

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

DATE: FRIDAY, OCTOBER 10, 2008
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:03 a.m. The following were in attendance:

MEMBERS

Laura Thielen
Jerry Edlao
Ron Agor

Timothy Johns
Rob Pacheco
Dr. Sam Gon

STAFF

Dan Quinn, SP
Sam Lemmo, OCCL
Paul Conry, DOFAW
Mike Arnold, DOFAW

Morris Atta, LD
Dexter Tom, DOCARE
Alton Miyasaka, DAR

OTHERS

Randy Ishikawa, Deputy Attorney General
Michael Kop, K-2
Leon Siu, K-2
Stephanie Nagata, K-3
Tina Maragos, K-1
Owen Liang, K-1
Carlos Priska, K-1
Greg Nasky, D-6
Henry Curtis, D-3
Josh Strickler, DBEDT, D-3
Paula Hartsell, C-1

Carole McLean, E-2
Sylvia Kop, K-2
Dawn Chang, K-3
Marti Townsend, K-3
John Held, K-1
Elsie Liang, K-1
Ryan Nichols, F-1
Guy Gilliland, D-3
Peter Young, D-3
Kent Smith, D-3

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

Item A-1 September 26, 2008 Minutes.

Chair Thielen asked the Board to defer the minutes per staff's request.

Deferred (Johns, Gon)

Item E-1 Request for Permission to Hold the Aloha Council, Boy Scouts of America, Makahiki at Sand Island State Recreation Area, Oahu

Dan Quinn, Administrator for Division of State Parks, reminded the Board that this had been requested previously and gave some background. A Boy Scout representative was here to answer questions.

Unanimously approved as submitted (Johns, Gon)

Item E-2 Briefing on Lease and RFQ/RFP Status for He'eia State Park as requested at the August 22, 2008 Meeting of the Board of Land and Natural Resources

Mr. Quinn explained that no action is required because this is a briefing. He reminded the Board that this issue came up at the August 22nd Board meeting and apologized that he was out-of-state at that meeting. Mr. Quinn referred to HRS§171-43 which could be used for a lease. He reported a curator agreement is not the right vehicle because it doesn't allow a concession and the proposed timeline is subject to change. October 15th will be pushed back a week. It will take another month for management and operation proposals to be submitted.

Member Johns asked whether the Board will see the RFP before it goes out. Mr. Quinn said the concern is to have the RFP out at the same time to be fair for bidding proposals. Also, Member Johns told Mr. Quinn he wanted to move the lease start date to August 2009 to allow a full year for the Friends' RP which Mr. Quinn agreed.

There was discussion regarding the normal turnaround time to process an RFP which could be a month, but that's tight. Before bringing it back to the Land Board it could be 30 to 60 days for the review, finalization, and preparation of the submittal.

Carole McLean representing Friends of He'eia said yes, a month would be enough time to respond to the RFP and they are excited and hopeful.

Chair Thielen noted that this has been out in the community and people want to proceed quickly.

Mr. Quinn announced that the AG's Office passed the Friends of He'eia's RP this morning.

Item K-2 Enforcement File No. MA-08-44, Regarding the Alleged, Unauthorized Removal of Ili ili Rocks from the Shoreline at Waiehu Beach, Waiehu, Wailuku District, Island of Maui, Michael and Sylvia Kop, Seaward of TMK: (2) 3-2-015:005

Member Johns noted that items K-1 and K-2 were numbered incorrectly on the submittal and asked whether there was a Sunshine Law problem. Deputy Attorney General Randy Ishikawa said as long as the agenda identifies what's being considered. It was noted that Item K-2 is labeled K-1 in the submittal.

Sam Lemmo representing the Office of Conservation and Coastal Lands pointed out that the principal investigator; Officer Dexter Tom is here from Maui. Background was reported by Mr. Lemmo.

Member Johns asked why the term 'ili'ili to describe these rocks. Does it have any connotation of Native Hawaiian cultural significance? Is there anything in the statutes to define 'ili'ili rocks as opposed to any other where Mr. Lemmo said he didn't know of any? Member Gon noted as a linguistic clarification although 'ili'ili are more commonly used as a hula implement it does describe smaller stones. Member Johns said that is why he is asking are you raising the Native Hawaiian gathering rights by describing them thusly. Mr. Lemmo replied that is not his intention.

Mr. Lemmo continued his background report and noted that HAR 13-5-24 has identified uses in the resource subzone under R-7 for mining and extraction. Before accepting this it requires acceptance of a Conservation District Use Application (CDUA) for processing and approval by the BLNR. Mr. and Mrs. Kop said they were taking the 'ili'ili for cultural purposes. Staff researched the Department of Commerce and Consumer Affairs where the Kops' have a trade name, Hula Supply Center, a commercial enterprise. Staff performed a site visit and found that each set of 4 'ili'ili was sold for \$12.00. A DOCARE officer counted one of the buckets which came out to about 400 rocks x 16 buckets totaling about \$20,000. Staff recommends handling this case like the last rock case where each entity was charged \$2,000 each plus administrative fees of \$1500 for a total of \$3500. The Department wants to send a message out that these kinds of activities are unacceptable, to have the Kops pay the fine within 30 days, and follow a number of conditions.

Member Johns asked what are the rules regulating the commercial use of the conservation district. Mr. Lemmo said it's the same rule that applies to commercial and non-commercial, it's the impact to the resource not whether it's commercial or non-commercial.

The Board asked what is allowable in terms of mining to obtain a permit. Mr. Lemmo explained the CDUA is one permit, a license, lease or disposition would be needed from the Land Division. Member Johns clarified a disposition of State property would be needed for State property. If it's private property a CDUA and the approval of the Land Board would be needed.

Chair Thielen asked Paul Conry regarding the permit process for harvesting in the forests. Forestry & Wildlife Administrator, Paul Conry explained they have a permit process for their forestry lands and wouldn't necessarily come before the Board. All individuals would obtain this permit to gather. There is a small commercial use permit. Member Gon asked whether there was a permit combining Native Hawaiian use with commercial use which there isn't any per Mr. Conry.

Officer Dexter Tom from Maui who did the investigation reported that the Kops admitted to taking the rocks.

There was some discussion regarding how DOCARE learned about the Superferry rocks where an anonymous caller notified Superferry personnel and they in turn contacted DOCARE. In this case, Young Bros. personnel called because of the publicity surrounding the Superferry rocks and a gentleman of Hawaiian descent had called with concerns. Officer Tom acknowledged that the public is concerned with the resources leaving the island. He counted one bucket which contained 411 rocks.

Chair Thielen said there was an increase of violation fines from \$2,000 to up to \$15,000. Also on public lands, this act authorizes the Board to consider the market value when setting a fine. She had asked Mr. Lemmo to find out when the act was passed which was July 7th and he distributed the act. Because this violation occurred before July 7th staff is using the act applicable at that time.

Michael and Sylvia Kop of Hula Supply Center brought the basket of 'ili'ili photographed in their store. Mrs. Kop described the difference between pohaku (rocks) and 'ili'ili (tiny pebbles) which has a specific cultural use. Over the past 4 to 5 years they had rocks from all over the world because they buy them from Home Depot, City Mill and a Kapolei construction company who sells rocks at \$25 to \$35 per bag. Oahu doesn't have 'ili'ili stones. There is a demand from halau for 'ili'ili. Mrs. Kop presenting her 'ili'ili; said that no one can tell where the rock is from although halau would prefer them from Hawaii. In the last year they had to turn away Kamehameha and other schools because they can't supply them. She described the preference of water worn stones by hula practitioners.

Michael Kop for Hula Supply Center described his family's business and recalled gathering stones at that beach with his dad. When Officer Tom told them about the violation both sides were respectful of the other. Mr. Kop said he wouldn't say they were stealing rocks from this beach because they didn't hide their actions or the rocks. They've done this before and shipped the rocks on Young Bros. There were no signs on this beach, but he noted there are signs at the Kapahulu groin that says it's a conservation district, the boundaries, map and what is prohibited. Mr. Kop was unaware that this beach was a conservation district. He has been doing this all his life to provide a service to cultural practitioners.

Mrs. Kop demonstrated the size of the rocks to fit a child's hand and an adult's hand explaining they can't guarantee all rocks are from Hawaii and people are denied if they want only made in Hawaii stones. Hawaii rocks and mainland rocks sound different.

Mrs. Kop asked whether state officials are supposed to approach them to tell them not to do that (gather rocks). The Board said that they don't know who those officials were unless Mrs. Kop could say specifically. There was a discussion over what happens if a DOCARE officer receives a call and there was the example of gill nets when the officer would investigate right away.

Mrs. Kop said they are admitting that they took the rocks and that they were unaware of this law. Their business is 62 years old and this law is 9 years old and no one enforced it until the Superferry situation. They have been collecting 'ili'ili rock 4 times more than the law in place. Mrs. Kop wanted to know for the halau they serve who can get a permit, how to get a permit, is there an official form, but they aren't getting any answers. Young Brothers questioned whether these rocks were for resell and she said some are and some aren't because they give away a lot. Mrs. Kop was willing to get a permit, but it seems no one knows how or where. They only started charging \$12 per set this year because after buying bags of rocks and yielding only 2 sets there is no way they can make money. It is strictly a service. There are 2 kumu hula who has 200 students and they don't want to send students out to look for rocks. Mrs. Kop reiterated trying to get permit information since May 29th. Chair Thielen said it may be that staff needs to hear from the Land Board on this matter before giving you an answer. Today, if this Land Board comes to a decision staff could provide some certainty and will be able to get you more information.

Member Edlao said that people are more aware of the depletion of resources. Mrs. Kop agreed and described growing up maintaining the natural resources. She felt we shouldn't wait 4 or 5 months before getting a permit because of the schools.

Leon Siu, a Native Hawaiian and friend of the Kops, noted that the public doesn't know whether these rules are published anywhere. He reiterated the permit process question, but for cultural practices referenced Member Johns earlier mention of the term 'ili'ili. It seems that the staff and the Board don't know what the permit process is. To fine people for something that they cannot get a permit for is disingenuous. Mr. Siu recommended the charges be dropped because the officers weren't informed or due process was not followed. Also, the Kops were sent DLNR testimony, but weren't notified of this Board meeting which they learned through the newspaper and due process wasn't followed. Mr. Siu questioned whether the State had the authority to enforce rules over ceded lands. There are pending cases filed with the Supreme Court to determine whether the State has title over these lands. Until that is resolved it would be difficult for the Board to pursue a case regarding Native Hawaiian uses of resources and gathering rights. How extensive are these gathering rights? Does it apply to limu, driftwood?

Chair Thielen asked Mr. Lemmo whether the Kops were notified of this Board meeting which they were by written notice that this would be on the Board agenda on this day.

Mr. Lemmo said that when the issue of taking material from the shoreline areas comes up staff refers to HRS §205(a) and Chapter 171, public lands law. There is a section on prohibitions under 171 which says "The mining or taking of sand, dead coral or coral

rubble, rocks, soil or other marine deposits seaward from the shoreline is prohibited with the following exceptions: the taking from seaward of the shoreline of such material not in excess of one gallon per person per day for reasonable, personal, non-commercial use.” Chair Thielen summarized the law allows for personal, non-commercial use that doesn’t require a permit. She reiterated Forestry’s permit for gathering. Private lands in a conservation district would need a CDUP in excess of this amount. Public lands require a CDUP and approval from the Land Board when harvesting natural resources for commercial purposes. Mr. Lemmo agreed.

Member Johns agreed and suggested posting some clarification to the website. Mr. Lemmo said that this particular language is out of 171, but cross referenced in 205(a). It is a violation of the statute.

Member Johns pointed out that the signage Mr. Kop referred to is the MLCN – Marine Life Conservation District in Waikiki which is a separate, more restrictive reserve as opposed to the conservation district. The conservation district covers almost half the state, 2 million acres is covered by the general conservation district. Mr. Lemmo acknowledged that but noted its all areas seaward of the conservation district around the State of Hawaii. The MLCN is a specific designated management area that’s an overlay of an existing zoning regime which is statewide and comprehensive and runs from the shoreline out to sea for 3 miles. The Board discussed that there would be a lot of signs if it was required for every piece of conservation district land and water.

Chair Thielen noted that there was a significant amount of public information out during this time regarding taking rocks from public land which led the shipping company to call DLNR. It was highly publicized and there were 2 bills before the legislature during that session where the Department specifically asked for authority to increase the fines for taking or theft and unauthorized uses or activities on public lands in the conservation district.

Member Johns suggested doing more outreach with hula halau or specific groups who are more directly affected. Member Gon asked Mr. Lemmo whether these hula halau or kumu hula have approached his Department asking for the proper procedure to collect ‘ili’ili for personal use. Mr. Lemmo doesn’t recall anyone. Member Gon said there are allegations clamoring for guidance on what to do to properly gather ‘ili’ili. He admitted ignorance to the details of 171 and 205(a) and relies on others. But, he was well aware since childhood that you could go down to the beach with a gallon bucket to gather coral, rocks and sand for personal use which was common knowledge at that time. Maybe that knowledge has faded away. Mr. Lemmo said because his office manages beaches, protecting our finite sand resources, he doesn’t want to promote the idea because large groups of people, done consistently, could take sand from a location which could deflate the beach. Sand systems are fragile. It’s a rite of people to execute it, but he doesn’t want to promote it.

Member Pacheco said that if people are operating a commercial enterprise it's an obligation to understand the rules and laws that allow resources referring to tax compliance. You need to find out what you need to do to use those resources legally.

Member Gon explained as a hula/chant practitioner and as an individual he is free to go to the beach to find his own 'ili'ili and he expects students to do the same. Not go out to purchase them. Expedience and cultural practice don't mix in his viewpoint. If you are going to be devoted to cultural practice you should go by the proper procedures rather than buy a skirt. You should make or gather your own implements.

Member Edlao indicated the rule has been on the books for a long time and these fines are more a deterrent to people. Yes, the State needs money, but that is not the reason they are fining.

Member Gon added if you want to convey a clear message the commercial exploitation of other islands' protected natural resources is not correct and will not be tolerated. That is the message we want to be giving.

Chair Thielen acknowledged that is the Department's message in their submittal when seeking approval to increase the fines. The fines for public lands was \$500 and people were engaging theft of expensive koa wood, deforesting native habitats creating run off onto the reefs. The market value of a single koa tree could be as high as \$50,000 and the fines were not a deterrent. The Department's preference is for people to comply with the law which is the ideal situation. But sometimes it takes fines for people to change their behavior.

Mrs. Kon reiterated the issue of not getting a permit when she came to the office 3 times trying. She doesn't want to be told that she wasn't compliant. Chair Thielen recommended she work with staff afterwards.

Member Edlao moved to pass staff's recommendation. Member Gon second it.

Chair Thielen informed the Kops that if they are affected by the Board's action to file a contested case hearing or accept the action. If they want to file for a contested case hearing they need to make a statement at this meeting orally before the end of today's Board meeting. Then work with staff to file a written request within 10 days.

Unanimously approved as submitted (Edlao, Gon)

Item K-3 Guidance for the University of Hawaii With Respect to Submission of its Comprehensive Management Plan for the Mauna Kea Science Reserve, Island of Hawaii, TMK: (3) 4-4-015:009&012

Submittal was distributed to the Board.

Member Pacheco recused himself.

Mr. Lemmo gave some background information as distributed. He recommended that the Board provide guidance to the University of Hawaii that the Management Plan being prepared by the University of Hawaii for Mauna Kea be accompanied by an environmental assessment. He has a submission from one of the consultants working on the management plan.

Dawn Chang from the University of Hawaii apologized for delivering the packets late and introduced Stephanie Nagata, the acting director for the Office of Mauna Kea Management. The University of Hawaii accepts staff's recommendation and will be preparing an environmental assessment pursuant to Chapter 343 for the comprehensive management plan. The packet contains a status update of the community outreach. Stephanie Nagata will address any questions related to the comprehensive management plan. It was important from the beginning to engage the community because it's critical to any activity success on Mauna Kea. Mrs. Chang described the public meetings. UH did a statewide survey asking what was the understanding of the community with respect to Mauna Kea and what are their understandings and comments of some of the critical issues, cultural and natural resource protection. A copy of that survey was included. It was found 90% statewide supports the co-existence of culture and science as long as the cultural issues were addressed. UH has been updating the Mauna Kea Management Board. Mrs. Chang reported on "Sharing Astronomy with Kupuna." The community wanted to see a more definitive plan and asked what the decommissioning plan was. UH asked the Institute of Astronomy to provide a plan to decommission obsolete telescopes and what is the commitment by each of the telescopes. Each telescope acknowledged their commitment that at the end of 2033 will either restore the site or will work with UH to extend the lease. Mrs. Chang described the Outrigger Keck case and that UH withdrew their appeal of Judge Hara's decision. UH will continue meeting with the public.

Stephanie Nagata conveyed they completed merging of the proposed management recommendations and the cultural and natural resources management plan. They have prepared a summary of those management recommendations that they will take to the public for comment. She noted that any changes will come from the public and not only from their internal process. This document will include a summary of resources to be protected. It will identify threats and impacts to the resources and proposed management actions to protect those resources. Ms. Nagata cited examples of uncontrolled access, disturbance to cultural sites, etc. They have categorized the proposed management actions into Education and Outreach, Information Gathering, Management Measures, and Regulation and Enforcement. Ms. Nagata described sub-categories under each of the above categories. For future land uses some recommendations include staying within the confines of the 2000 master plan. No development will happen on any undisturbed pu'u and will be contained within the astronomy precinct. She described other examples and explained the review process of the draft. Ms. Nagata asked that the Board review the draft concurrently with DLNR staff.

Member Gon asked whether they got any guidance on the cultural side about the cultural significance of the natural living resources. Ms. Nagata gave background of the 2000

master plan to establish a Native Hawaiian advisory group which has been involved with the recommendations that have come forth and are currently reviewing the draft. Member Gon compared this to the Kahoolawe Island Reserve Commission's management plan of merging cultural with natural. Ms. Chang agreed and noted that EKF is one of their consultants. Mauna Kea is important to certain families and they are try to learn to protect the cultural and natural resources. Member Gon clarified after a visit to Mauna Loa with Kekuhi he learned it's not what plant is this, but WHO is this. The plants can't be held separate because they are part of the cultural resource. Ms. Nagata acknowledged that they are very aware of that concern. Mrs. Chang added it is not something historic, but something on-going. Once there's a greater understanding and appreciation of the cultural significance then people will be more respectful of the natural resources.

Member Johns asked that staff recommends an EA accompany the CMP and Mrs. Chang and Mrs. Nagata agree so there is no Board action today. The Board will evaluate the CMP or go through staff first. Mrs. Chang made it clear that they will do an EA first before the CMP and will go through the usual internal process.

Marti Townsend representing KAHEA disagrees with staff's submittal and advocated an EIS over an EA. The BLNR and its departments' staff should be completing the comprehensive management plan and not UH. Ms. Townsend cited a Supreme Court ruling, Kapa'akai vs. the Land Use Commission, that forbids state agencies from wholesale delegation of their authority. If the BLNR accepts this management plan without doing their own independent review it will be in violation of the Supreme Court ruling. There is no authority in DLNR's rules to allow delegating authority to a developer. Also KAHEA disagrees with the scope of the staff's submittal who recommends the Mauna Kea Science Reserve be analyzed, but it should be the entire conservation district. Judge Hara's ruling said all inclusive. The purpose of a CMP is to balance the multiple land uses with the conservation needs of all the natural and cultural resources throughout the conservation district. Ms. Townsend reported on a Federal EIS that impacts the cultural and natural resources on Mauna Kea. BLNR is publicly accountable, not UH. DLNR could hire someone, but UH can't because UH doesn't have the same statutory obligations. There was discussion regarding who should do the CMP and that the BLNR will still review it. The difference here is the proposed activity is not the construction or commercial activity of something. The activity the CMP is covering is the fundamental balancing between how to allow multiple land use and how to protect cultural and natural resources in the entire conservation district at the summit of Mauna Kea. Not just the areas controlled by UH.

Member Johns asked why an EIS at this time. Ms. Townsend replied an EIS is more significant and the public is begging to not waste anymore time commenting on an EA when we know an EIS is required and should require an EIS from the beginning. We already know there will be significant impact which an EA determines so do an EIS instead. There was discussion regarding the cumulative impacts at the summit, but the plan doesn't do the 30 years of activity. The plan proposes an action. Ms. Townsend warned that there maybe a lawsuit about this because it allows UH and Ku'iwalu to

complete the document. Granting this gives them a shield from liability. She requested a copy of the document from Ku'iwalu where Member Johns handed over to her. Ms. Townsend noted that the Office of Mauna Kea Management is an advisory group under UH and not an independent group. She expresses her concerns with planned telescope.

Member Gon asked whether the scope of the comprehensive management plan was legally defined. Mr. Lemmo read from 3rd Circuit Court decision, #18 of conclusions of law which says "DLNR Administrative Rule HAR 13-5-24 for the R-3 resource sub-zone requires a management plan which covers multiple land uses within the larger overall area that UHIF controls at the top of Mauna Kea within the conservation district." It was construed to the UH controlled areas based on this document.

Member Johns moved to accept the briefing from staff for the University of Hawaii on the development of the cmp. Member Agor second it.

Unanimously approved as amended (Johns, Agor)

Item K-1 Enforcement File No. OA-06-55 Regarding the Failure to Adhere to Terms and Conditions of Conservation District Use Permit (CDUP) OA-3077, Masami Kobayashi Kaneohe, Koolaupoko District, Island of Oahu, Subject Parcel TMK: (1) 4-4-013:034

Written testimony was provided by Eric Hirano of Engineering Division

It was expressed by Mr. Lemmo the complexity of this issue and he described it. There were issues of non-compliance with terms and conditions. There needs to take corrective action soon because retaining walls aren't built and grading issues are unresolved with a potential slide. Engineering came back with recommendations. On page 7 of the submittal, staff cited 13 instances of non-compliance. Staff is proposing a \$2,000 per fine for each permit violation which comes out to \$26,000 in fines plus \$1,000 in penalty administrative costs for a total of \$27,000. The applicant submitted an emergency plan to resolve the grading and Mr. Lemmo will need to amend the submittal to include some of these conditions. There was question of who the owner is and Mr. Lemmo listed the recommendations and conditions. He went over Engineering Division's testimony requesting addition of general conditions 2, 3, 5 and 8 and special condition 3.

Chair Thielen noted the change in the law regarding the increased fine of up to \$15,000 for future violations. Recommendation no. 9 should change as well as who the landowner is. Also change wording to say maximum statutory fine.

Tina Maragos and John Held, neighbors since 2000, described the area. Ms. Maragos reported that they filed the complaints, knew the history of owners, and the problems that they had with boulders falling on their property along with mud slides. They support staff's recommendation.

John Held added that the erosion has been going on for 3 years and requested that their home be the first to be protected with retaining walls describing where.

Owen Liang and his wife Elsie, the landowners, introduced their architect Carlos Priska who is working with the seller to rectify the violations. Mr. and Mrs. Liang own the property as of last week not knowing all of the issues, but had a general idea. Their intention is to complete the home with all the safety measures. They met with the neighbors and have had several meetings on how to proceed. The Liang's are trying to get an emergency approval to immediately grade the property because of the danger which the city has approved to start grading. The approval process will take 2 to 3 months. Mr. Liang asked the Board to allow them to start grading since the city has. He understood the conditions.

Chair Thielen explained that this is premature because DLNR staff and the Board have not seen the plans. She recommended expediting this and sharing those designs approving it by the process. Also, to sequence it to prevent too much runoff exposed where the resource protection is subject to review by this Department.

Mr. Liang said that the sellers are fully aware of the fines imposed and that the sellers are willing to pay for it as part of the conditions with the Liangs. Once everything is approved DLNR he and his wife would appreciate expediting this as soon as possible.

There was discussion regarding the retaining walls on Mr. Held's side. Nothing is being done on Mr. Held's side of the property because everything has been done and the Liang's don't have the budget for what Mr. Held is asking for. The immediate danger is behind the Liang's home which Engineering will assess.

Mr. Lemmo said that if the Board approves this with the amendments the Liang's will be given an authorization to complete all of the plans and specs for the additional remedial work, get approval by DLNR staff and then go to the city. His staff could work on the emergency portion to expedite it.

Carlos Priska, architect was here to answer any questions and he is completing the work for Mr. Kobayashi. Chair Thielen asked him to give our OCCL staff Mr. Kobayashi's current address.

Mr. Lemmo recommended changing in the submittal the name Kobayashi and changing it with landowner. Nos. 9, 10 and 11. The Chair reiterated the fine change.

Member Johns moved to approve staff's recommendation with the following amendments: the reference to Masami Kobayashi be replaced by landowner, condition # 9 changed from \$2,000 per day to up to \$15,000 per day, the same under condition #10, additional #12 which adds Engineering's recommendations, work with staff on the emergency approval for the additional remedial work subject to DLNR staff approval, add to #7 expedited county approvals, ask DLNR staff and Engineering to work with the

adjacent landowners and current landowners to ensure the review include consideration for the safety for the adjacent landowners. Member Agor second it.

Unanimously approved as amended (Johns, Agor)

11:35 Adjourned for recess.

11:45 RECONVENED

Item F-1 Request for Approval of a Special Activity Permit for Dr. Robert Humphreys of The National Marine Fisheries Service, Pacific Islands Fisheries Science Center, and Designated Assistants

Division of Aquatic Resources representative, Alton Miyasaka asked to add the waters of Oahu as a collecting area.

Ryan Nichols was here to answer any questions.

**Unanimously approved as amended (Pacheco, Johns)
To add the waters of Oahu as a collecting area.**

Item D-6 Approve Nondisturbance and Attornment Agreement Between State of Hawaii and Cyanotech Corporation, North Kona, Hawaii, TMK: (3) 7-3-43:63.

Morris Atta for Land Division informed the board that Cyanotech is a sub-lessee of NELHA who our lessee. He reminded the Board had previously approved the mortgage. Staff recommended agreeing to this.

Greg Nasky with Cyanotech agreed to all the conditions.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-3 Approval, in Principle, of the Issuance of Direct Leases to Hamakua Biomass Energy, LLC, for a Commercial Biomass Energy Generation Facility and Hamakua Biomass Holdings, LLC, for Commercial Forestry Purposes, North Hilo, Hamakua, Hawaii, TMK: Various.

Written testimony was distributed by Hamakua Biomass and Sunfuels Hawai'i.

Member Johns recused.

Mr. Atta noted that this request came through DBEDT and staff was asked to consider issuing long term[s] leases for these lands. This is a result of the renewable energy rapid response team review process. There are two leases: one for the facility and one for others in the future.

Chair Thielen asked for a deferral because she had spoke with DBEDT energy staff and the director. There is a demand for land leases for renewable energy proposals. Since DLNR doesn't have the expertise she asked DBEDT to assist with energy policy matters with DLNR staff by evaluating applications.

Guy Gilliland, Chief Executive Officer of Hamakua Biomass Energy (HBE), said a deferral doesn't fit into their planning schedule for their project including a commitment to Kamehameha Schools. Standing eucalyptus tree is the primary feedstock, a \$30 million investment. HBE are presently in negotiations with HELCO and received a waiver from the competitive bid process with a timetable placed on them by the PUC to complete the negotiations by Dec. 4th, but driving for a Nov. 4th deadline for the PUC. Mr. Gilliland said a January deferral wouldn't work for them and that the plant cycle is important. His company followed the process, submitted to the rapid response team, vetted his project and felt it's not fair at this point of the process and asked to reconsider.

Chair Thielen explained the situation on another island where a third competing party has come in complicating matters—and stated that this Board does not have the technical expertise or knowledge regarding renewable energy projects. It is not this Board's expertise to weigh between projects that are ready to go or is feasible and would need assistance with DBEDT. Chair Thielen understood the timeframe and asked whether November would work for them.

Member Pacheco agreed with Chair Thielen on bringing in the expertise of DBEDT.

Chair Thielen apologized for springing this on everyone. The law is new and the Department is catching up, and it just so happen that Mr. Gilliland's project is at the beginning. Chair Thielen said she could have staff expedite this.

Mr. Gilliland understood and noted that other energy projects have gone through. He described the bidding process and said the plant will start operating in 2010. Mr. Gilliland gave his PowerPoint presentation (hardcopy distributed). There was discussion of the map.

Henry Curtis, Executive Director of Life of the Land raised the procedural issues. PUC requires that all new energy be competitively bid out to find what is best for rate payers, although the PUC allowed for grandfathered in utilities. He reported the competition for HELCO. The exemptions apply only if the cumulative impacts don't trigger an EA. Energy security, carbon neutral, pesticides and herbicides were described.

Peter Young representing SunFuels, another alternative energy company, explained converting trees to biofuels for transportation and he distributed written testimony expressing wanting to be involved with discussions. Mr. Young said it's an energy and land use policy and suggested not deferring on the facility and is willing to work with the Department.

There was discussion on cost effectiveness which is viable in Europe.

Josh Strickler with DBEDT was surprised by Chair Thielen's suggestion to defer. There are three competing projects on the Hamakua Coast and there are discussions on the best way to allocate that resource. This is the first time he has seen the map. DBEDT has the same concerns as the Board reiterating Hamakua Biomass's timeline concerns and the need to put in a rush. There will be a plant at Hamakua and another at Pepe'ekeo converting the old sugar mill.

Chair Thielen suggested the sharing of resources in terms of access like an easement corridor citing the Yokohama Bay example. Mr. Strickler will meet with DBEDT on this.

Mr. Strickler didn't have any recommendations, but agreed to proceed with the plant portion because the permits drive the banks. There could be long term implications with waiting even for a week. In terms of getting the plant started Mr. Strickler asked to lean forward on it and left it up to the Board.

Member Pacheco asked how the PUC could give a competing plant the purchase agreement when they don't have the feed stock. Mr. Strickler said if someone has the plant and the trees and are ready to go the PUC will give them the PPA. The question is whether or not to give the land/trees to Hamakua Biomass. Where is this other competitor? If you're not moving forward and thinking about these issues, long term, then there is only so much DBEDT can do. The competitor has all this money for the plant, but doesn't have an answer on how to feed that plant. It comes to a point where HBE locks up the trees and will build the plant. It's a capitalistic economy.

Member Pacheco felt his information is inadequate to make such an important decision and appreciated the difficulty DBEDT has with a lot to consider. Mr. Strickler agreed, but felt the Board should move forward. Mr. Strickler agreed with Chairperson Thielen that the way the law is two competing energy interests can get around the bid process, but DBEDT can't negotiate with two interests so it goes back to the bid process. Chair Thielen interrupted saying it's not a bid process. The law came around because there is a desire for renewable energy as the number of applications grew. Maybe to bid to find the best, but it recognizes a continuation of those (entities) under the old rules which is grandfathering. The situation is dealing with multiple grandfathered applications is not necessarily throw them in the bid process, but it does require sitting down to think through how to deal with these situations. The Department is not dealing with applicants from a renewable energy perspective as much as a land perspective, but that will come into play because of multiple applicants for the same lands and the Department can only give so many lands. The Board will need to consider who to give them to. Mr. Strickler agreed to sit down and figure out what the smartest way is to do this to get the most out of the land.

Member Pacheco asked wasn't the intention of Act 102 (direct negotiations) meant to expedite this to come online faster. Chair Thielen said this allows direct negotiations for these projects so there is no need to go to auction. There is a whole list of items where this Board is authorized under law to go do direct negotiations for certain policy reasons

that the State says these type of leases are important and want you to support them where renewable energy is one of them. Member Pacheco asked whether there is an established policy as a Board or is the Board obligated under the Act to act on these on a first come first serve basis. Chair Thielen replied no; traditionally the state has a number of these policy exceptions where they can do direct negotiations. Mr. Atta gave the example of non-profits.

Russell Tsuji explained that 171-95 allowed for biofuels is for the facility to put the power back to the grid to allow agriculture and biomass be grown on the same site, but not necessarily the facility on the same site. Chair Thielen said in answer to Member Pacheco's question, because there haven't been a lot of competing use or whether one non-profit or another. It's traditional land management. Now we have competition for energy proposals and the question is who. Chair Thielen gave the example of a situation of two parties with a third coming in and seeing the need for help on this because of an increasing number of people leasing lands for ocean energy, wind, and biofuels and there's a finite amount of land. The Board wants to support state policy for renewable energy, but don't want to tie up state lands with one entity who may not be viable, or falls apart, then those lands don't become accessible to another and it doesn't go through. This law just passed and all this is new.

Member Gon asked relevant to the issue of limited lands the 10,500 acres of state lands what that is in the percentage of state lands available on the Hamakua coast. Is it 50%, 80%? Mr. Atta said that it is difficult to answer because the lands are encumbered or in forest reserve. In terms of percentages it's difficult to quantify that because of the availability of when and at what time. Chair Thielen referred to the table after the map page. We're looking at a maximum of 23,000 plus acres. Mr. Gilliland said that is not the whole of Hamakua, but just the lands HBE worked on in the zone they were interested in.

Mr. Gilliland added they are the only applicant, but it sounds like DBEDT wanted to reserve this process for potential applicants. HELCO has given his company the opportunity and imbedded them to be the applicant for a PPA process. HBE's viability to be a real applicant is there. It's discouraging that there will be a process where 3 other entities could be involved when HBE followed the rules and they took the initiative as a project to be in a position to execute this deal and to hear talk about other applicants when there are none. There was a letter submitted yesterday by a group with a conceptual idea to do biodiesel, they don't have the acreage, they don't have the plant location established, they haven't proven economic viability or end product. HBE's pricing is very attractive to HELCO and are much farther along. Mr. Gilliland finds it unfair at this stage to put a halt to this and throw it to the wind to a panel group when his company is in the position to progress this and bring it online by 4th quarter 2010.

Member Gon asked is the 10,500 acres up to or what is HBE's minimum to stay viable where Mr. Gilliland replied they need all 10,500 acres as a necessary requirement for a sustainable feedstock that relies on an 8 year rotation of trees. There are other DHHL lands that are in negotiations too. Mr. Atta said there are revocable permit lands that are

currently not vacant and that is why staff crafted the submittal to say up to 10,500 acres because those lands were questionable.

Member Edlao said this is in concept reiterating the applicant had invested a lot, the deferral is a surprise, and it is not fair to HBE. Chair Thielen described the meeting regarding another project on another island and suggested that Land Division meet with DBEDT to get a clear understanding of the different entities interested in this Hamakua area, how much competition is on the horizon that Land Division is not aware of because they're not working with them yet, to come back to the Board with yes go forward in principle or here is what should be done because Land Division knows there will be competition over these lands. The Department doesn't have the answers to that question. Chair Thielen recognized HBE did a lot of work, and of course, will say they are the farthest along because they are here and they should get credit for being the first in the door, but the Department doesn't know what is out there. In answer to Member Edlao, Chair Thielen reiterated situations where lands are tied up for many years when another entity could use it. Member Edlao agreed and thought because it was the lack of expertise. Mr. Gilliland would appreciate approval of the concept of the plan, but would like to get a clear sense of the process between DBEDT and Land Division. Member Pacheco said he finds it an issue trying to understand what 10,500 acres is in the entire inventory of viable fuel stock.

Member Gon said he had a potential revision of the recommendation that allows for the agreement in principle for the plants and then directs Department staff to work with Hamakua Biomass Holding to identify a specific set of State parcels for potential leases in coordination with DBEDT staff.

Mr. Gilliland agreed that this is a framework they would be willing to work with. The timeframe is critical because of the next Board meeting in November. He mentioned the complexity of the land holdings and that clarification would be helpful to the process.

Chair Thielen noted that Member Gon's concept raises a record that the Department is considering looking for fuel stock in this area in principle, but doesn't lock it up. It doesn't give 100% of what you want, but it gives some record that this Board is authorizing and directing Department staff to work with Mr. Gilliland. He appreciated that.

Member Gon said in the recommendation it says conduct due diligence to obtain necessary entitlements and permits including compliance with Chapter 343 for the 10,500 acres. If that prepares an environmental assessment, which he thinks such a large acreage would. He thinks it's covered.

Mr. Gilliland clarified that there are no other parties except for Hamakua Biomass. Member Agor felt it important to identify the 10,500 acres because if some of those acreage is encumbered by diversified agriculture, people or cattlemen, they have the right to know.

Chair Thielen pointed out that Member Gon surfaced an idea about moving forward with the plan and directing further work to be done on this particular property with this applicant to identify specific parcels, but also for our staff to work with DBEDT to get an idea what is the interest in this area and to get some input.

Mr. Young noted that SunFuels will not be going before the PUC for that power purchase agreement. It's going biomass to liquid fuel which is different and can't be ignored. It does have a request for property as was submitted. SunFuels wants to be part of the discussion because of the type of need that biomass electrical...the guys who are going to burn it, they may need something different than the kind of property and growing opportunities they would have. They would like to get into that discussion as well.

Kent Smith is a principle of Hamakua Biomass thanked the Board for approving the site and said they are established and credible in Hawaii. He agrees with Member Gon's suggestion and reiterated the time constraint. It needs to come back for the Nov. meeting.

Paul Conry of DOFAW asked to include forestry staff in this process to identify uses.

Member Gon amended staff's recommendation "That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above, approve in principle the issuance of a direct lease to Hamakua Biomass Energy, LLC, covering the State-owned 63.67-acre parcel for a commercial biomass energy generation facility and to direct Land, DOFAW and other appropriate Department staff to work with, in coordination with DBEDT and Hamakua Biomass Holdings, to identify a specific set of State parcels for potential leases covering up to 10,500 acres of State-owned lands for a commercial forestry operation with the understand that ..." (the rest of the motion carries).

Member Edlao second it.

The Board:

Approved the issuance of a direct lease to Hamakua Biomass Energy, LLC, in principle only, covering a 63.67 acres State parcel for a commercial biomass energy generation facility. The Board, however, deferred until the November Board meeting, consideration of staff's recommendation for the issuance of direct leases to Hamakua Biomass Holdings, LLC for up to 10,500 acres of State owned lands for commercial forestry operation. The Board directed the Land Division and DOFAW staff to collaborate and consult with DBEDT staff to: (1) identify appropriate State owned lands for biomass energy production in the targeted areas; (2) determine, based on considerations that include policy, technology and initiative, an appropriate manner to select among multiple and/or competing applicants seeking those lands; and (3) formulate a recommendation on how and who to issue direct leases for those lands found to be suitable for the respective purposes stated by the applicants.

Unanimously approved as amended (Gon, Edlao)

Item C-2 Approval of Memorandum of Agreement (MOA) to Implement Mitigation Outlined in “The Final Habitat Conservation Plan for the Construction and Operation of the Lana’i Meteorological Towers, Lana’i, Hawai’i”

Member Johns recused.

Paul Conry, Division of Forestry and Wildlife, noted this came before the Board previously and the liability issue was agreed upon.

Unanimously approved as submitted (Edlao, Gon)

Item C-1 Annual Progress Briefing to the Board of Land and Natural Resources Regarding Implementation of the Management Plan for the Ahupua’a of Pu’u Wa’awa’a and the Makai Lands of Pu’u Anahulu

Mr. Conry recognized ACP coordinator, Paula Hartsell, for her work and staff is striving to get a position for her with the Department.

Mike Arnold with DOFAW went over his report with the Board.

The Board expressed their appreciation of his work.

Item D-1 Consent to Mortgage, Land Office Deed S-27965 to Jim K. Aana and Marie E. Aana, Waimea, Kauai, TMK: (4) 1-6-02: Fronting 45.

Item D-2 Request to Write-Off Uncollectible Account on the Island of Hawaii.

Mr. Atta asked to withdraw both items.

Withdrawn (Johns, Gon)

Item D-8 Approval in Principle of Land Exchange between the State of Hawaii and Hawaii Baptist Academy for State-Owned Land at Nuuanu, Honolulu, Oahu, TMK: (1) 2-2-22:02 & 19, and Privately-Owned Property Yet to be Identified.

Mr. Atta asked to defer.

Deferred (Pacheco, Gon)

Deferred until next Board Meeting to provide Applicant’s representative an opportunity to attend and provide testimony.

Item D-4 Approval in Principle of Direct Lease to Kua O Ka La Public Charter School for School Purposes, Puna, Hawaii, TMK: (3) 1-3-6:14.

- Item D-5** **Withdrawal from Governor's Executive Order No. 2554; Set Aside to the Department of Water Supply, County of Hawaii, for Well and Reservoir Site at Ahualoa, Hamakua, Hawaii; TMK: (3) 4-6-11;42 por.**
- Item D-7** **Sale of Remnant to Anna B. T. Lai Trust, Darrell K.M. Lai Trust, and Barry W.C. Lai, Auwaiolimu, Honolulu, Oahu, TMK: (1) 2-2-003:095.**
- Item D-9** **Rescind Prior Board Action of April 11, 2008, Item D-8, Consent to assign Homestead Lease No. 34, Henrietta Kia Cypher, Assignor, to, Barney Kealoha Cypher, Assignee, Waianae, Oahu; TMK: (1) 8-5-004:027.**

Mr. Atta has no changes.

No public testimony.

Unanimously approved as submitted (Pacheco, Johns)

- Item L-1** **Authorization to Enter Into a Memorandum of Agreement between the State of Hawaii, Department of Land and Natural Resources, and State of Hawaii, Department of Transportation regarding the Implementation of Ferry System Improvements at Lahaina, Maalaea, and Manele Small Boat Harbors**

Unanimously approved as submitted (Edlao, Gon)

- Item M-1** **Approval for Award of Construction Contract -Job No. F46B657B, Kokee State Park, Kalalau Parking Lot Reconstruction & Related Improvements, and Job No. F46B657C, Kokee State Park, Kalalau Lookout, Lookout & Pathway Improvements, Waimea, Kauai, Hawaii**
- Item M-2** **Appointment of Mauna Kea Soil and Water Conservation District Director**

Chair Thielen asked if there were any questions on these and there were none.

No public comment.

Unanimously approved as submitted (Gon, Pacheco)

Adjourned. (Johns, Gon)

There being no further business, Chairperson Thielen adjourned the meeting at 1:11 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



Laura H. Thielen
Chairperson
Department of Land and Natural Resources