for the Board to make the right decision.

Kealii Makekahu testified in opposition of Ms. Kawananakoa's request. He spoke about the rights of honor and shared his family lineage with Makekaunu'uauu. He felt that he had no right to be buried at Mauna 'Ala, but only the individuals of greatness deserved to be buried there and asked where the line of greatness stopped. There are many opportunistic people asking for shortcuts. Although he opposed Ms. Kawananakoa's request, he respected Ms. Kawananakoa's grandmother who adopted her and cherished her as it was her real biological child.

Kaanohee Kaleikini testified in opposition of Ms. Kawananakoa's request. She did not agree to Ms. Kawananakoa's adoption because she knew Native Hawaiians who had a stronger bloodline than that of Ms. Kawananakoa. She related Ms. Kawananakoa's past when she caused problems concerning the Kawaihae cave and the desecration of Moepu. Ms. Kawananakoa had also filed a lawsuit against Kawaihae and wanted burials from the sewer line project at Kapiolani Park to be entombed there.

Member Edlao shared his concerns such as whether an Ali'i had the last words in regards to who should be buried at Mauna 'Ala or if a hanai (adopted child) from an Ali'i that might hold no water and if that was illegal. He believed that the Ali'i should have the last say. Ms. Kaleikini said that if you are adopted, you don't have the bloodline. Claire Steele wanted to clarify Member Edlao's last question. She said that Ms. Kawananakoa was born post contact and not born in the monarchy. Member Edlao appreciated her bringing clarity to his question.

Dana Naone Hall testified and opposed Ms. Kawananakoa's request and said that the decision should not be coming from the Board. She requested for a wider discussion and consultation from the Hawaiian community on who should be the decision makers and from DLNR's own in-house experts of cultural history branch staff, State Historic Preservation Division (SHPD) and the ethnography and archeology staff. She shared the legal timeline of Mauna 'Ala. In 1956, an opinion letter was approved by an acting attorney general under the territory of Hawaii as legal underpinning that jurisdiction of who should be buried at Mauna 'Ala had evolved to DLNR. The last burial at Mauna 'Ala was in 1953 which for 60 years has been considered a historical burial site. She asked many questions about Mauna 'Ala being a cemetery or a burial site and if the construction of the new tomb would make Mauna 'Ala's a subject to the jurisdiction of the Department of Health (DOH) and HRS which governs the mausoleums. She questioned if an Archeology Inventory Survey (AIS) is required for ground disturbance needed to install the concrete base of the tomb and if burials are identified if they will to be treated under HRS. She requested the Board to examine each question thoroughly. She felt disheartened with the staff report's recommendation for the project to be exempt from preparation of an EA. Ms. Hall stated the 21 specific exemptions in Class 3 contained references such as: construction of enclosure for parks, trash containers, park picnic tables, park stoves, cooking grills and barbeques. The subject requested did not pertain to the numbered classes of exemptions. She referred to HAR 11-200-18 and environmental review process of Chapter 343. The request is that the Board denies or defers action on the matter until required studies are prepared and the EA and AIS are approved. She said that anyone who is familiar with the Royal Mausoleum won't be able to help but be moved by the grandeur of the place. Member Gon appreciated Ms. Hall's testimony.

The Chair asked the Kahu on the genealogy and hanai reference. The Kahu said that Ms. Kawananakoa's grandmother, Kekaulike, was the sister of Queen Kapi'olani and they were both

from Kaua'i. Kekaulike, with her husband Pi'ikoi, had three sons: Prince David Kawanakoa (eldest), Prince Jonah Kuhio and Prince Edward. When Prince Edward passed away, the two remaining brothers were the high Chiefs of Hawaii. When King Kalakaua had his formal coronation on the grounds of Iolani Palace, 20,000 people filled the bleachers and crowned Queen Kapi'olani and crowned himself. He made sure that if Princess Kaiulani had no children or passed away at an early age, Prince Kuhio and David Kawanakoa would be elevated and become Ali'inui, the highest Prince in the Western world. In 1908, Prince David passed away in his early 40's, and the senior line goes to Prince Kuhio. Prince Kuhio traveled around the world and lived in Africa because everything was taken from him at that time. But when he came back to Hawaii, he challenged Robert Wilcox and became the Second Delegate to Congress and created the Hawaiian Homestead Act which provided land for the Hawaiian people. When Prince Kuhio passed away in his early 50's, the throne goes to the Kawanakoa family. The Kahu shared the Ali'i value of adoption. He said that the Ali'i had great power, but in the Western world, people are allowed to dispute the Kawanakoa's bloodline lineage. The Kahu pointed out that it wasn't right to say that Ms. Kawanakoa was a hanai and was not blood related to the Ali'i when in fact she was. The Kahu finds favor with her request. When families are buried at Mauna 'Ala, it provides the Hawaiian right to also ask to be buried alongside her family. He agreed that the Kamehameha's were still with us genetically, but the last ruling family of Kamehameha was Princess Pauahi.

Member Pacheco said he's been on the board eight years and always questioned the wisdom of Hawaii's laws and that this item was the most questionable. At some point, the Board would have to make a decision. He was struck by the burial grounds being tied into the monarchy and that its history was in the context. He couldn't deny Abigail's bloodline, but also asked if it would be right to have no further burials.

The Kahu said he knows his place and mana'o (wisdom) and his parent's mana'o. He can live with people's decision whether in favor or not in favor. Member Pacheco asked how the Kahu felt. The Kahu said if the request was not granted, he would feel disappointed because Ms. Kawanakoa had the right to be there with her family. He also shared that he came to live at Mauna Ala at the age of three. The Chair asked if anyone wanted to talk to an attorney.

Member Morgan said no, but moved to approve. Member Edlao second it for discussion. Member Morgan said that this was the most impactful item he witnessed on the Board and he referenced Ka Paakai. He said that this was a Hawaiian practice of people administering kuleana and pointed out that there were only a few areas where the practice exists.

Member Edlao felt very proud to finish his term with a good ending. He was very impressed with the Kahu and respected everyone's testimony. He felt as if he should be making a decision to oppose or support, but felt afraid to vote or not to vote, but requested for more discussion and was uncertain to go forward, but brought attention to the Hawaiian community.

Member Pacheco asked if there was anyone who was alive that had a direct sibling with anyone buried there. The Kahu said Kamehameha's tomb was sealed just as the Wylie tomb was sealed, but the Kalakaua crypt was open for the Kawanakoa family to honor their lineage. Member Pacheco shared his struggle and how uncomfortable he felt with the decision making, but on the

otherhand, he understood his role as a Board Member to be aware of the rules and policy. He finds it difficult to provide a decision to deny a request of burial. He supported the requests if it included a board policy that the crypts be closed, but did not allow the ability to entertain internments as a matter of policy.

Member Morgan asked if it was possible from a Sunshine Law point of view to address this issue of policy. Member Pacheco said that the Board could change the policy such as there would be no further living descendants of generational connection to the people of Mauna 'Ala. The Chair felt reluctant to make a policy and that every request was based on its merits. He said that they were doing their best to mesh a Western process with the Hawaiian process, but these do not mesh well. It wasn't his place to question someone who had more knowledge and kuleana. It was the Board's decision by default when the process was set up. The Chair questioned whose decision it was in 1953 and said that it wasn't the maka'ainana's decision. He was ready to make the decision and knew that there will be people who may come forward to testify on their genealogy, but thinks that the decision today will lock the Board into a precedent. Member Edlao supported the motion and the Kahu's statements and the responsibility of taking care of Mauna 'Ala and that his family was chosen by the Ali'i to take care of the place. Member Pacheco said he does have concerns and requested an executive session.

Member Pacheco 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 Gon seconded that. All voted in favor.

11:20 AM EXECUTIVE SESSION
11:35 AM RECONVENED

The Chair said he appreciated everyone's humility and understanding in a decision that is very sensitive. Member Goode said he understood a Hawaiian decision making process had to take place. As to the Western decision making, they had a lot of talk about rules for the future that needed to be addressed. He suggested a need for a discussion of the exemption. He agreed with Ms. Hall that there was an exception to the exemption, if the exemption was appropriate. There may be a potential for iwi to be found which may require an AIS. Because of the sensitivity, the Chair agreed that, at a minimum, AIS should be required and felt that he had no problem making that decision which they would have done anyway. Member Gon said that if iwi is found, a series of actions will have to take place.

Member Morgan made a motion to amend his motion and Member Edlao seconded it.

Member Gon said he felt surprised with the agenda item and would not have been comfortable with the Board making the decision on its own merits, but also supported the Kahu's testimony. Member Edlao said he initially thought of abstaining, but felt comfortable moving forward based on the Kahu's comments and the manao that was shared. He encouraged the Kahu to share the wealth of knowledge to his son.

Chair Aila took the vote and all voted in favor of the amendment. The Board's recommendation was to amend Recommendation 2. "Authorize the construction and use of a burial tomb to house the remains of Abigail K. Kawananakoa on the grounds of the Royal Mausoleum State Monument and delegate authority to the Chairperson to issue, negotiate and approve a construction Right of Entry for said tomb subject to the following:

d. Review and approval by the State Historic Preservation Division (SHPD) as required by law, and to add that, at a minimum, Ms. Kawananakoa must complete an Archeology Inventory Survey (AIS).

Unanimously approved as amended (Morgan, Edlao)

Lela Hubbard requested a contested case hearing.

Item K-2 Rule Amendment KA-10-01, Request to Amend Title 13, Chapter 5, Hawaii Administrative Rules, to Establish the Lawa'i Kai Special Subzone, Located at Lawa'i, Koloa District, Island of Kaua'i, Tax Map Keys: (4) 2-6-002:001, 004-009, Including Submerged Land in Lawa'i Bay, Ma Kai of Subject Parcels.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed some background on item K-2 that the purpose of the rule amendment is to establish a special subzone on the south shore of Kaua'i. This is the first time someone has ever proposed creating a special subzone involving not only their own private land but including adjacent submerged land. They're looking at an ahupua'a perspective that fits in with their long term goal for the area with a management plan. If the special subzone is designated, other divisions would be involved such as Division of Boating and Ocean Recreation (DOBOR) and Division of Conservation and Enforcement (DOCARE). The special subzone is exclusively set aside for areas with unique resources and management challenges. It reduces the burden of having to come to OCCL for the day to day requirements. Everyone from the community seemed to be on board with the actions. OCCL received positive comments and have not seen many in opposition. He recommended moving forward.

Chipper Wichman, Director and CEO of National Tropical Botanical Garden (NTBG) testified sharing some history, his struggles and vision and what he endured for the past 20 plus years in planning the special subzone. He expressed his gratitude working with DLNR in making it a phenomenal place for bicultural restoration. His desire was for the Kaua'i community to take responsibility since there were ancient iwi and a piko stone on the site.

Member Morgan said that it took a total of seven years since he's been on the Board. Mr. Wichman explained that it started with Chairperson Peter Young and when William Aila became the Chair, the Chair had to be comfortable with the submittal.

Hartwell Blake came forward to testify saying that his family lived on Kaua'i since 1860 and grew up knowing Lawai Kai, a pu'u honua (place of safety) for future generations. Member Gon asked the meaning of Lawai. Mr. Blake said the meaning of Lawai was the day the kapu

(prohibition) was lifted, perhaps from a fishing kapu or moon cycle. Member Gon requested staff to work with DOBOR and Division of Aquatic Resources (DAR) and to know what kapus will be placed on the area.

Unanimously approved as submitted (Gon, Morgan)

Item K-3 Time Extension Request to Extend the Initiation and Completion Deadlines Two Years for Conservation District Use Permit (CDUP) HA-3495 for the Hawaii Oceanic Technology, Inc.'s Open Ocean Mariculture Facility, Approximately Three Miles West of Malae Point, North Kohala, Island of Hawaii, Seaward of TMK (3) 5-0-000:000 (Submerged Land). Proposed Initiation Deadline of October 15, 2015 and Proposed Completion Deadline of October 23, 2018.

Mr. Lemmo relayed some background on item K-3 and requested to extend the initiation and completion deadlines from this measure. The first extension had a condition that no further extensions be granted. Mr. Lemmo had no idea where the condition came from, whether from himself or the Chair because he had no record of it. The construction approval has not been issued, but he respectfully asked to grant additional time to initiate construction. As to the number of comments, 98% were in opposition with the North Kohala community and offshore mariculture facilities, and the "no more" extension language had been reserved for entities where it's clear peculating or not pursuing the project.

Bill Spencer, CEO of Hawaii Oceanic Technology Inc. (HOTI) testified sharing some history from the submittal. In September 2010, the Army Corps wanted HOTI to do one ocean sphere with new inventions, new technologies to allow the project to be effective and be a safe environment. In April 2012, National Pollution Discharge Elimination System Permit (NPDDS) permit was granted. A lease was finally perfected in February 2013, but the Army Corps told HOTI to go through seven more levels of approvals before it reached the commanders, as a result, this delayed the project.

Tom Kapp from North Kohala, representing many Kohala organizations testified the organizations received 1,700 signatures from Hawaii residents against commercial open fish farms, especially HOTI's project. Member Pacheco did not represent his constituency, but was appointed as a Board Member with legislation, food sovereignty mandates and desired the Board to work through the process correctly.

Carl Bernhardt testified that the community felt betrayed. He requested that the extension not be granted and that HOTI is not entitled to an extension because the delay was self-inflicted and that the Army Corps will not approve 12 ocean spheres.

Member Morgan asked if he would consider a one year extension. Mr. Bernhardt said this was not the time to give extensions. Mr. Lemmo said that he does not have any objections to the extension. Member Morgan said he does not have any problem with the extension because it is still a worthwhile prospect. Member Pacheco asked if they see any actions by the applicant that unduly stalled the project. Mr. Lemmo said he may have done something that caused the delay

with the Army Corps, but he wrote to the community on numerous occasions to help the applicant be aware to get a final plan approved, but will not make any speculation until he sees what the army produces.

Unanimously approved as submitted (Pacheco, Edlao)

Item E-3 Request for Approval to Issue a Single Revocable Permit to Adventures In Paradise, Inc., for Commercial Kayak Tour Purposes, Under Terms and Conditions to be Determined by the Chairperson, Ka'awaloa, Kealakekua Bay State Historical Park, Kealakekua, Hawaii, TMK: (4) 1-4-004:021.

Mr. Quinn relayed some background on item E-3. The Board approved it at the end of 2012 to continue three commercial kayak permits. Adventures in Paradise had some issues with incomplete filing of Department of Commerce and Consumer Affairs (DCCA) reports.

Member Gon requested to move forward and the Chair supports the recommendation.

Member Pacheco 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 Gon seconded that. All voted in favor.

12:40 AM EXECUTIVE SESSION

12:55 AM RECONVENED

Unanimously approved as submitted (Gon, Edlao)

Item D-11 Issuance of a Perpetual, Non-Exclusive Easement and Management Right-of-Entry to Hawaiian Electric Company, Inc. for Utility Purposes, Waianae-Uka, Wahiawa, Oahu; Tax Map Key: (1) 7-6-001:006 portion.

Russell Tsuji representing Land Division said there were no changes to item D-11 submittal.

Unanimously approved as submitted (Gon, Morgan)

Item K-1 Conservation District Use Application (CDUA) HA-3651 to Construct Pier 4 of the Interisland Cargo Terminal, by the Department of Transportation, Harbors Division, Located at Hilo Commercial Harbor, Kūhiō Bay, Waiākea, South Hilo, Hawai'i, Submerged Land Ma Kai of Tax Map Keys: (3) 2-1-007:011 & (3) 2-1-009:007.

Mr. Lemmo said there were no changes to item K-1 and this was the last Conservation District Use Permit CDUP for this project which OCCL will stand on Department of Transportation's (DOT's) report.

Unanimously approved as submitted (Pacheco, Gon)

Item K-4 Time Extension Request to Extend the Completion Deadline Four Years for Conservation District Use Permit (CDUP) KA-3240 Regarding Completion of Navigation Improvements and Sand By-Passing at Kikiaola Small Boat Harbor, Waimea, Kauai, TMK (4) 1-0-000:000 (Submerged Land). Proposed completion date of July 2016.

Mr. Lemmo said that OCCL needed to extend the construction deadline for item K-4.

Unanimously approved as submitted (Gon, Pacheco)

Item B-1 Request Board Approval to Enter Into Contracts for Furnishing Helicopter Transportation Services for the State of Hawaii between the Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, Windward Aviation, Inc. and ManuIwa Airways, Inc.

Ed Underwood Acting Administrator for DOCARE said there were no changes to item B-1.

Approved as submitted (Gon, Morgan)

Item D-7 Amend Prior Board Action of February 11, 2011, Item D-10, Grant of Term, Non-Exclusive Easement to Douglas Lee Callahan and Madeline Cochrane Callahan for Access and Utility Purposes, Hanawana, Hamakualoa, Maui, TMK (2) 2-9-001:008 por. The Purpose of the Amendment is to Change the Previously Approved Term, Non-Exclusive Easement to a Perpetual Non-Exclusive Easement.

Withdrawn

Item D-1 Amendment of General Lease No. S-5221 to Kauai Economic Opportunity, Inc., Lessee, for Flower and Foliage Farm Purposes, Kapaa, Kawaihau (Puna), Kauai, Hawaii, Tax Map Key: (4) 4-6-004:013. The Purpose of the Amendment is to Allow the Lessee to Pay Nominal Rent Instead of Fair Market Rent.

Item D-2 Cancellation of Revocable Permit No. S-7190 to Gary Rodrigues and Request for Waiver of Level One (1) Hazardous Waste Evaluation Requirement, por. Kapaa Homesteads, 1st and 3rd Series, Kawaihau, Kauai, Tax Map Key: (4) 4-6-008:023 and 024.

Item D-3 Withdrawal from Governor's Executive Order No. 3814 and Reset Aside to Department of Accounting and General Services for Radio Tower Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key 3rd/ 2-4-01:170; and Grant of Perpetual Non-Exclusive Easement to State of Hawaii, Department of Accounting and General Services, for Access Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key 3rd/ 2-4-01: Portions of 40 and 122; and Issuance of Immediate Construction and Management Right-of-Entry to State of Hawaii,

Department of Accounting and General Services, Waiakea, South Hilo, Hawaii, Tax Map Key 3rd/ 2-4-01:170.

- Item D-4** **Consent to Assignment of General Lease No. S-3158, I.C. Haunani Henry, to I. C. Haunani Henry and Leonard K. Bolinger, aka: Leonard Kent Bolinger, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-1-07:24.**

- Item D-5** **Cancellation of Revocable Permit No. S-7535 to Margaret L. Loo and Issuance of Month-to-Month Revocable Permit to Ainslie A.N. Loo, Anita Loo and Nicole K. Loo for Diversified Agriculture Purposes; Ili of Kaohia, Waipio Valley, Hamakua, Hawaii, Tax Map Key: (3) 4-9-11:02.**

- Item D-6** **Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display Purposes at Honuaula, Makena, Maui, Tax Map Key:(2) 2-1-006: seaward of 036.**

- Item D-8** **Issuance of Right-of-Entry Permit to Na Wahine O Ke Kai for Canoe Race Event to be held on September 22, 2013, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of 021.**

- Item D-9** **Issuance of Right-of-Entry Permit to Oahu Hawaiian Canoe Racing Association for Canoe Race Event, from October 12 to October 13, 2013, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of 021.**

- Item D-10** **Amend General Lease No. 3846 to Allow Lessee to Conduct Activities that are Consistent with the Administrative Rules Governing the Natural Reserve Area System, United States of America, Lessee, Poamoho, Wahiawa, Oahu, Tax Map Key: (1) 7-2-001:006.**

- Item D-12** **Amend Prior Board Action of September 24, 2004, D-14: Conveyance of State-owned Land to the Department of Hawaiian Home Lands, East Kapolei, Honouliuli, Ewa, Oahu, TMK: (1) 9-1-17: 71 and 88. Amendment Request: Change the Conservation Easement to a 20-year Abutilon Menziesii Preservation Easement to be Issued in Favor of the Department of Transportation.**

Russell Tsuji said that there were no changes to D-1, D-2, D-3, D-4, D-5, D-6, D-8, D-9, D-10, D-12

Unanimously approved as submitted (Pacheco, Gon)

- Item E-2** **Consent to Assign General Lease No. SP-0181, Erik Paul Coopersmith, Assignor, to Erik Paul Coopersmith, Ruth Belmonte and Adrien Malina, Assignees, Lot 29, Koke'e Campsites Lots, Waimea (Kona), Kaua'i Hawai'i, TMK: (4) 1-4-004:021.**

Mr. Quinn said that there were no changes to item E-2.

Unanimously approved as submitted (Gon, Edlao)

Item J-1 Issuance of a Revocable Permit to Honolulu Transpac, Ltd. for Support Areas and Mooring Sites for the 2013 California to Hawaii Yacht Race Finishing at the Ala Wai Small Boat Harbor, Tax Map Key (1)-2-3-037: portion of 12.

Item J-2 Requesting the Board of Land and Natural Resources Approve the Issuance of an Offshore Mooring Permit and Installation of a Mooring System in Kailua Bay, Hawaii to the Following Entities: Bill Busters Charters Inc., Kanoa Inc., Live/Dive Pacific, SDH Inc., Blue Sea Cruises Inc., RCL LLC, Anela O Ke Kai LLC, Eka LLC, Pueo Bay LLC, Kanoa Inc., Kalani Nakoa.

Item J-3 Request Approval to Initiate Rule-Making Proceedings to Amend and Compile Hawaii Administrative Rules, Chapter 13-230-4 Penalties and prosecution (violation and administrative penalties); 230-8 Definitions (civil union, civil union partner, dormant vessel, personal partner, reciprocal beneficiary, spouse, stay aboard, Tahiti moor, temporary mooring, temporary permittee); 230-21 Definitions (personal partner); 230-22 Twelve-month rule (corrected citation); 230-25 Particular categories (legal relationships); 230-27 Permittee required to report change of residence (residence off-island and assumption of obligations to others); 230-28 Appeals (corrected citation).

Ed Underwood representing DOBOR said that there were no changes to items J-1, J-2 and J-3.

Unanimously approved as submitted (Edlao, Morgan)

Item F-1 Request for Approval to Authorize Chairperson, Board of Land and Natural Resources, To Expend *Port Royal* Trust Funds for 2013-2014 Research Project: "Coral Reef Restoration: Removing Invasive Algae, Out-Planting Urchins, and Mitigating the Effects of Ship Groundings" Through a Contract with the University of Hawaii for a Cost Not to Exceed \$600,000. *SUBMITTAL TO BE DISTRIBUTED*

William Tam, Acting Administrator, Division of Aquatic Resources (DAR), described the 10 year coral restoration project on Oahu which involves two separate activities. First, invasive algae is mechanically removed from reefs in Kaneohe Bay by a vacuum devise ("Supersucker"). Second, urchins raised in tanks at Anuenue (Sand Island) are then placed on the reefs in Kaneohe Bay to keep the algae levels down so that coral may re-recruit.

For the past few years, this project was funded by federal grants and Hawaii Invasive Species Council (HISC) funds. However, the funding was not secure and varied from time to time. This should be resolved by late 2013 when longer term funding becomes available. In the interim,

bridge funding for 6 "Supersucker" staff positions and 12 month funding for the urchin and monitoring staff is needed.

Funds from the *Cape Flattery* settlement are currently held by the Department of Interior. They should be released by late Fall, 2013. Second, the 2013 Hawaii Legislature authorized and appropriated General Funds for 6 Civil Service positions (Supersucker staff). Until those long term funding sources can be brought online, there is a need for bridge financing so that 10-12 people may continue working.

DLNR has trust funds available as result of its settlement in the *Port Royal* ship grounding case. The funds are intended to mitigate damage to reefs and coral as a result of ship groundings. Item F-1 is a request to use up to \$600,00.00 of *Port Royal* Trust Funds for the urchin and Supersucker coral damage mitigation until more permanent funding sources come online in late Fall, 2013. DAR will work with the Research Corporation of the University of Hawaii (RCUH) and Pacific Cooperative Studies Unity (PCSU) at the University of Hawaii (UH) to manage this program.

On a broader scale, DAR is developing a set of policies for a Hawaii mitigation program. There are 120-140 boat groundings every year. DLNR may be able to collect damages in some of these cases for the loss of coral. The State needs to establish a more comprehensive way of dealing with coral and reef loss.

As part of a renewed interest in ocean management, DAR will provide more briefings to the Board about ocean policy and management issues facing the State. For example, DOT plans to expand the Kapalama (Honolulu Harbor) container terminal. The U.S. Army Corps will set permit conditions requiring the State to mitigate or offset the loss of coral. There are approximately 7,000 coral heads in the area. This is a large project.

In another area, the National Oceanic Atmospheric Association's (NOAA) proposes to list three corals in Hawaii as threatened. DAR is starting a coral nursery which may safely house some of those corals until they can be replanted.

Federal regulations on corals are changing. DAR is seeking new federal-state relationships to address mitigation measures beyond the formulaic requirements of the Endangered Species Act.

The science in all these areas is fascinating and the impacts are far-reaching. To address these issues in a more comprehensive way, DAR will provide briefings on the restoration efforts, mitigation, and other programs and projects. DLNR is shifting its ocean management approach toward place based rules where fishery management is developed with the best available science and in close coordination with communities.

Unanimously approved as submitted (Pacheco, Edlao)

Adjourned

There being no further business, Chairperson William Aila adjourned the meeting at 1:20 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,



Marlou Lamblack
Land Board Secretary

Approved for submittal:



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