

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

DATE: FRIDAY, DECEMBER 11, 2009
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 9:08 a.m. The following were in attendance:

MEMBERS

Laura Thielen
David Goode
Jerry Edlao

Ron Agor
Rob Pacheco

STAFF

Sam Lemmo/OCCL
Morris Atta/LAND
Curt Cottrell/PARKS
Scott Fretz/DOFAW
Wesley Choi/DOBOR

Dan Quinn/PARKS
Kevin Yim/DOBRO
Paul Conry/DOFAW
Dan Polhemus/DAR
Meghan Statts/DOBOR

OTHERS

Bill Wynhoff, Deputy AG
Randy Vitousek, K-3
Randy Cates, K-2
Stephanie Pascual, D-8
Roger Hirako, D-9
Cheryl Hirayama, D-9
Sam Monet, D-9
Celia Shen, D-5
Ernest Nomura, J-2
Sam Monet, J-2
Pam Macer, J-3
Canen Hookano, H-1, 2
Norm Rahyuns, H-1, 2, 5
Reg White, H-1, 2, 5
Huang-Chi Kuo, H-4

Mark Roy, K-5
Stephanie Iona, E-3
Marti Townsend, K-2, F-1
Don Pascual, D-8
Earl Yamamoto, D-9
Sandra Song, D-9
Roy Oyama, D-9
Jonathan Durrett, D-10
Mark Meyer, J-2
Andrea DeMauro, D-13
Gareth Sakakida, H-1, 2
Lawson Teshima, H-1, 2
Sam Monet, H-1, 2, 5
Mark Meyer, H-1, 2, 5
Kelvin Ching, H-4

Bill Mossman, H-5
Jeannie Light, H-5
Adam Sutton, H-5

Janet Mandrell, H-5
Julia Trott, H-5

Chair Thielen explained that because of the holidays November and December has only one Board meeting and as a result a large number of people attend these meetings and asked that people be brief.

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

Item A-1 October 23, 2009 Minutes (TO BE DISTRIBUTED.)

Board member Pacheco recused from this item. Minutes were distributed.

Approved as submitted (Edlao, Agor)

Item A-2 November 19, 2009 Minutes (TO BE DISTRIBUTED.)

Member Pacheco recused himself. Minutes were not ready.

Deferred.

Item K-5 Conservation District Enforcement File MA-08-30, Request for Additional Time to Resolve Unauthorized Seawall Improvements Located Makai of Shoreline at 3695 Lower Honoapiilani Road, Lahaina, Island of Maui, by Hale Kai AOA Condominiums, TMK (2) 4-4-001:042

Sam Lemmo, Administrator for Office of Conservation and Coastal Lands reported that Hale Kai AOA requested for an extension of time for them to get their permits.

Mark Roy representing Hale Kai AOA was here for any questions.

Unanimously approved as submitted (Edlao, Agor)

Item K-3 Conservation District Use Application (CDUA) HA-3518 for Kuleana Land Use-Single Family Residence & Related Improvements by Keith and Cynda Unger Located at Kalahiki, South Kona, Island of Hawaii, TMKs: (3) 8-6-014:012 and portion of (3) 8-6-011:003

Mr. Lemmo described home background with concerns of flooding.

Randy Vitousek representing the applicant asked for approval and went into more detail on the house.

Chairperson Thielen noted that the archaeological inventory survey covered the entire footprint of the house as opposed to the whole property and State Historic Preservation Division (SHPD) commented that there will be a fairly extensive drive up there with the requirement of the archaeological monitoring and she noticed that it was a condition. Mr. Vitousek said it was completely acceptable.

Unanimously approved as submitted (Pacheco, Edlao)

Item E-3 Request Approval to Renew and Issue New Revocable Permits for Use of State Park Land on the Islands of Kaua'i, Oahu, Maui and Hawai'i

Dan Quinn, State Parks Administrator presented saying that these include a number of permits for boating operations on Kauai which were previously approved by the Board at the Napali Coast as well as for the Wailua River area which had been administratively issued with the authority of the Board. There is no proposal to change anything except for the permit for the Lodge at Koke'e which staff recommends an increase of 1 percent in the rental amount and the Lodge sent an agreement to the proposal. He went over various other RP permits.

Stephanie Iona representing Kikiola Land Co. asked for the Board's consideration.

Unanimously approved as amended (Agor, Edlao)
In Recommendation #3, change 4% to 1%.

Item K-2 Conservation District Use Application (CDUA) OA-3525 and Request to Expand Lease Area of State Marine Waters for Marine Activities for Hukilau Foods LLC, Two Miles Offshore Ewa Beach, Island of Oahu by John R. Cates, Hukilau Foods, (coordinates at 21.2875 North Latitude and 158.0066 West Longitude)

Mr. Lemmo communicated that this is a request to increase the size of an existing open ocean aquaculture farm where they are culturing moi. This permit was originally permitted in 2001 by this Board.

Randy Cates representing Hukilau Foods testified.

Marti Townsend of KAHEA reported that a diver contacted them with concerns of exclusive use because people dive there. Questions regarding condition #8 and #27.

Mr. Lemmo said that condition #8 is a standard condition. When staff issues a CDUP as the permit the CDUP permit which is a zoning permit regarding regulatory land use does not convey any rights or exclusive privileges. The applicant will be seeking exclusive use of two acres and a limited exclusive use of the larger area, no anchoring. That will be consummated in the State lease. This instrument doesn't convey those rights.

Chair Thielen summarized the permit authorizes to do the use for the area that is in the subsequent lease document and asked will that lease come back to the Board for approval. Mr. Lemmo confirmed that it will. Chair Thielen continued saying the lease terms and conditions will be published and people will have an opportunity to comment on those and if people wanted to do further investigation between now and then it will give them time to go do that. Mr. Lemmo acknowledged that.

Unanimously approved as submitted (Agor, Pacheco)

Item D-8 Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc., Mauna Kea Beach Hotel, South Kohala, Hawaii Tax Map Key: (3) 6-2-2: portion seaward of 4.

Land Division Administrator, Morris Atta described revocable permit background. The permittee reported they won't be using a platform, but instead will use wooden racks and the area is the same so there is no need to amend the revocable permit.

Stephanie Pascual for Hawaii Explosives and Pyrotechnics said she was here for any questions.

Don Pascual representing Hawaii Explosives and Pyrotechnics testified describing how they used to get a permit and the current process which is a burden asking to get a revocable permit on other areas that they use in the state.

Chair Thielen suggested what can be done under this process is say for the next three months schedule in the advance. Mr. Atta commented that subsequent to staff granting that was a different fireworks company, but staff was advised by the Attorney General's Office that opening new dates is not permissible. Chair Thielen asked whether it could be delegated to the Chair where Mr. Atta said he wasn't certain and would have to refer to the AG's Office because of questions regarding dates to be determined.

Mr. Pascual asked to ease off the burden by accommodating their request on a last minute basis to celebrate events.

Chair Thielen said that the Board sympathizes with Mr. Pascual on the business side and staff will work to see how they can work with him on the process, but it is also requesting to use State lands on a public beach plus there may be other competing things as well sometimes we have to manage that on our side, too.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-9 Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: (3) 6-6-05:19, 20, 22, 24, 25, 27, 29&32.

Mr. Atta briefed the Board that this is a request to allow the sale of a deed reservation to a number of ag property owners which pertains to the State's right to acquire portions of their lands for the Waimea Bypass Highway. The Department of Transportation (DOT) changed the location of the bypass project and this reservation at this location is no longer needed and the property owners wanted to clear their titles on this reservation. He noted that this reservation is specific to this project and could not be used for any other purpose per the Attorney General's Office even if the County may want to switch projects.

Roger Hirako, a Lalamilo area farmer testified that the farmers want the lands returned to allow them to farm the area where some farmers had put in improvements and that they want to clear their deeds.

Earl Yamamoto, the owner of Lot 5B described purchasing it in 1975 and is under reserve where at that time he was told it wasn't going to be used for the bypass and is in favor of having the lands be sold back to the farmers.

Cheryl Hirayama representing Hirayama Farms testified that they occupy the old Lot 1 having farmed there for 47 years. Their field is in the reserve and her home is 6 inches from the reserve where she requested to approve this to protect her field and home.

Sandra Song represents the Hirayama, Imioka, Yamamoto, Pecado, Hirako, Hori Families, Lalamilo Partners – Edi Family & Kawamata Farms are all farmers in Lalamilo that asked to be able to acquire an 80 foot road reservation. She did submit some written testimony this morning which she referred to attachment A-1 and A-2 noting how bad the land was where farmers were pulling up rocks and B-1 to B-13 shows what the area looks like today. The farmers produce 30% of the leafy vegetables in Hawaii and that these are real farmers working in the fields' all day. The Board is allowed to sell this reservation if the Board can find that it's not prejudicial to the best interest of the State, the community or the County. DOT has said they don't want the reservation for their road, the State Plan, the County General Plan and specifically the County Development Plan which was tasked by the County by ordinances to preserve this land to provide buffers around the land. Ms. Song had attached a map that was part of a CDUP from South Kohala in 2008. The Community Development Plan talks about a connector road for Waimea it doesn't specifically say the location and it shows this road is outside the Lalamilo Farm Lot and the plan says to preserve the Lalamilo Farm Lots and provide a buffer that the Department of Ag recommends 800-1,000 feet. She referred to attachment C map pointing out there is more than adequate land where the County can start this road in Parker Ranch land. The farmers are also afraid of encroachment and that is why Lalamilo was established because it was away from everything else. But, once the County puts in the connector road it's guaranteed these lots will no longer be farm lots and be sub-divided into smaller lots. Ms. Song reiterated the farmer's request to acquire this reservation to help preserve the integrity of their land and gives them an extra buffer away from any connector roads the County plans to build in the future. If the Board grants this and gives back the reservation to the farmers, and if the County decides to locate this connector road in the farm lots, the farmers would still have the power of

imminent domain to acquire these lands. Restating the various plans she doubted the County would want to infringe on farm land.

Member Goode said that he finds it odd that the County Planning Department, who he assumed codified this, is against this and wondered whether there was additional correspondence with the County. In 2008 the plan was adopted by the council, 2009 there is a new planning director and asked why.

Ms. Song explained that she spoke with Alan Salvea who is the director who worked on the South Kohala Community Development Plan. In addition she spoke to Alice Kawaha who is the senior long range planner at the Planning Department and that Ms. Song spoke to Alan before planning submitted any comments and Mr. Salvea confirmed that it was part of the CDUP and she was aware of recommendations from Warren Lee and staff who wanted to use this as a road or as a buffer. The prior public works director was looking at other alternatives. Warren Lee came from HELCO, private industry and in Ms. Song's opinion is that they figured this was the easiest route through farm land than deal with a private owner. But, there is a lot of balancing of equities. What is more important? Do you want it cost more to the County or do you want to preserve some farm land and agriculture? Mr. Salvea agreed with Ms. Song that its part of the CDUP and the ordinance that if they were to go to court over this issue the farmers would probably win and the County wouldn't be able to put the road in which Ms. Kawaha agreed. Ms. Song said they are following the lead of public works.

Member Good asked whether planning is looking at alternative routes where Ms. Song confirmed that they are looking at additional routes.

Member Pacheco noted that the language in the reservation is specific bypass road which has changed. These are good farm lands right across there is a lot of empty pasture space along the same corridor he is in favor with the submittal.

Ms. Song raised the issue regarding written testimony from a Margaret Willie asking for a contested case that there is no basis for it and the Board could deny that request today.

Sam Monet is a Lindsey from Waimea, Big Island testified how the farmers cleared the rocks from those lots and developed home grown vegetables for the State that no one else was successful in doing this and urged the Board to continue these farms.

Roy Oyama representing the Hawaii Farmers Association is a member of the Hawaii Farm Bureau and President of the Kauai Farm Bureau and supports agriculture. Mr. Oyama noted that if the Farm Bureau knew about what was going on they would have been here today. He and his wife weren't able to face the rocks at Lalamilo and he is still on Kauai. Since the early 1960s there was talk to be sustainable by the State to create a salad bowl where Mr. Oyama asked and begged to strongly support the farmers because it is sustainable for Hawaii.

Chair Thielen noted that the Department of Agriculture submitted written testimony. She asked because of the issues with the County were they aware this item was on our agenda today. Mr. Atta said that the Hawaii District Office has been in contact with the County and confirmed that the County decided not to attend this meeting.

Unanimously approved as submitted (Pacheco, Goode)

**Item D-5 Extension of Approval in Principle of Direct Lease to Connections
New Century Public Charter School for School Purposes, Kaumana,
Hawaii, Tax Map Key: (3) 2-5-6:141.**

Mr. Atta explained that this item was an amendment to a prior approval issued on March 28, 2008 where the Board approved in principle the issuance of a direct lease to the school provided they are able to comply with Chapter 343 in two years, but the school came and asked staff for additional time and staff agreed it was appropriate to grant a year extension to December 31, 2010 for the school to comply with the Chapter 343 requirements.

Celia Shen with Wil Chee – Planning said she understood the requirements.

Unanimously approved as submitted (Pacheco, Edlao)

**Item D-1 Issuance of Revocable Permit to the Kauai Farmers' Association and
Amend the Board's Prior Action of April 25, 2008 (Agenda Item D-1),
Wailua, Lihue, Kauai, TMK:(4) 3-9-02: Portion 20**

Mr. Atta described this has to do with the Kalopa Lands as part of the prior Board action numerous RPs were issued or authorized at that time there was no resolution to the remaining 68 acres on how it was to be utilized and who it was going to go to. Subsequent to that report after discussion with all parties the idea was floated that the Kauai Farmers Association be the applicant for purposes for future planned farms and this is what this request is to issue the remaining 68 acres with the Kauai Farmers Association.

Roy Oyama representing the Kauai Farmers Association is a non-profit 501c3 under the Hawaii Farm Bureau Foundation explained that this area is to train applicants on the island and to train on other crops.

Chair Thielen asked Mr. Atta whether under the recommendation the subject area is for use for diversified agricultural purposes will cover that and the training. Mr. Atta confirmed that.

Unanimously approved as submitted (Agor, Goode)

Item D-10 Applicant's Request for Mutual Cancellation of General Lease No. S-4212 and Revocable Permit No. 7235 to Western Apartment Supply & Maintenance Co., dba Maui Oceanfront Inn, and Sale at Public Auction of Two Co-Terminus 55-Year Leases, Kihei, Maui, Hawaii, Tax Map Keys (2) 3-9-004:029 and 149. (TO BE DISTRIBUTED)

Mr. Atta said the applicant requested this be deferred to the next Board meeting because staff was talking of other alternatives.

Jonathan Durrett representing Western Apartment introduced himself and acknowledged they wanted to defer this item.

Deferred (Edlao, Pacheco)
Deferred to next Board meeting.

Item J-2 Denial of Request for Contested Case Hearing by Brian Barbata

Kevin Yim representing Division of Boating and Ocean Recreation (DOBOR) reported that the petitioner is contesting the selection of Honey Bee as the developer of the haul-out and fuel dock sites located at the Ala Wai Small Boat Harbor as well as the Department entering into exclusive negotiations regarding the development agreement. Staff recommends the Board deny the petitioner a contested case hearing because of a lack of standing.

Chair Thielen noted to the Board that there are legal questions and if they feel the need to go into Executive Session they could request that to get advice from our counsel.

Ernest Nomura on behalf of Magic Island Petroleum testified with respect to the request for a contested case hearing. The basis for objection is lack of standing and he thinks the Department of Land and Natural Resources is confusing the concepts of public procurement - Procurement Code 103d versus the negotiation of leases under all State land. The basis for lack of standing that his client did not submit a proposal with regards to the RFP has to do with the Procurement Code under 103d and that forfeits the right for any person who didn't file a response to the RFP basis to protest the procurement. That is under a different statute and a different agency under the State. What they are asking for is a contested case hearing under Chapter 91 as well as HRS 171. The Department's own objection for a contested case hearing certainly suggests that there is standing, but for the fact that they didn't file a response to the RFP. The fact that they didn't file a response to the RFP has nothing to do with lack of standing asking that this issue be examined much more carefully given the kind of legal issues as well as public interest issues that are going before the Board during contested hearings. This is not a simple development of the Ala Wai Boat Harbor. This is a multi-million dollar type plan and proposal that directly impacts not only the existing occupants of the area, but the residents of the area as well. He suggested the Board look at this issue and allow them to file a contested case hearing.

Member Pacheco asked anyone can come here and say that and what makes it different for you and your client. Mr. Nomura's response was that they are a current occupant of one of the proposed site that Magic Island Petroleum has been a long standing occupant or lessee developed by this proposal and that is where they have standing. Mr. Yim clarified Magic Island Petroleum is under a revocable permit.

Mark Meyer from Honolulu testified that these people worked in good faith to put together a proposal and that DLNR has taken six years to fulfill any new contract for the boat harbor since that contract ended in April 2004 and nothing new since then. Chair Thielen clarified the item to Mr. Meyer on whether the request for a contested case should go forward or not and he said it should not go forward and supports getting someone in the area citing the cost.

Sam Monet an Ala Wai Harbor resident agreed that DLNR needs to get someone at the boat harbor ASAP because the state it is in now is deplorable, unhealthy and unsafe and wants someone in there.

*Board Member Agor made a motion to approve the denial of the request and Member Goode seconded it.

*Member Pacheco moved to go into executive session to consult with the Board's attorney on the Board's rights, duties, privileges, immunities and liabilities. Member Goode seconded it.

10:13 AM EXECUTIVE SESSION

10:27 AM RECONVENED

Chair Thielen reported that after conferring with our counsel said we have a motion and second on the floor and called for the vote and asked all in favor? All approved. Staff recommendation has been accepted and request for a contested case has been denied.

Unanimously approved as submitted (Agor, Goode)

Item M-1 Amendment to Prior Land Board Actions of July 14, 2006, Under Agenda Item M-1 and August 28, 2009, Under Agenda Item M-2, Regarding Issuance of Direct Lease to Paradise Inn Hawaii, LLC, DBA Tsukiji Fish Market Restaurant, Parcel 6, Domestic Commercial Fishing Village, Vicinity of Pier 38, Honolulu Harbor, Honolulu, Oahu

Item M-2 One-Year Extension of Cooperative Agreement No. H-89-8 Issued to the United States Department of the Interior at Kawaihae, Kohala, Hawaii

Patty Miyashiro representing Department of Transportation/Harbors Division said she was here for any questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-13 Amendment of Grant of Term, Non-Exclusive Easement S-5703 to Asanoma Family Trust for Seawall and Landscaping Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-058:seaward of 041.

Mr. Atta noted after issuing the easement in August of 2002 it was discovered staff did not insert what is now a standard term to allow the easement to run adjacent with the land and this item is a request to correct that.

Andrea DeMauro was here representing her client.

Unanimously approved as submitted (Pacheco, Edlao)

Item J-3 Consent to Assignment and Update of Subleases and Assignment of Petroleum Supply Agreement for Harbor Lease No. H-83-2, from Kona Fuel & Marine, Inc., Assignor, to Kona Marine Holdings, LLC, Assignee, Honokohau Small Boat Harbor, Kealakehe, North Kona, Island of Hawaii, Tax Map Key (3) 7-4-08-040

Mr. Yim reported staff is looking to assign six subleases from the previous owner to the current owner.

Chair Thielen noted to the Board members that the information for the specific leases are in the Board submittal and all leases have to be cured prior to any assignment.

Pam Macer representing Chun Rair Yoshimoto was here for questions.

Unanimously approved as submitted (Pacheco, Agor)

Item H Administrative Items Relating to Recreational Renaissance Plan B:

H-1 Request for Final Approval to Adopt proposed Hawaii Administrative Rules, Chapter 13-146, relating to State Parks System;

H-2 Requesting Approval of the Reduction of Commercial Parking Fees at the Nu'uanu Pali State Wayside;

H-3 Request for Final Approval to Adopt proposed Hawaii Administrative Rules, Chapter 13-121, Rules Regulating the Hunting of Wildlife on Public Lands and Other Lands;

H-4 Request for Final Approval to repeal Hawaii Administrative Rules Chapter 13-125, Rules Regulating Wildlife Sanctuaries, and Adopt Chapter 13-126, Rules Regulating Wildlife Sanctuaries;

H-5 Request for Final Approval to Adopt proposed Hawaii Administrative Rules, Chapter 13-234-1, 13-234-3, 13-234-5, and 13-241-25 relating to Division of Boating and Ocean Recreation.

Numerous written testimonies were distributed.

Chair Thielen explained that we'll have a staff presentation for H-1 to H-5 then public testimony in order afterwards.

Dan Quinn, Administrator for the Division of State Parks introduced administrative items H-1 to H-5 regarding the Recreational Renaissance Plan B. The Department submitted its initial proposal for approval to the Board on August 14, 2009. Subsequently, staff met with the Small Business Regulatory Review Board and presented their rules that were going to be heard. After that, the Department conducted statewide hearings on the rules. Staff went on to present to the Hawaii Tourism Authority (HTA). The HTA modified their agenda and voted to support the Recreational Renaissance Plan B. Following the hearings staff went to the Small Business Regulatory Review Board and received their approval for processing the rules. There were seven public hearings held statewide that the submittal had a summary of the 275 testimonies received. The bulk of the State Parks' testimonies were related to the entry fee asking to modify the rules to allow charging entry fees system wide. Some testifiers were confused with the parking fees which are already authorized and approved by the Board that charges parking fees to non-residents only at selected state parks. There was concerns and opposition for the fees primarily on Kauai. There were comments on Kapapa Island fishing and camping. There were a lot of comments on the Boating mooring fees and temporary mooring rates.

Chair Thielen related that staff will follow the process that was used by the Small Business Regulatory Review Board which helped move things along. People may have points on multiple topics. The order will be State Parks, Forestry and then Boating where we'll have Board discussion and then the action after each division.

H-1 and H-2

Curt Cottrell, Assistant Administrator for the Division of State Parks discussed items H-1 which is to request approval of staff's proposed amendments to Chapter 13-146 and item H-2 is to adjust the parking fees established last August for commercial operators especially at Nuuanu Pali. Before he began he noted that this is a huge policy shift for the State of Hawaii which transitions us to financial independence. It is something long overdue because most parks nation wide have embraced and conducted this for years.

Based on the public testimony the most important change in the public's opinion is State Park's capacity to charge fees. Mr. Cottrell started with the public input discussion on Section 13-146-5 regarding public opposition to parking and entry fees reiterating Mr. Quinn's explanation that we already have the authority to charge for parking fees and today is to approve the authority to charge for entry fees. He understood how the public would mix these two fees together because they are closely aligned. The largest number of opposition was on Kauai directed to Kokee State Park. On the flip side, there were comments from Kauai residents that if fees were levied that the fees remain on the island that it was generated, such as at Haena State Park. Maui had a lot of comments from part-time Hawaii residents regarding the parking fees at Makena which is not part of the rule package - and could be responded to in a reasonable manner such as issuing passes. A few Big Island residents opposed fees at Akaka Falls where their perception was a gated booth - that wouldn't work there. The model that people had in mind that generated opposition was Diamond Head - with a booth and a gate and the associated concerns of potential traffic issues resulting in a detrimental park experience. Staff agreed that a booth and a gate will not work at all parks and there are other ways to collect parking and entry fees.

There was a concern that if staff collects an entry fee whether - the goal would then be to increase patronage at the park - which is not the role or the goal of the Division. Back in August staff picked eight parks based on the high mix of visitor to resident ratio in terms of the number of people coming in, and staff has assured the public that this is not an attempt to bring in more people to our parks. It is to tap in the current visitor resources and have them contribute to payment of operations. There was comment that this would be a decline to visitors to our parks, but HTA didn't think so and agreed it was reasonable for the visitor industry to help off-set what is a dire economic situation at State Parks. Some members of the public understood that only visitors will be charged or only visitors use the parks and it makes sense to take special revenue to pay for park management rather than use general tax revenue. The comments were that some people don't use the parks - and it made sense to have the visitor pay for that. The fee collection would help offset the alternative of closing the parks and allow for State Parks to stay open.

The commercial tour and transportation industry does not support any additional fees at this time. Many of the operators said we should charge everybody, but they did understand State Parks' dire need for additional revenue understanding the relationship between the quality of our State Parks and the quality of the visitor experience. There was an informal consensus that an entry fee was preferable to a parking fee based on the Diamond Head model which works well for the commercial tour industry. Tour operators can drop off visitors and the visitor will pay the fee without incurring costs to the tour operator.

H-2: When staff came before the Board in August to set the fees for the commercial parking it was consistent across the board on what those fees were for both visitors and residents except for Nuuanu Pali. Staff recognized, due to the shorter time spent at the Pali, the rate was reduced from \$5 per car to \$3 per car. The commercial tour industry expressed that reduced rate for their patronage should be considered, based on the little

time spent at the Pali - which staff agreed to. Staff asked the Board to reduce the rate for the commercial carriers at the Nuuanu Pali.

Discussion on Items H-1 and H-2: The most negative response was directed to the Chapter 13-146 amendments toward the Board having the authority to set entry fees which are a common procedure in many national and state parks. Mr. Cottrell reminded the Board that the entry fee will be set by them in the future with public input. With advances in the parking and entry technology it can be unobtrusive and that most visitors are accustomed to fees.

Staff recommends no change resulting from the testimony. Staff recommends that the Board grant approval to adopt the amendments to the specific sections shown in attachment 6 for Chapter 13-146 for the State Park Administrative Rules and that the Board authorize the Chairperson once approved by the Attorney General's Office to sign for adoption of the proposed rules to submit to the Governor for approval and to submit to the Lieutenant Governor's Office for filing.

Member Pacheco asked for clarity on H-1 that this is to only to approve the ability for this Department to charge entry fees which will be decided in the future. Mr. Cottrell confirmed that saying that the parking authority was set 8 or 9 years ago and staff never acted on it until August 2009, which is the same thing that staff needs now - the authority through our rules to charge entry fees and the Board would be the policy entity to set the fee. Mr. Quinn clarified currently the rules authorize the Department to set entry fees at Diamond Head State Monument and the new rules strike out the reference to Diamond Head. Chair Thielen summarized that what this rule would do is authorize the Department to charge entry fees. Any subsequent quest to charge an entry fee at any park would have to come back before this Board. Mr. Quinn acknowledged that. Chair Thielen asked if the Board submittal clarifies if there are parking fees at a park that these entry fees would substitute those parking fees. Mr. Cottrell said that was a decision the Board made in August 2009 as a policy call which is not imbedded in the rules. That policy call was if staff has a parking fee in place, and the Department chose to adopt an entry fee - then staff will rescind the parking fee. It would be one or the other. Mr. Quinn said also, if someone had paid for a camping permit they wouldn't be double charged for parking but would get a parking pass as part of their permit.

Member Agor noted it was his observation that Kauai has the biggest opposition that the people opposing the fees did a good job lobbying the public. His encounter with the public was "why are you charging us?" Once he told them it was only for tourists they wondered why they weren't told that and that it was ok. There is a lot of support for charging just the tourist. Mr. Cottrell said when he read some of the testimony there was the assumption the division was charging everybody and that staff didn't do an adequate job in making that clarification.

Chair Thielen announced that Gareth Sakakida is here to testify on item H-1 which is the proposal to amend the rules to authorize entry fees and if you have comments on H-2 as well.

Gareth Sakakida representing the Hawaii Transportation Association said he had sent written testimony and the Chair acknowledged that they received it. Mr. Sakakida testified that his association members are the tour operators who don't like the proposal because it sets precedence to charge at any look out. Commercial vehicles are not always marked and there is no enforcement officer on duty to check if it's a family visiting. There are concerns and difficulties whether it's a per vehicle fee. Agrees with paying the fees to help the maintenance and the economy is bad so should wait until its better.

Member Agor asked whether Mr. Sakakida recognizes that the Department depends on the Legislature for funding and in the past hasn't been very good that we need to somehow maintain the parks that his customers' go to. Mr. Sakakida acknowledged that.

Canen Hookano from Kauai and Chairperson for the Kokee Advisory Council reported that the Advisory Council is opposed to any entry stations on Kauai if the funds raised do not stay on Kauai. He noted that people in Haena have been preparing for an entry station for the past 15-20 years expecting the revenues to stay in Haena. The Council has been trying to find other means to raise money for DLNR and suggested charging a \$1 surcharge at car rental companies and those companies are not opposed to that. It could raise approximately \$60 million per year which may be four times what is proposed with toll stations in Hawaii. The Council is sympathetic with DLNR's situation – and to do a \$1 rent a car surcharge, the Council will work to push it through the Legislature.

Member Pacheco asked whether he was in support of this proposal to the change our rules to allow for entry fees. Mr. Hookano said he is opposed unless the monies from each island stays on each island then they (the Council) would be in support of it. The Council feels the money generated from Koke'e State Park can raise enough revenues to fund the rest of the state parks on Kauai, but not enough is generated for the rest of the state parks throughout Hawaii. Chair Thielen asked if that be the case would he support Kauai people paying entry fees at other islands' parks. Mr. Hookano replied that he thinks Kauai people would be ok with that.

Member Agor asked whether he'd be opposed to this Board approving this plan and deferring it for maybe three months until the Legislative Session and see how successful you are with taxing car rentals and if you are successful and the funds look good for the Department then they (the Board) may suspend entry fees. But, if you are not successful we need a mechanism to get going. Mr. Hookano response was he understood the situation reiterating Member Agor that the funds will be directly allocated to DLNR to support Hawaii's parks suggesting that they (the Council) would be in favor of their kama'aina contributing to an annual fee for locals at a cheap rate for certain parks throughout the State. He would be fine paying to go to Diamond Head. Chair Thielen noted that locals pay a fee when renting a car on the neighbor islands. Mr. Hookano agreed by saying that most people he talked to spend \$3 in rent-a-car fees that goes to DOT. And, \$1 is nothing knowing that the facilities at each State Park will be working - there will be toilet paper, working toilets and sinks for our keiki, kupuna and our tourists - it is a win-win situation.

There were some explanations and discussions between the Chair and the public on how to manage the public testimony whether to have people speak on everything all at once or as items came up. The Chair had those who wanted to speak on H-1 & H-2 to come up first and then those who wanted to speak on everything in general.

Lawson Teshima representing a U.S. bus company said that they rejected rate increases over the last two years because they feel for their customers and they try to keep expenses down. There has been vehicle rate increases. His company doesn't feel it's fair to charge at the Pali since they only stay for 10 minutes to look.

Chair Thielen asked whether he would support the low entrance fee – or otherwise they would be left with higher entrance fees. Mr. Teshima said he reluctantly supports the lower fee.

Chair Thielen noted that we're moving to the multiple item testifiers.

Norm Rahyns, a resident on Oahu and a member of the Waikiki Yacht Club testified that he is against the access fees and he strongly supports the car rental fee which is a much better way to do this.

For Boating, he went to the public hearings where he learned that the haul-out, fuel dock and some empty slips are not being rented at the Ala Wai which is revenue for the DLNR that is not being collected. Because DOBOR can't do their job you have to pay an additional 60%, 100%. As a member of the Waikiki Yacht Club they charge a \$1.50 per foot per day and members get showers, a pool, a bar and others where DLNR is charging more and not offering any of these amenities. The proposal is not in alignment with what's offered the boaters and with the charter which is adjusting the fees if needed, but there are safety issues without a haul-out facility. Mr. Rahyns asked to consider the legitimacy and impacts of the rates that 45% of DLNR's monies go to payroll and is not in alignment with any mainland boat harbor.

There was Board discussion with Mr. Rahyns clarifying that the proposal amount was reduced to \$1 per foot per day from \$2 based on public testimony. Mr. Rahyns apologized and said in his opinion the harbors are worth 60 cents per foot per day in the current condition. He encouraged renting the empty slips.

Sam Monet is an Ala Wai resident on various Boards testified that Boards (Government) do not run businesses which is the problem - trying to create a business model that wouldn't work in the real world. For example, the day after the old haul-out tenant left the Ala Wai there would be another taking its place in the business world otherwise the business would go belly up. Mr. Monet witnessed what happened at the Legislature. He described the problems staff has with reduced hours, less staff, increased work load due to gross miss-management which should be taken care of at the top not with the janitors. Operate like a business. Mr. Monet is not opposed to a fee increase, but DLNR must get rid of the cumbersome rules and regulations that are imposed on boaters, to free up staff

to do their jobs to generate income in the harbor. Do your job on the revenue side, and then talk about generating more income from the boaters.

Reg White introduced himself as Vice-President of Rail Star Hawaii Transit which operates 36 buses, 16 vans and 2 limos on Oahu and cautioned pricing a very delicate tourist industry out of existence. He related a situation in Florida where the tourists stopped coming. Mr. White is both a commercial boater and a recreational sailor who lives on his boat at the Ala Wai who wants to support the Recreational Renaissance Plan and likes the overall idea. Marion Higa's (State Auditor) accounting from the past always gone to Boating and made the Ala Wai and Honokohau Harbors able to generate surplus revenue over there costs. That revenue was trickled out to other harbors in the State and he agrees with that because some harbors could never be self supporting. He as a boater objects to paying a higher rate for his boat so that the surplus would spill over to bail out a guy who is paying less against the deficit at his harbor. He objects to this tiered fee structure where people for the same thing pay different fees. If you're going to spread the money around then everybody has to pay the same fee helping to contribute to the deficit and Mr. White doesn't mind doing that. Otherwise, if you keep this tiered fee structure that money generated has to stay in that harbor and can't trickle out and help the rest, but reiterated those non-self supporting harbors needing this revenue.

Mr. White continued the transient fee should all be the same and not pay double or triple to go visit some other place where he related the change in fees at Ko Olina. Mr. White's family have a DLNR permit and honor the same rate when visiting other harbors. Almar manages all the marinas in Hawaii and Mr. White distributed some information on some West Coast marinas not managed by Almar. The Chair asked if he was referring to the transient mooring rates which he confirmed. Mr. White has no objection to the increase in fee as long as it's fair across the board.

Mr. White said the ramps aren't self supporting and it takes a tremendous loss out of the Boating Special Fund and he suggested giving the ramps to State Parks or make them self supporting to some degree.

Mr. White objects to the automatic increase in the fees every year and the reason is there is no relation to the cost. The American Transportation Safety Act of 2002 clearly defines fees applied to vessels as the cost to provide a service or facility. There is no justification for an annual increase based on the consumer price index. To justify it we have to have it because costs have gone up is another story.

Chair Thielen asked whether Mr. White supports everyone paying the same fee and not the tiered which the Chair explained what that tier structure is. Mr. White confirmed that. The Chair noted that the proposal in front of us today would take that structure which is a big range between a class A and class E harbor and charging that per foot dollar amount increase at every harbor would narrow the difference between those tiers. She asked whether this proposal before us today is a step in the right direction by narrowing the dollar difference between harbors. Mr. White agreed but it doesn't achieve the goal reiterating his earlier testimony on paying the same rate across the board. The Chair

asked whether it would be better to take a step towards that direction if he recognizes that these increases are probably necessary to get these improvements done. Mr. White said only if you put into it a plan that would continue to reach a level across the state. Chair Thielen explained that it's like Legislatures can't bind future Legislatures and boards can't bind future boards, but there is clear record in saying there was a policy choice in arriving at these fee proposals which is to make it more equal. We have that record to go back to and Mr. White's feeling is to make it 100% equal.

The Chair wanted to address Mr. White's statement that he has a problem with "the pulling of income from surrounding real estate at the harbor out of the Boating General Fund and putting it elsewhere." Chair Thielen addressed Mr. White to clarify for him and the audience that the revenue received by Boating and Ocean Recreation Division goes into one single account which is the Boating and Ocean Recreation Division Special Fund. That would include the mooring fees, the temporary slip fees, the lease rents, the fuel tax, everything. But, Boating and Ocean Recreation Division has responsibilities for managing harbors and statutory responsibilities for ocean recreation. She understands Mr. White's opposition with the boat ramps that it should be somebody else's responsibility, but under statute DOBOR is responsible for a number of things – demarcation buoys and these things outside of the harbors. Payments for those have always come from the Boating and Ocean Recreation Division Special Fund. We have not moved money out of that account or into any separate account. It's when we're running the numbers we're showing how much revenue is generated in the harbor by the mooring fees and how much money is generated by non-boating revenues, but it's all still staying in the Boating and Ocean Recreation Special Fund. We may have philosophical difference about applying monies to other things. But, it all remains in that same account where it always has been and there has been no change to that.

Mr. White disagreed and stated that it's the way you are keeping the book where it shows the harbor running in a deficit when in the past it always showed it running in a \$1.2 million surplus and the difference is that money has been taken out plus the empty slips we have now due to the re-construction is temporary where Chair Thielen explained that the funds are not taken out assuring him that it's still in that special fund. Mr. White argued that it's (fast-land revenues) taken out of the accounting of the marina. The Chair reiterated it is still all in a single account. The Chair made the final clarification that it's when DOBOR was going through the numbers and allocating where the revenues are coming from it all remains in that one account but the breakout shows the revenues versus expenses by program.

Mark Meyer testified that he hadn't seen anything on H-1 to help people who may be handicapped or the elderly and having no fees to allow them to enter the park noting parks on the mainland grant people who are handicapped or elderly to enter the park at no charge.

Chair Thielen reiterated item H-1 and H-2. Member Agor asked if the Board we're to approve these today how soon would we be developing a plan and having informational meetings. Mr. Cottrell said early next year. Right now staff is dealing with parking

vendors trying to get an RP out for the Oahu parks. Once these are codified and in place the next stop may be Maui. Chair Thielen summarized that at the Board's request staff will meet with the affected communities for the parking fees before moving forward. Staff has had multiple discussions with the commercial vehicle and transportation companies. We agreed with them to phase in the commercial rates at a timetable when they have a chance to change their advertised fees because the commercial companies that have advertised fees in Japan under Japanese law cannot change those fees once advertised. Those commercial operators are working to make those changes. These operators prefer the option of the entry fees, not the parking fees. Staff spoke with the Hawaii Kai Neighborhood Board about Ka Iwi and the plan was to move forward with the parking fees for Nu'uanu Pali and Ka Iwi either late December or early January for a permit. Then staff will look at the neighbor islands.

Member Agor communicated that he would like to see a mechanism for the public (especially Kauai) to successfully lobby the Legislature for a tax specifically for DLNR then we abandon charging entry fees. In the meantime we should proceed.

Member Pacheco noted that if we approve this it still has to come back to the Board to implement any parking fees and we'll know that at that time.

Member Agor said we have to send a message to the Legislature that we would suspend this like what the people of Kauai want, if Kauai is successful lobbying the Legislators. If the State Parks goes ahead and charge the entry fees than the Kauai people may not be successful. They need time. Member Agor questioned whether this has been brought up to the Legislature in the past - applying a surcharge to the parks. Mr. Quinn replied not for Parks. It may have been discussed, but he couldn't remember.

Member Pacheco asked whether the Department had a position on the proposal. Chair Thielen said no position and that the decision would be up to the Legislature. The Department doesn't have the authority to do it. One thing the Recreational Renaissance has done is elevated the attention that is needed to manage these lands and the fact that we don't have the revenues dedicated to manage these lands and they are very important. People on Kauai are concerned with the entry areas and she appreciates the fact they want to find revenues to support them. We (the Department) don't control that and the Chair is reluctant to stop any momentum because the state of these facilities is an embarrassment. People have talked about is it fair to charge tourists and it's a poke in the eye for them, but the Hawaii Tourism Authority didn't think so. People are used to paying entry fees when going into parks. It's a poke in the eye when people walk into that comfort station, it's disgusting. We have buildings that are falling down, we have picnic tables where the rebar is showing and we need to fix them up. As long as the revenues go to support that we want to keep moving in that direction, but she understands this discussion by the Kauai Board member (Agor) that they would agree to step back if the Legislature were to adopt dedicated revenues to support these areas. The bottom line is the Department and the communities are interested in being able to fix these places up. But, the Chair agrees that you don't want to stop because you don't know if you can get the momentum started up again.

Member Edlao suggested moving forward with this and do a resolution communicating to the Legislature giving an opportunity to the Kauai people to approach them. Member Agor said when the time is appropriate we can support the movement.

Member Pacheco asked in the rules would they allow all park passes where people could buy or commercial tour companies could buy multiple park passes or system wide permits. Mr. Quinn said that would be a management tool giving the example of Diamond Head where there is an annual pass for individuals which provides an easier way for the regular users to get in. Mr. Quinn clarified that staff is not proposing any changes to fees at Diamond Head. Staff has been in discussions with the commercial tour companies for some system other than a pay at the park. Chair Thielen noted that is where the confusion is on some of the testimony on the park fees. The parking fees are more rigid, and those have already been approved by the Board are set and they don't have the option for a tour company to drop off passengers so they can walk in. They don't have the option like the annual pass. The entry fee would allow us to do more flexible proposals and that would have to come back to the Land Board. You could do an entry fee at a park which would provide a golden pass for someone above a certain age as an example. There are residents on Maui who have concerns because they are there (on Maui) only three months of the year and could establish a quasi-kama'aina rate or snowbird kama'aina rate. The entry free authority gives greater flexibility and the Board can deal with that on a park by park basis. Mr. Wynhoff suggested a system wide basis.

Chair Thielen commented on H-2 in the flurry of getting this in that staff had discussions with some of the commercial vehicles where they might have 10 passengers going to a park, but because their mid-range vehicles are all booked and out on the road they take their larger 25 passenger bus. Staff had talked about there may be impacts on the infrastructure by the large vehicle size. Staff wanted to have the option of working with them and maybe having some variability based upon the number of passengers with a minimum level. We talked about adding "up to" the rate rather than at the rate. Mr. Cottrell acknowledged that. The Chair proposed to the Board members on the recommendation amend the rates for the commercial vehicles in the recommendation – both at all the parks which is the \$10, \$20 and \$40 based upon the passenger size and, at Nuuanu the \$6, \$12 and \$24 to be "up to" those amounts. Member Pacheco asked whether it would be a sunshine issue with other parks. Chair Thielen asked Mr. Wynhoff that it was her understanding that it's not a sunshine issue because they are talking about reducing the number that was in the proposal. Mr. Wynhoff noted that the agenda title is only for Nuuanu Pali. The Chair said we could come back and do the others later then she asked Mr. Wynhoff if the Board could do Nuuanu which she reiterated. Mr. Wynhoff confirmed that the Board could.

Member Pacheco reiterated going back to Member Agor's previous comment on charging entry fees to tourists because Member Pacheco had concerns that it would delay this. Member Agor said he had no intention of delaying this at all. Chair Thielen said that how they communicate the message is one thing. A way they could do it is move forward with Oahu parking fees on a month-to-month revocable permit and in the event that something passes at this Legislative Session as an alternative that parking permit can

be revoked. For the entry fees, those would have to come back to the Board, anyway. If this Board is saying that we would probably not be looking at entry fees prior to a certain time, then we'd be looking at the spring time to give people time and it's not so much an issue.

Member Agor said that it's a matter of the Board making a statement on that and he was ok with the motion to approve as submitted with its amendments and myself personally send a message to all of the Kauai to help them lobby the legislators. If they are successful the Department will probably generate more funds.

Member Goode said he supports what Member Agor brought up on the rule change we don't know what the Legislature will do and we don't know what the package will be six months from now. It is more appropriate to delegate the Department to work with the Koke'e Advisory Group and any other interested parties to see if this can be part of the Legislative package for a year and step up with them if it's appropriate and go with them to the Legislature. If it happens you end up with a fee that is much easier to implement. As an implementation stand point and division standpoint it's got to be better. As a Board ask them to work with these folks to come up with something and give it a go. Chair Thielen said lets have some further discussion because timing wise our legislative proposals are completed, but we could discuss with the Legislature and Board members can engage in that discussion as well on their respective islands/counties.

*Member Agor made a motion to accept staff's recommendation as submitted to H-1 and H-2 with the amendment to H-2 adding the words "Up to" the stated fee amount(s) for Nuuanu Pali. Member Pacheco seconded.

The Board:

Accepted staff's recommendation for H-1 and H-2 with the amendment to H-2 that the fees for the commercial vehicles on Nu'uauu Pali, be up to the fee amount(s) stated.

**Unanimously approved as submitted for H-1 and as amended for H-2.
(Agor, Pacheco)**

H-3

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) presented H-3 having to do with establishing public shooting ranges. The public comments at the hearings were the need for additional flexibility so any operator could have greater capacity to develop and implement an operational plan which staff agrees with. There were comments to remove redundancies to items that weren't in agreement with that. Staff recommends passing the rule as submitted.

Unanimously approved as submitted (Pacheco, Edlao)

H-4

Mr. Conry reported that H-4 updates DOFAW's Wildlife Sanctuary Rule which went out for public hearing and the comments were to support increase protection to the Wildlife Sanctuary. There was opposition primarily with Kapapa Island as a Wildlife Sanctuary and concerns expressed by both fishing clubs and the public that it would restrict access and recreational use and they are here to testify.

The other concern was commercial use of off-shore sanctuaries and one issue was the commercial fees for kayaks to visit Oahu off-shore sanctuaries. Comments were that the fees were too high and the Division came back recommending that the fees be reduced from \$5 to \$3 for a single kayak, \$10 to \$6 for a double kayak. Visitor limits were too low for Mokulua and Popoia islets and staff agreed increasing those. There was opposition to the use of Kapapa Island as a commercial site and staff agreed recommending removing that islet from the list. Staff recommended going forward with the approval as revised. One comment on the Board submittal was from the fishing club that they wanted to correct the comment submitted from their club was signed by 20 of their members reiterating the previous concerns on Kapapa.

Member Pacheco asked about the kayak fees on how the vendor would distinguish whether people will use the kayak to go to these sanctuaries or along the shoreline and how that is applied. Mr. Conry said all the kayaks will have a registration that will be identified comparing it with commercial hiking tours where the operator can reserve a number of spots that day and go on-line and identify a certain kayak with a registration number as going out to the islands. The operator can notify his customers that if they intend to take the kayak to these islands a fee will be assessed or if the customer takes the kayak to the North Shore the operator won't necessarily assess it. If the operator gets false information he can pass the cost on to the renter.

Member Pacheco referred to page 4 of the H-4 submittal, 3rd paragraph, last sentence the comment regarding impacts to seabirds by visitors on kayaks and the last paragraph, 3rd sentence regarding improved management assistance by users that staff is stating they have better behavior from guided tours rather than people renting kayaks and going in there and yet you are charging the fee higher for a commercial guided tour than for someone renting it which seems inverse to him. Someone is already paying money for a guided adventure which is going to be less impact by the visitor to charge money to land on the islet than going around being un-escorted or un-assisted. Mr. Conry said that staff is basing their fees on guided tours on hiking trails and got input from the vendors. Mostly, individuals will go on their own. He confirmed that if someone is guiding people there are elements of control like not killing birds and there is the element of going out in a larger group which is a balance on how to assess those fees. Staff kept with the same model and structure they have for hiking or guided tours - \$5.00 per head. Individuals going on their own could be faster and longer and there is that inconsistency.

Chair Thielen noted that when she went to the Hawaii Kai Neighborhood Board there were comments on Kapapa where it was on a list to allow commercial activities and people didn't like that and DOFAW's recommendation is to take it off that list to not

allow commercial activities at Kapapa. The other thing is amending the maps based on the comments by the fishermen to allow some of the fishing activity to occur on a peripheral area where it's not near the seabirds and the Chair asked whether that was accurate. Mr. Conry replied that staff is not permitting that type of open fishing on Kapapa and is proposing access above the high water mark is restricted. Staff could issue permits for conservation action, science, education and cultural and traditional practices. If someone was claiming they wanted to exercise a traditional and cultural fishing practice staff has a permit process they could go through with. At this point, staff is not recommending opening up the above water portions of the island to just recreational fishing.

The Chair asked if someone wants a traditional and cultural practice for fishing in that area and they're Japanese how does the division deal with that because normally the term traditional and cultural practice refers to Native Hawaiian. Mr. Conry said that staff is developing a process that is in use at Papahānaumokuākea where staff will set up a Native Hawaiian advisory board to look at what is appropriate as a traditional and cultural practice that staff will follow what is in the constitution, the statutes and what has been passed down in the court rulings as what is protected under that. His reading on the rulings of the PASH is not strictly race based. If you want to come in and practice this tradition you can either be adopted in a family or show that you are doing it or accompanying and assisting someone that is practicing. Mr. Conry would refer this to the cultural practitioners to guide staff on what is appropriate. Chair Thielen said that leaves some uncertainty for people who have traditionally fished there and are not Native Hawaiian.

The Chair discussed State Parks kokua agreements or stewardship agreements with organizations and community groups who say we want to have a memorandum of understanding with the Department to help care for this area and they become a recognized group and steward. Could staff have a special permit for activities by that group? Because what's behind the move for Forestry is, un-managed and un-accountable people are out there and there is a lot of damage going on. If you managed people who were accountable through your permitting system, could a group like that be willing to sign up and accept stewardship responsibilities? Have their membership known and hold their membership accountable with the understanding that if there are violations you may risk the permit? Would that be something possible under the current structure for that islet? Mr. Conry said the proposed rules have a permit provision that would allow for conservation management and staff is looking at overnight camping which is a significant impact. To qualify for conservation permits people have to be legitimately out there providing conservation and wouldn't just be going out there to fish. The Chair said there would be responsibilities imposed under that kind of agreement.

Huang-Chi Kuo testified on behalf of Atlapac Fishing Club and is a U.H. Botany student relating the importance and history of Kapapa Island to fishermen and he didn't think for the purpose of protecting the islet that the fishermen should be kicked out.

Chair Thielen reiterated the proposed rules would allow for an organization to enter into a conservation permit agreement with the Department to be able to do conservation activities out there. She asked representative of the club while the fishing club may have done some clean up while out there the primary purpose is to go out there to do overnight fishing, would the fishing club be willing to work with the Department on a conservation permit where the club is increasing the conservation activities to help maintain that area and restore it? Also, assist with monitoring and reporting because staff can't be out there all the time. Staff has Makai Watch agreements with numbers of community groups and it would be a formal type of arrangement not just cleaning up, but ones where the club would be responsible for certain things and agreed to do that and be accountable.

Mr. Kuo said that the club already helps and when they see people abuse the island they call for help, but nobody comes. He doesn't think Kapapa Island was degraded by fishing because the birds come back year after year and the bird population is stable citing some numbers. There are problems with ants overrunning Chinaman's Hat because there are no birds left. Kapapa Island produces 10% of the chicks compared to Mokulua and he thinks that is to mislead the public because the cause of the 10% chick production is not the fishing activity that there are other vectors that affect how many birds the island can sustain. He doesn't think its good evidence to say fishermen are the ones causing this.

Chair Thielen said she is trying to find a middle ground because what happens is there are many places that staff manages where responsible people will go into those places and help watch and keep them clean. But, there are many irresponsible people and that it is clear that Kapapa Island has been hurt. Part of the problem is staff has no way to enforce against irresponsible people because there are no rules to protect it. She thinks Mr. Kuo's concern is the rules that staff is proposing to protect the area would restrict his fishing during the night time. The compromise that the Chair is looking for is a process that he could go through with the Department as a club to work out an agreement on a conservation type permit. But, to be honest staff is not going to give a conservation permit just for fishing and will be looking at clear conservation activities that the club may be willing to accept responsibility for, adopt, report back to the Department and some of it is helping staff monitor the area like Mr. Kuo said that they call and no one comes because the marine patrol is on the other side of the island and can't get there.

Mr. Kuo suggested mapping out areas where the fishermen use the reef area, in land areas for birds and map out areas for camping and fishing would be a better solution. The Chair said it would be impossible to enforce unless staff was out there at night monitoring full-time and that's where staff wants to through back to his group if they want to continue the activity we need groups to step up and help take stewardship responsibility because staff cannot do it all noting that this would take it to a higher level and allowing the Department to put something in place to protect the area that is being damaged by more irresponsible people.

Mr. Kuo noted what DOFAW presented to the Board had more supportive comments from people rather than people who opposed the rule which is not the truth. All the

people at public hearings testified against the rule and the written testimony had 169 pages, but there were 33 repeated written testimonies from the same address and were counted as one. His club had 20 members sign the written testimony, but was counted as one against the rule. This H-4 submittal is biased information where the comments consistently sided with the need for a strong relation to protect. Mr. Kuo doesn't think DOFAW really heard the opinion and incorporated into the amendment. Many of the people of Kailua may protest. They don't want these rental fees, but the amendment at the public hearing is to reduce the fee and increase limits and he thought it was for the benefit of the kayak company because DOFAW had received donations from the kayak company for many years. This draft rule went to the kayak company for review, but not to the public which Mr. Kuo noted on page 145 of the written testimony and he thinks it is unfair for the public. This round of rule change he considers it just for DOFAW to collect user fees that DOFAW doesn't consider to conserve the area because they seem to allow too many people to go to the island. One way to conserve the wildlife sanctuary like Flat Island, Mokulua, has 100 times more birds there than Kapapa Island and staff allows only so many tourists to go there and he doesn't think that is a way to conserve a wildlife sanctuary. It's just a way to get money. Mr. Kuo doesn't think this is a way to conserve that the birds will suffer and as a fishing club member he doesn't like this rule. There is a need for change because DOFAW hasn't incorporated enough public opinion and input that very little testimony is allowed at public hearings and many people did not get to speak and he doesn't think it is fair that this decision is managed by the five Board members present.

Kelvin Ching appreciated the clarification to the map, how written testimony was counted as one from the fishermen, but he was concerned and wants to look for solutions to this. He has been proactive since the Kaneohe Master Plan was mandated to be established. In that master plan the community has recognized that there are campsites and fires on the island. About 10 years ago an independent third party did a study saying that the fishermen and the birds could co-exist that there was no real threat to the island. His family and community were proactively working with staff to adopt the island and that his family goes back six generations in using the island. Mr. Ching said he was uncomfortable if we move forward with so many "what ifs." The fires at a minimum impact considered to the overall picture. The fishing seems to be ruled out as illegal or not acceptable whatsoever.

Chair Thielen asked for some clarification on that whether it is allowed during the day or not at all at night. Mr. Conry said that people can fish from the beach during the day, but not up above the high water mark.

Mr. Ching asked of the people who are in support of this rule how many actually went to Kapapa Island explaining if you are shore casting you are not going to set your pole down below the high water mark. There are other fishing activities that can be done below the high water mark, but staff is singling out a big user group of the island. This makes fishing illegal. He can speak for Atlapac Fishing Club as well because if he becomes a part of the adopt the island or whatever he will include the fishermen because traditionally there are at least three fishing clubs that use the island and they have all

taken care of the island. They had called about the incident over the summer and there was no response. In his written testimony it relates how the fishermen removed a boat that was there for well over a year by taking generators out there and cut it up. There is no question how they (the fishermen) will participate in all of this. The question is what will happen after they participate because he can see the potential for this island and if the island does maximize and have the population of birds that could potentially happen where every square inch is populated by birds does that mean at that time the humans and fishermen are off the island and only the scientist and eco-tourist can go there and he'd hate for that to happen. Mr. Ching said for the fees he was out there this past weekend and reported constantly seeing kayaks out there because there are no rules and he understands the need for rules. He tried to do something 10 years ago by contacting the Department and now he comes back from Japan and hears about Kapapa and draft rules were established that he didn't hear anything about this and didn't think it was fair for this to be going this far forward in this extreme. Mr. Ching would hate for our traditional uses and various iwi on the island that he personally knows of having taken some there in the last five years to rebury kupuna. The koa fishing shrine, canoe hale, canoe landing they take care of all of that. Camping - they teach their children the education part by teaching how to live off the land while they are there and erect tents for little children. Traditionally, while they are out there they never had one death in the middle of nesting season and there is no impact the two to four times a year when they go out there. He hopes that the Board will take this into consideration. And, with regards to number of testimony, Mr. Ching submitted one for fishermen and his family and his family alone number over 200 people as well as many other fishing families that have been there for many generations. He reiterated his question what are we conserving it for and at what point are we ultimately off the island.

Member Pacheco asked whether there is a formal relationship between the fishing clubs and the Department or is this place wide open. Mr. Conry said right now there isn't any regulation at all to protect the sanctuary or managed lands. The regulations that are in affect are for illegal take of birds. Member Pacheco asked where is this island if it's under DOFAW. Mr. Conry explained that the islet was under DOFAW's jurisdiction by Executive Order but that a rule change in 1981 removed the islet from the wildlife sanctuary system, and so it fell into this status in which it is not covered by rules and there are no land management rules for the islet at this point.

Member Edlao asked if we move forward with this and if someone were to step up to do the stewardship program if they were to develop a conservation and education program. Mr. Conry acknowledged that provisions are provided in the proposed rules for those types of permits, but he made it clear that the reason staff is proposing it go in the rule is overnight camping/fishing is severe and staff is trying to add this to the sanctuary because there is so few areas that are available for birds to be successful and its important.

Member Pacheco asked if there is any documentation for the lack of success or why there are failures out there.

Scott Fretz, DOFAW Wildlife Program Manager explained that the issue on the island is mortality. This is a long lived species and produces one young per year when there is a situation that you have mortality there is a heavy impact on the population. Every year staff documents adult mortality on the island. Looking at source sink dynamics and biological systems what you have here is a sink. The population might appear stable where birds are drawn in by the island, but staff documents mortality everywhere due to the lack of rules. Per Member Pacheco's question on the cause of mortality where Mr. Fretz said fishing lines, dogs, entanglement in fishing gear and trampling of burrows.

Chair Thielen said she doesn't want to head into a battle ground - flat out defiance and not following the rules and leading into a number of issues. She reiterated the irresponsible people who are likely fishers, tourists or people recreating and reiterated directing the Department staff to work with these clubs toward a conservation agreement. The Chair was disappointed with the testimony of the fishing club seeking only to carve out this area to fish and not being willing to step forward to step up obligations because she thinks it's a good middle ground and she doesn't think it is fair for people to come to the Department and say because I'm good don't pass this rule to protect this area because you have to acknowledge those people who aren't. If people want to continue the activity they have to step up. The Chair thinks the middle ground for this Board is to support the rules because there needs to be some rules here where the Office of the Attorney General said Kapapa and Ahu O Laka are two pieces of land under our jurisdiction that no rules apply to and they are not even unencumbered lands. If we don't pass rules it's a free for all out there except for Federal or City & County general laws. Where the Chair reiterated directing staff to work with the established fishing clubs to negotiate a conservation permit, but she made it clear to the fishing clubs that this is not a permit to go out and fish. It would be a conservation permit to do specific conservation work to improve that area above and beyond what people have already been doing and is only granted to specific people who are held responsible for meeting the conditions of the permit. It's not a free for all that my uncle, cousin can come in and say they fall under the permit - you have to be accountable. If there were violations of the permit the permit could be terminated. It's a privilege as well as a responsibility and she was wondering whether that can be the middle ground otherwise there is no impetus for people to come to the table.

Member Pacheco said it's difficult because of the conflict with the fishermen, there's no map, he has never been there and it's difficult for him to make that important decision. Dr. Fretz said that the island can tolerate some low level fishing depending on how the island is being used. Member Pacheco asked whether camping like in other areas are allowed in the sanctuary rules where Dr. Fretz answered negatively that camping is not allowed and sanctuaries are closed from sunset to sunrise to the general public. The Chair asked that staff has the authority to issue a permit for conservation activities that may occur during closed periods which Dr. Fretz confirmed. The activities may be different from what has been going on in the past there may be limits with capacity, location that would be worked through to be compatible with the sanctuary. Those limits meaning not going certain areas which may be possible with a management plan. Dr.

Fretz said staff is not ruling anything out for this permit process that it's something they need to evaluate and have some kind of advisory board for.

Member Pacheco asked for more background history regarding the Executive Order. Mr. Conry said that the Executive Order was in the early 1900s to be put in for wildlife conservation and included all the islands that are there. When the rules were adopted in 1981 it was proposed at that time. It went forward, but the same problems with wanting to reserve it for fishing and excluded by the Board and not put in the wildlife sanctuary rule. It became a piece of land EOd to the Division and was not covered by a rule. Chair Thielen noted that the Board is used to unencumbered public lands that fall under the Land Division that has administrative rules that covers the lands EOd to the Land Division. Forestry doesn't have any administrative rules only rules for sanctuaries. Dr. Fretz said that Kapapa was created as a Wildlife Preserve during the territorial days. Mr. Conry said this was one that should have been added earlier or un-EOd.

Member Agor asked whether staff can come up with a plan to work with the fishermen to come up with a stewardship/fishing plan and Dr. Fretz acknowledged that. Mr. Conry said that it could be something staff could bring back to the Board and he wanted to be clear that part of the problem is for the island to serve a sanctuary function that the current activity is too much. Member Agor agreed that is the main priority.

Chair Thielen summarized to say approve this and direct you to work with the established fishing clubs on trying to come to an agreement on the terms of a conservation permit and then bring that back to the Board given that the membership is all over and these things take time and asked what is the timetable that staff could come back to the Board which is fair for the clubs. Dr. Fretz said that staff has been in discussions with interested people in the community – families that testified. The district representative said in a year. The Chair asked what happens to the fishermen and families if the Board passes the rules. Dr. Fretz said they can access the shoreline and would have to follow the rules until they can work something out.

Member Edlao noted if you do come up with a stewardship program it cannot be exclusive to the fishing club and asked whether this would be open to a bid or submit a proposal based on conservation. Cannot just say I will only work with fishermen because there could be families or the community. Chair Thielen said that it would be working with the people who have been traditionally been out there and the night time activities whether you can form a conservation permit that would still protect the area, put conditions and requirements on it and the people who are willing to assign themselves to be accountable for that. If they are out there and not doing it their permit would be revoked and lose the privilege. Mr. Conry said it could be several forms – a camping permit, a specific time period like a year. Member Edlao said he doesn't want a camping or fishing permit because anybody can do that and that is where we have the problems with bad users. There has to be restrictions and a conservation type permit. The Chair suggested Land Division has done the beach activities where people have to come in and prove they are eligible to do that, the insurance, but DOFAW may have different criteria and once you pass that test and agree to abide by the conditions and understand that, but

it's not like going for a camping permit. Mr. Conry agreed saying that there are periods of greater activity where the birds are more sensitive and try to avoid those. It may be difficult to say a blanket type of permit but there is flexibility in the rule to work out issues.

Mr. Ching said he had some questions reiterating that this is not to railroad the whole process that he did speak with staff this past month. He asked the Board what happens if it (stewardship agreement) doesn't get done in a year. What happens if the State drags their feet? What if they could continue as it is and do studies on the impacts? Because when he talks about the extremes we are ruling out fishermen and everybody. But, can they leave the traditional document of known uses meaning the fishing clubs and families that used it and that may show an increase in the bird population and what they do. Then you have the commercial kayakers and other general population that are not going on there and see the numbers go up. Chair Thielen reiterated because of the lack of rules staff has no ability to do anything, which Mr. Ching understood. The Chair understood his concern if the State does nothing complete un-management continues and then maybe they get to something in a year or not or the choice is we adopt rules and have some management out there that the direction could go to the staff from the Board – we want you to report back to us within a set period of time. We cannot direct you (Mr. Ching) to report back to the Board as members of the public and have staff come back with public notice and notice to you folks if you leave contact information before hand and make sure staff is not dragging their feet and hold them accountable.

Mr. Ching asked if this goes forward to give some concession to the families and fishing clubs who have come forward. Member Pacheco said only through a permit and Chair Thielen noted some of the pace of getting to a permit is up to you. We have to have conservation permits in place and you should give staff copies of this. The faster you drive towards something the faster we can get to a conclusion. Mr. Ching remarked that he has asked for these in his written testimony. The Chair suggested if the Board were to vote to approve this they can pressure the Division to report back to them a little bit sooner and provide you copies of examples that you may have and you can come back and say you are willing to do those things. She said to report back in three months that she doesn't expect the permits to be done but we can get the progress status.

Member Edlao said the rules need to be in place. Staff sees what the Board wants and we know what the fishermen want. We need to get this done. In three months get back with a report and the sooner they get together the better. Chair Thielen suggested if there are sample agreements to permits to share them. She asked the fishermen to give staff their contact information.

Member Edlao moved to approve staff's submittal directing staff to work with any of the fishing clubs and other entity who are interested in applying for the process and to come back in 3 months with a report telling the Board where they are at in terms of working with the fishermen and the permitting process. Member Goode seconded.

Chair Thielen suggested also, besides giving contact information, we should be giving notice of the March meeting as well.

The Board:

Moved to approve staff's submittal by directing staff to work on a community stewardship agreement with any of the fishing clubs and other entities who are interested in applying for the process and to report back to the Board in 3 months on the status of working with the community and the permitting process.

Unanimously approved as amended (Edlao, Goode)

12:50 PM RECESS

1:05 PM RECONVENED

H-5

Kevin Yim, Division of Boating and Ocean Recreation (DOBOR) Staff Officer referred to the Board submittal on public hearing comments. The comments for Chapter 13-234-3 were that the proposed mooring rates were too high. According to the Hawaii Revised Statutes and Hawaii Administrative Rules the mooring fees is suppose to cover for the cost of the mooring program. In order to determine if the fees were covering the cost of the mooring program staff conducted a financial analysis where Mr. Yim distributed an analysis from the August 14, 2009 Land Board meeting. The analysis excludes revenues generated by lease rents and other income that were not generated by harbor users such as the liquid fuel tax. DOBOR found none of the small boat harbors operate at a break even level and have been subsidized since their inception. In order to break even on operating costs, DOBOR would have to increase rates by \$3.47 per foot statewide. In the Board packet there is an attached chart of local and mainland harbors. The local mooring rates with the fee increases are comparable to local and West Coast marinas. DOBOR realizes that this may be difficult for some folks to pay so for existing harbor users the increase was phased in over a five year period. And, in response to concerns that certain harbors were subsidizing others the rate increase applies equally statewide. Even though the rates were increased DOBOR will probably continue to subsidize the harbors with other revenue sources over the next five years and the cost will remain the same and will do so into the future.

Chair Thielen said that was part of the original Recreational Renaissance Plan B presentation to the Land Board. There was a comment which came up when Captain Reg White was doing his testimony about fees. Again, all these revenues are in the Boating and Ocean and Recreation Special Fund. What we've done was separate it out the revenues that are by source and categorized the harbor revenues is the ones generated from the moorings, the vessels in the harbor and the like and then the other revenues from the other sources. But, that total is in a single account.

Mr. Yim confirmed they only have one account that the money goes into. It's just how we're looking at it. The second rule amendment to discuss was for Chapter 13-234-5 where the amendment was to increase the temporary mooring rates and the comments were the temporary mooring rates were too high. The majority of the public hearings testimony that staff received was on this particular section. Based on that testimony, DOBOR recommended changing the rule by amending the temporary fee for vessels moored within the harbor from the \$2.00 per foot per day down to \$1.00 per foot per day. The proposed off-shore mooring would remain the same at \$1.00 per foot per day and as you can see on the comparison chart in the packet the \$1.00 per foot per day fee is comparable to the local and West Coast marinas. The last thing staff is asking for today is 13-241-25 would increase the vessel registration fee \$5.00 to cover the cost of placing the vessel registration system on-line as well as a servicing feature on-line cost. All comments to this rule change were positive and staff recommends item H-5 be passed.

Chair Thielen noted a number of testimonies came in regarding people with moorings in Reed's Bay on the Big Island and she understands after talking to DOBOR there are separate fees that apply to them that is not necessarily in this packet. She asked to supplement the presentation that had been prepared before they got the testimony with information about Reed's Bay, specifically, and what would change at Reed's Bay. Mr. Yim said in the current rule packet that went out to public hearing, nothing in Reed's Bay would change. What went out for public hearing was for boats moored in a harbor. Reed's Bay would be off-shore mooring so none of the applicable rule changes would apply to them.

Chair Thielen summarized the attachments and the rule changes that are being proposed by DOBOR would affect the fees in harbors along catwalks and at temporary mooring sites which Mr. Yim confirmed. Chair Thielen continued saying that Reed's Bay consist of off-shore permanent moorings and those fees would remain unchanged. Mr. Yim acknowledged that. Chair Thielen then asked whether Reed's Bay included off-shore temporary moorings and that was confirmed by Mr. Yim where he said it would change with the rest of the rule that was placed at \$1 per foot per day. He thinks currently it's at a graduated rate depending upon how big your boat is by adding 10% and annualize that to bring it to a daily rate giving the example of a small boat up to 20 feet would rise to about a \$1.10 per foot per day. Chair Thielen asked whether the written testimony was from people on permanent off-shore moorings in Reed's Bay. Mr. Yim confirmed that and the rule change that will be in affect will not impact them. Chair Thielen asked when they (Reed's Bay people) were talking about the fee increases assuming the \$3.43 phased in over the five years per foot would apply to them. Mr. Yim acknowledged that they were incorrect on that. Member Agor asked whether its temporary moorings. Mr. Yim explained the people on Reed's Bay are moored out on anchors.

Chair Thielen said that the administrative section has items H-1 to H-5 and a series of attachments. Attachment 9 is the actual rule change proposal and on page 2, Type of Mooring and State Boating Facilities with mooring rates and the category along catwalks. She asked what is bow-stern mooring. Mr. Yim said that is when both ends of the boat is tied down to a buoy. The Chair asked whether that would apply to the Reed's Bay off-

shore permanent moorings. Mr. Yim replied in the negative that they are single point. Chair Thielen asked whether on the owner's buoy or anchor. Mr. Yim said if it's on the owner's own buoy, yes. The Chair asked whether this fee increase would apply to people who are moored on their own buoy or anchor referring to the chart on page 2. Mr. Yim responded saying all the rule changes that they have are in harbors and nothing is off-shore. Reed's Bay is off-shore. Chair Thielen asked the only thing in the rule change that would apply to off-shore would be the temporary moorings. Mr. Yim confirmed that.

Member Pacheco asked going back to the spreadsheet why the liquid fuel tax and the rental of land & wharf are still in the same pot. Are these the funds people are talking about in testimony that was once in harbors? Mr. Yim said they are not using those funds to fund the cost of the mooring program. The law says the mooring program must be funded by mooring fees. These are not mooring fees. Member Pacheco stated these are your statutory requirements. Mr. Yim confirmed that reiterating the law on mooring fees.

Bill Mossman is a boater and active in advocating for small boat harbors related his background and testified that the public opposition is focused on the changes to the bookkeeping system which appears that all small boat harbors were in the red. After speaking to Mr. Yim who said the law requires him to address only the fees that come directly from mooring. But, Mr. Mossman disputed that because the law says "shall come from that source." The Federal Government is allocating \$2.9 million to Boating and fishery resources like last year, fuel tax rebates are \$1.6 million, land rent is \$1.6 million and all are eligible for Boating and asked why they aren't being used rather than setting them aside in the Boating Special Fund. Up to this year these funds were available and now are removed because the Department took that revenue for the Renaissance Special Fund and this is how the exorbitant fee increases were born. The low level commercial users and recreational users bear the burden of these fees. Other users of harbors are:

1. Cruise line passenger fees which is a \$1.40 per passenger where in Alaska its \$40 a head. DOT increased from around \$10 to around \$20 a head. Mr. Mossman suggested increasing the fee to \$4.40 per person which would generate a million dollars more.
2. Land and wharf rent leases could be addressed.
3. Commercial vessels that pay 3% of the gross rate remain untouched. The commercial vessels under the 3% is hit with a 90% increase in fees.
4. Vehicle parking not addressed in the Recreational Renaissance.

Mr. Mossman asked that any public analysis be fair and equitable. To not dump a 90% increase on boaters and let the others go free that the economy is bad and it's the wrong time to impose any fee increase.

Janet Mandrell representing Makai Society opposed H-5 related some DOBOR history and reiterated previous testimony that this plan is unfair affecting boaters that this money will be used for off-shore recreation activities and these rates are tied with the consumer price index as it goes up. DOBOR consistently ignores well established principles of

planning, public participation, a community master plan that other Divisions developed for DOBOR's facilities leading to mismanagement of the resources and gave the Ala Wai boat yard haul-out situation as an example. DOBOR did nothing when the previous operator of the haul-out left because the administration wanted to include it into its privatization strategy and now boaters have no services and no lease rent for two years. Ms. Mandrell reported that DOBOR refuses to lease the \$300,000 sand lot on the perimeter of Maalaea Harbor because DOBOR claims there is not enough money referring to DOBOR's financial arrangement constructed by the Legislature and had been audited many times. DOBOR changed accounting methods to justify these increases relating past history that fees must be tied to the cost of the facility. The adversarial relationship between DOBOR and the public is known worldwide. Ms. Mandrell referred back to State Park's parking and entry fees noting that Parks won't charge double, but DOBOR will and it's ok with staff. She finds it interesting that DOBOR doesn't include parking in their pie chart reiterating that this is to justify the fee increase and wanted to know the actual cost.

Mark Meyer is a boater at Ala Wai and agrees with Ms. Mandrell reiterating bookkeeping issues and is against the new rates since he has to pay a \$300 parking fee that the parking contractor didn't do what he said he would do. He referred to the rates based on categories for boaters reiterating previous testimony on Almar here and the mainland comparing it to the Ala Wai which has drug problems and vagrancy. That other state or county marinas were never investigated. Almar always has a slip available, but in Hawaii you must pay \$100 to get on the waiting list. Mr. Meyer hopes the Board will defer this because this is not fair. And, he noted it costs \$500 for \$300,000 liability insurance and people are running out of money. There is a need for more public hearings because the last one scheduled was cancelled due to staff being ill.

Jeannie Light and her husband, Michael own Ala Wai Brokerage who testified at public meetings and asked why the rate is at \$1 per foot per day when it was going to be reduced. She suggested taking the current fee for temporary mooring and doubling it. Mooring fees on the mainland compared to Hawaii do not work. If you raise the temporary mooring fees people have no place else to go and would be in permanent moorings if the State had a place for them that the State shouldn't penalize them. Ms. Light suggested charging permanent rates to the boaters who are already on temporary mooring because there is no room for them in temporary mooring then staff can charge the higher rate to temporaries and at least there is a choice. Charging exorbitant rates to temporaries or people passing through the State will result in empty slips and there is the potential for lawsuits because these people are being forced out of their home. There will be abandonment issues where people will walk away for their boats. Ms. Light suggested phasing modest increases like the permanent slip holders and asked to give this more thought.

There was some discussion regarding the amount of the fees which are 27 cents times the size of the boat times 10% which comes out to \$6-\$7 per day and increase to about \$35.00 per day.

Chair Thielen explained that this is an unusual situation that staff recognizes with the Small Business Regulatory Review Board that most people on temporary mooring will visit an area for the weekend. Having the yacht brokerage is having boats placed there for a longer term but it does take up a temporary site and the chart compares fees at other areas.

A Board member questioned how many temporary slips there are and Wesley Choi, DOBOR's Assistant Oahu District Manager, answered that most are at the Ala Wai and some at Keehi.

Julia Trott is a temporary mooring holder who reiterated previous testimony that temporary mooring holders wait from 3 to 5 years paying a higher rate compared to permanent holders and asked to address the plight of temporary mooring holders. She described how permanent holders after 5 years pay \$322.70. Temporaries waiting for the mooring will pay \$1,050 per month which is a difference of \$727.00. This is because slips are not made available. Temporary slip holders are required to move between harbors four times a year because there is a time limit on where you can park. There are hundreds of people in this situation. Ms. Trott proposed a kama'aina fixed rate for permanent boaters and to allow temporaries who are waiting to have the permanent rate. Staff will be spending more time and fees impounding boats because people will be driven away. She asked to shelve this and said it isn't their fault they are temporary.

There was some discussion regarding the last fee increase in 2005 and this increase of 450% and that Ms. Trott wants a compromise.

Adam Sutton, a resident of Kaneohe here to testify on temporary mooring and has a legal mooring in Kaneohe Bay related some personal sailing history. He agrees with Julia Trott and opposes this item reiterating the staggering fees which poses a heavy burden on the user and the enforcement branch which could negatively affect safe harbors and passage between islands. Mr. Sutton reiterated the cost of \$1 per day will run about \$60 a night that recreational boaters require safe harbor to make safe passage that the mooring maps are inadequate because you can't find them. The problem is cash collection by an armed official on shore is a bad idea. He cannot see calling in a credit card in 35 knots of wind once you've decided where you are going to pay a \$50 fee which will be a burden on the Department because he can't see how you can delineate whether or not you are in a mooring field because it's not indicated on GPS maps. The fee is extremely high matching the cost of fuel. Services are non-existent when you are anchored off shore. This fee could push people to drop anchor on coral. Mr. Sutton suggested reconsidering the bill and apply the 72 hour exclusion for recreational boating which is already on the books and is a simple way to avoid conflict on the water.

There was some discussion about the 72 hour anchoring where Mr. Sutton got a citation and won.

Chair Thielen said under the current rules recreational boaters can moor for 72 hours without have to pay the temporary mooring fee. Staff said in an off shore mooring. Mr.

Sutton said there was a contradiction in the rule regarding anchoring or a legal mooring area that you have to pay. There were more discussions between staff and Mr. Sutton. The Chair asked where do you have the ability to do the mooring for 72 hours without having to pay the mooring fee. Wesley Choi, DOBOR staff, said all areas that are not designated or restricted that you cannot pull in to. That includes any designated off shore anchoring area or mooring area without obtaining a permit by rule you are required to pull up with a permit. Mr. Sutton reiterated applying the 72 hour rule.

HAR§12-234-1 and HAR§12-234-3

Chair Thielen closed public testimony and suggested going rule-by-rule. The ones that will increase over the five year period are Sections 13-234-1 and 13-234-3.

Member Pacheco asked to go back on the question, justifying the increases, and he wanted to be clear if they are doing this correctly and to walk through each fee listed. Chair Thielen referred to staff's handout – Exhibit B, Fiscal Year 2009 Revenue and Expense that was from an earlier Land Board submittal. Total Revenue: is about \$12 million plus. Total Expenses: over \$11 million. The Expenditures in the Harbor: about \$9.2 million. There was some discussion today if you take all the revenues from the fuel tax and other things and applied it to everything but the harbors, the answer is “no.” Monies from those expenses are going to the harbors and expending \$9.2 million on harbors but collecting from the harbor fee holders about \$5.6 million. The remainder of that difference is going to support the ocean recreation expenditures.

The Chair summarized that the cost of administering a statewide boating program including, but not limited to the cost of operating, maintaining, managing all boating facilities, boating safety, operating vessel registration, boating activities shall be paid for from the Boating Special Fund. Chair Thielen read the rule for 13-234-1 General statement (a) (1) – in the law Boating and Ocean Recreation Division has requirements for ocean recreation and coastal area programs which would include maintaining some general navigational channels for the small boat harbors, the launch ramps, piers, protected structures, break walls and she gave examples of Kikiola on Kauai, Mala on Maui of ocean recreation expenditures that you are not allowed to consider when looking at setting fees which is for protection for the boaters in the harbors that boating cannot charge the boaters in the harbors for the mooring rates and the cost of these other things outside the harbors. At the same time, what it's looking at is the cost of the mooring rates in the harbors need to be helping to pay for those expenses in the harbors themselves.

Where Member Pacheco queried that he thought the explanation for this rule is not including the liquid fuel tax, parking fees, rental of land and wharf because there was a statutory obligation that only mooring fees could be used to do that. Chair Thielen said the statute says when you are setting the mooring fees you need to look at the cost of operating the harbors and not consider the cost that DOBOR has to pay for ocean recreation and other areas. What the numbers look at is the cost of operating the harbors and what are the revenues exclusively from the harbors. In coming up with the proposed fee increase it is to take a look at the actual cost of running the harbors, what's the revenues to the harbors, and if staff were to increase the revenues from the slips to cover

that cost. The check and balance was to see what other harbors charge at their mooring fees which is in the submittal on page 3, mooring fee comparison. When DOBOR was looking at costs in running the mooring program to come up with the fee increase and used this comparison of other marinas, it comes out compatible.

There was more discussion about the revenue and expenses and the budget between staff and the Board.

There was some discussion regarding the Federal funds that DOBOR receives an \$800,000 reimbursement for qualified operating expenses from the Recreational and Boating Safety Act (RBSA) which are grant funds used for specific purposes related to Recreational Boating and Safety.

It was discussed that DOBOR transfers funding to Division of Conservation & Resource Enforcement (DOCARE) for personal costs. Where there was a question whether funding comes from DOFAW and it was clarified that DOCARE is general funded.

The Chair explained the mooring fees that DOBOR expenditures are more than our fees that eventually DOBOR has to pay the debt service on those fees. At the end of five years depending what category harbor your boat is in, the mooring fees will be paying \$178 to \$319 per month which is not unreasonable. The other fees in parking, grants and fast land revenues will be increased and the funds generated for Recreational Renaissance Plan B are not coming exclusively from boaters. The boaters advocated for the general fund to pay for some of the ramps and other things and concentrate boating on the harbors and not on ocean recreation. The Legislature hasn't agreed with the boaters and it has to be a special funded program.

The Chair continued saying but, for the first time under Recreational Renaissance, Land Division put out a request for bids for vacant, commercial and industrial lands that are no where near the harbors and those lease rent revenues will go to supplement the harbor fees to be able to improve these areas. The fees from the parks and harbors are not going to be enough to get facilities fixed up because places are falling apart and it's a safety hazard and we got to find the monies from somewhere.

Where Member Pacheco asked referring to testimony that there is a lot of money out there and whether or not staff is going after those monies. Chair Thielen responded that Land Division is moving forward on a list and has started putting out bids for vacant commercial and industrial lands and Land Division has dedicated staff to work on the parking contracts at the Ala Wai and assisting Parks and Harbors.

In regards to empty slips at the Ala Wai, Mr. Yim said that staff made 232 offers on the slips and 104 accepted. Of those 104 acceptances, 78 are being charged a fee and a current vacancy of 110 where there are temporary vessels occupying some of them. He explained if the Department were a private entity you could lose your opportunity to put a boat in. Boaters have over 130 days to get their vessel in a slip, and there is an administrative rule for this, which gives people an opportunity to purchase a boat. After

Member Pacheco's queried about those accepting and those charged the fees where Mr. Choi explained that once the boater officially accepted, the charges start and staff starts collecting once the permit is done which could be four months out noting that the rule was written with the understanding that Hawaii is in the middle of the Pacific and not everyone will have a boat.

Member Pacheco asked whether or not there was a wait list. Mr. Choi said it depends on the harbor because each harbor has its own category size per Boating rules citing Ala Wai as having eight categories. There are people who have refusals are dropped from the list and it takes a month to go through this process and as soon as the slips are available the list goes back out where staff puts some temporaries in those slips depending on the offers. The offers of slips at the Ala Wai were limited for a long time because a number of them were taken out of service because they were not safe. Chair Thielen said upon the opening of the F, B, C and D docks at the Ala Wai, people waiting many years had the understanding that the rules allowed them time and we don't want to change that. Boating did ask and she authorized to close the office early on a number of days in order for staff to finish paperwork.

The Board questioned whether it is hard to find government run marinas on the mainland and Mr. Yim said that it is difficult to find any comparable to Hawaii's that a lot are public private partnerships with many entities or clubs.

Member Goode commented that he can see why there is a move to privatize. Everyone agrees to improve the harbors and that is what Recreational Renaissance is, but it is the worst economic downturn to increase fees and we will probably be chopped by the Legislature giving us less money. On the permanent fees, he has questions with how the numbers came out but felt comfortable moving forward with it. There were a lot of good issues that came out from the temporary side and \$1 is way too much that there are too many factors with temporary moorings and he feels uncomfortable with that. Member Pacheco agreed saying that there are tenant laws in the State that prohibit landlords from phrasing monthly rent to over a certain percentage and in all fairness they shouldn't move on the temporary moorings.

Mr. Yim noted that there is a financial audit conducted of the Department annually, but not of the one distributed to the Board today where Member Goode asked to have 3 or 4 CPAs look over it to answer those questions. Chair Thielen said that they can talk about the financial reporting that the Small Business Regulatory Review Board came up with things like that.

Member Pacheco said that Honokohau is a unique harbor that 50% of births are dedicated to commercial slips compared to 30% across the State. Mr. Choi replied that Honokohau is comparable to Lahaina or Maalaea where most slips are occupied by commercial slips. Where Member Pacheco noted that the difference is a percentage of the slips at Honokohau are charter fishing boats and most of those don't break into the 3% to pay for the mooring fees. One way this change is unfair is it's not affecting the larger operators who are paying the 3% who are still paying the same amount whereas the guys who don't

make enough money to go under the 3% will be hit hard by this. Exponentially that is quite a bit for a small operator. Chair Thielen explained to the Board that the commercial operators pay either double the mooring rate or 3% of their gross proceeds whichever is less. Mr. Choi said that it depends how much over the 3% the operator pays now because their mooring rates will go up comparable to everyone else. The Chair referred to Exhibit B handout under Honokohau that the current average monthly fee for an average boat would be \$206. Reg White testified at the Small Business Regulatory Review Board that a number of the people paying the double versus the 3% rate are under reporting. What would happen at Honokohau is to phase this in over a five year period, year two go from \$206 to \$240, year three is \$272 that she is taking the average fee and doubling it because it is either double or 3%. Mr. Yim said that is why staff phased it in over five years.

The Board asked what HAR § 13-234-1 is where Mr. Yim described it is a general statement that outlines what the mooring fee category shall be A and B and how they will implement it and HAR § 13-234-3 are the mooring rates.

Chair Thielen reminded the Board what the A and B category is that anyone that is currently in one of these permanent moorings the increase would be phased in over five years based upon the schedule in exhibit B. Anybody coming in after the rule was finalized would go automatically to the new rate that is 13-234-1. 13-234-3 is the actual rate increases. That the Board commented it would get boaters to bring their boats in sooner. It still has to go through posting and Governor's signature.

Member Goode suggested lets say CPI is 5% a year increase. Mr. Yim said he didn't think it would impact this first round. It would go into effect after that. Member Goode said there are program rate increases, but the CPI adjustments to that and you end up higher assuming there is deflation and inflation. Chair Thielen said that it specifically says the schedule A is the annual increase to the schedule B which takes that total implementing it 20% per year. It caps it.

*Member Agor said because it is phased over 5 years he made a motion to accept staff's recommendation for HAR § 13-234-1 and HAR § 13-234-3. Member Goode seconded.

Member Goode asked is this saying the CPI is greater than 20% do we follow that. Let's say 20 cents a year - \$1.00, \$1.20, \$1.40 - how does the CPI play into that? Does it play after year five? Mr. Choi said his impression was it ended after year five. Member Goode said that is the only way to implement it. There still is the legal question brought up. You could probably correlate saying generally a cost will equal CPI but it should also acknowledge that it might go down. He asked does it say here after year five. Mr. Yim said it says 20% a year. Chair Thielen asked the Deputy Attorney General Bill Wynhoff regarding the amended language in 13-234-1(3) and she read it. What's being raised is new people are going to come in at a certain fee, but existing people are going to be raised at a set amount per year. If they were to add after the 5th year, asking is that a substantial change because it's clarifying that that would we be tying this to the phase in schedule. Maybe add it where it says after the 5th year - shall increase annually by an amount equal to. Mr. Wynhoff said he doesn't think any change would be too

substantial. Chair Thielen said its more to clarify. For the people on the schedule that's going to be increased each year at the set amount the increases are there. Mr. Wynhoff agreed. The Board suggested taking out the CPI portion where it was discussed with the Deputy AG. Mr. Wynhoff said he doesn't see it as a substantive change and it's not a problem to take it out.

*Member Goode posed an amendment to strike the CPI (consumer price index) provision and Member Agor seconded it.

Chair Thielen summarized that we have an amended motion and an amended second to strike out the automatic consumer price index increase. It will read "The mooring fees shall be set by categories schedule A and schedule B, to be determined by the department, provided that:" Just because it maybe in other sections in this amended rule change she asked would the amended motion say and strike out that provision anywhere else in Chapters 13-234-1 and 13-234-3. Staff will do the housekeeping to take it out everywhere else.

The Board:

Approved to amend by striking out [and shall increase annually by an amount equal to the consumer price index increase, if any;] anywhere it appears in HAR § 13-234-1 and HAR § 13-234-3.

Unanimously approved as amended (Goode, Agor)

Chair Thielen said move on to 13-234-5 temporary mooring fees. We heard a number of testimony and a couple Board members talked about some concerns. We had some alternative suggestions raised in the testimony and she asked if any discussion.

Member Pacheco said he liked the concept of charging those who are on the waiting list the mooring fee versus the temporary fee. And, as an increase he thinks as a percentage is too much at one time.

Chair Thielen reported that they did have discussions after the public hearings with a different Deputy AG who had said that coming up with fees with different types like kama'aina or non-kama'aina harbor tenants was getting into the substantive changes and may require further discussion. That was one option raised by a testifier as well as other options. Member Agor asked whether they could do that. Chair Thielen said that this is what that Deputy AG said after DOBOR discussed with her after the hearing to come up with taking the temporary mooring fee which had been proposed at \$2.00 per foot at the public hearings to decrease that amount to \$1.00 per foot was not a substantial change. To talk about we're going to create a temporary mooring rate for kamaaina's and a different temporary mooring rate for non-residents, the Deputy AG (Pam Matsukawa) thought it would be getting into the realm of too substantial challenge to do. Mr. Wynhoff said that no one can give you an answer where exactly the line is. The process is if you got the rule that's too substantially different from what was brought for public discussion it has to go back to public discussion because if you don't, than later it's

challenged in court there's a time limit and some judge decides whether its too substantial or not. Mr. Wynhoff doesn't remember the verbal form for the definition of substantial. The Deputy AG (Pam Matsukawa) was looking at this and she thought it was too substantial than certainly he is comfortable with that. Chair Thielen said as far as getting into different categories for temporary moorings given Ms. Matsukawa's evaluation as too substantial. In terms of reducing the dollar amount she felt that was not too substantial. Mr. Wynhoff agreed saying that changing the number is one thing especially in response to concerned with comments on different things. That might not be wrong but is more wrong as changing all the rates.

Chair Thielen continued saying that Boating indicated after that public hearing to reduce it from two to one and given the testimony heard today about a certain number of people who are in there for a longer term maybe we should look at some alternatives.

It was questioned by Member Agor the concern with somebody having a regular slip and decides to temporary moor at Hanalei Bay, but this person is already paying a fee. He feels it's inappropriate to charge that person a \$1.00 a day in addition to what that person is already paying.

Chair Thielen said it depends on your opinion because on one had we have harbor tenants, but I pay a mortgage and go to the neighbor island and pay for accommodations. The way the hotel does it is give kama'aina rates as oppose to are you a tenant or not which is getting into categories. She was thinking of temporary moorings where people go to the neighbor islands for a weekend or people coming to Hawaii for a month and the rates didn't seem unreasonable. But, there is this class of people in the harbors long term and we want to come up with something that is fairer and create a different category. Maybe look into a temporary mooring rate increase now that would be fair to that category. If we want to come up with something that is different for other people, DOBOR has another rule making package that they are trying to clean up their rules and could drop in something there that could create a kamaaina rate and a malihini rate where staff could come back to the Board for review and go out for public hearing. What would be a fair based temporary mooring rate increase for longer term people and start there.

Member Goode agreed the need to get something done. He heard 44 cents but with furlough Friday deduction suggested 40 cents. Staff discussed that it's hard to calculate right now because each harbor is different. Mr. Yim explained the reason for this format was to eliminate where you were to make it easier way to calculate it. Mr. Choi related boats that jump from harbor to harbor having the same boat but paying different rates. Mr. Yim said it depends where you multiplied the 1.1 by. Chair Thielen noted even that an earlier testifier talked about the doubling and we still have a structure where everybody goes up a certain amount and Boating can go back with a different rule package and figure it out to make it consistent between harbors then take that out for public hearing, but that would at least not give the huge increase like the longer term temporary people were concerned about and look at that as a base for that category. Does that make sense?

Mr. Choi alluded to the fact that staff was talking about a second set of rules and amending the temporary mooring rate taking into consideration a person who has a valid mooring permit with DOBOR that travels to another facility and doesn't have to pay that rate. If we were to add that in now they would have to start all over. Mr. Yim noted that the transient going from harbor to harbor came up late in the process.

Chair Thielen explained that if we want some progress on this now one of the testifiers came up with the option of doubling the existing temporary mooring rates currently it will always come up different at each harbor. Mr. Yim acknowledged that is the reason why, no matter what harbor you go into there will always be one rate. Member Pacheco suggested a dollar amount down to whatever the Board decides where the Chair said that is one option, but what might end up doing is cutting the rates in some harbors and still having a real high increase at others. The current rate is calculated different per harbor and has a certain set of discount. Meghan Statts (Oahu District Manager) said if it's straight across the board at \$7.00 and let's say the Board decides to go down to 50 cents. Its still 50 cents no matter whether you have a 30 foot boat you are paying 50 cents per foot which is \$15.00 per day at a particular harbor that is \$450 which is a little more expensive than a regular mooring permit. Doubling as you suggested would be higher, but easier calculating straight across the board at all facilities. Chair Thielen asked whether the 50 cent per foot per day calculates about the same as the doubling. Ms. Statts said it's actually less giving the example of a 30 footer at around \$300 for a regular tenant and for \$15.00 its \$450. Chair Thielen said the rule change for temporary would be now. Ms. Statts meant what it would be five years from now that she didn't know what the regular rate is now.

Chair Thielen summarized to double the existing rate rather than trying to figure out what the dollar figure is and DOBOR has a second rule package coming up where you can start to break out the categories and provide those different rates for the visitor.

Member Pacheco assumed to leave this alone since the Board will be doing another rule change asking how much would we gain by this interim. The Board asked when DOBOR will be coming back and Mr. Yim said six months because they have to go to public hearings and its 15 years worth to address.

The Chair continued with her summary that one suggestion is to double and come back later to do a different rate for visitors to Hawaii or people who are not on the waiting list in a quasi-permanent category that they could do later. And, another suggestion was to do everything later. She felt it would be fair to put an increase on the temporary mooring fee because they are trying to raise the revenues across the board it is a very low fee. If it were just one category of tenant using temporary moorings they would come up with what is a fair amount. The problem is there are two categories of people using the temporary moorings – people on the wait list and people really using it as a temporary basis. The compromise is for the people on the wait list because that is the low number. If the Department wants to come back with a higher number for these other people they can do that.

Member Goode made the suggestion to look at how the rule was written under Chapters - 3 and -4 and added 10% somewhere in 3 or 4 lays out all the different fees involving harbors. Instead of adding 10% add 30% its small enough that it shouldn't hurt the people on the waiting list. Chair Thielen said this is getting into a substantive change if they go that route because it didn't go out for public hearing.

There were some discussions between the Board and the Deputy AG on this possible rule change and the question was whether there was substantive change to the rules that went out to public discussion.

Chair Thielen said that the rule that went out for public discussion was to change the temporary mooring fees to \$2 per foot. Now we're talking about increasing that by 20% of the existing fee. Mr. Wynhoff said that he didn't think there was a yes or no answer to that to change one number for everything to a whole pan full of different numbers is more substantial. The comparison is between the rule that went out versus the changes now that is a substantive change than the rule that went out to public discussions. Staff supports having the same rate across the board.

There were more discussions regarding why temporary fees now which was so someone isn't in a slip for five years.

Per the Chair's inquiry about the 20% increase to the temporary mooring fee Member Goode said that he would strike out all the additions to a \$1 per foot, in sub-session d he would leave that in and rather than 10% change to 30% which is slightly less than 20% increase. Also, take the brackets off. Chair Thielen commented that if this were done it would be fair for the people who are waiting for a permanent slip because it's tied to the fees in that harbor. Later on for the people who are moving around temporarily could come up with a new thing for them. This is something that keeps them aligned with our harbors.

There was some discussion regarding kamaaina and malihini fees that the Chair said there is some precedence where the Department has done it for camping where there are different permits for residents and non-residents and Boating could look at that and if they want to adopt they in the future they can.

Member Goode made a motion to Section 13-234-5 by accepting the Division's recommendation with the exceptions of striking the \$1.00 per foot per vessel per day in sub-section (a) and in sub-section (d) remove the brackets [] and change plus [ten] percent to plus thirty percent. Member Agor seconded the motion.

Member Pacheco said he will not support the motion.

The Board:

Moved to accept staff's recommendation for Section 13-234-5 with the exception of sub-section (a) striking [\$1.00/per vessel foot per day] and in

sub-section (d) remove the brackets [] surrounding the paragraph and change "...plus [ten] percent..." to "...plus thirty percent..."

Approved as amended (Goode, Agor)

All Board members voted in favor except for Member Pacheco who voted negatively.

Mr. Yim briefed the Board that 13-241-25 adds \$5.00 to the vessel registration to cover the cost of on-line registration. Chair Thielen said that staff moved the boater registration on-line to e-Hawaii which is the internet portal for the state that has a surcharge on it and this is to bring it in line for that surcharge that is being paid for the on-line services.

Member Agor moved to approve as submitted which Member Goode seconded.

Unanimously approved as submitted (Agor, Goode)

Item M-4 Issuance of a Concession Agreement to AMPCO System Parking for the Management and Operation of the Automobile Parking Facilities at Honolulu International Airport

Chair Thielen presented that this is one of DOT's standard leases.

Unanimously approved as submitted (Edlao, Agor)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to the Monument Co-Trustee Representatives of the U.S. Department of the Interior, U.S. Fish and Wildlife Service; U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and State of Hawai'i Department of Land and Natural Resources, for Access to State Waters to Conduct Conservation and Management Activities.

Written testimony was distributed.

Department of Aquatic Resources Administrator, Dan Polhemus briefed the Board that this is the annual renewal of the co-managers permit which allows all the co-trustee agencies to carry out their management duties in State waters at the Monument. These trust activities must be fulfilled as laid out in the President's Proclamation. Cultural and scientific review has accepted this application and no concerns were raised and there were no comments from the public. The proposed activities are in compliance with NEPA and HRS Chapter 343. Staff accepts the application.

Marti Townsend representing KAHEA testified that they highlighted their concerns regarding the last environmental review (in her written testimony) and referred to her Exhibit B, HAR § 11-200-8 and asked to compare the list considered for cumulative

impacts with the activities requested in the management permit. The cumulative impacts of those activities aren't being considered. KAHEA supports management of the Monument, but she is asking to think about the cumulative impacts of some of the management activities that we engage in. Even the Management Plan needs to have certain studies that were recommended to be completed, but haven't been done yet, citing the example of the Maritime Aviation Transportation Action Plan that has been ongoing for several years. Ms. Townsend emphasized the requirement to have these cumulative impact assessments because it is the only way to meet the requirements of the Hawaii Administrative Rules § 11-200-8. Then we can start issuing exemptions from environmental review for all the various permits that we issue. Without it the permits are not in compliance with Chapter 343. KAHEA has raised this issue by filing a lawsuit and she has challenged permits being issued in contested case hearings and those permits were allowed to be fulfilled and her contested case hasn't been acted on. Ms. Townsend stressed that the Board needs to act on this because there will be limited options left for them to take action to ensure that the law is being abided by and that this resource is fully protected. Her concerns were that there are huge problems that we aren't looking at and she'd hate to wait until a huge accident and damage done before agreeing that we need to look at this and take actions to mitigate human impacts.

Member Pacheco noted that what the Board has from staff and our legal counsel is in compliance with Chapter 343 in regards to these permits.

Ms. Townsend appealed as a common sense person that having a cumulative impact assessment for vessel operations is a good thing when we are talking about the most fragile marine environments on the planet and asked the Board to direct the staff to get it done, at least set a timeline.

Mr. Polhemus noted that Ms. Townsend is speaking of the large research vessels and if the Board recalls those come in separate permits before you. It may say vessel operations in this application for management activities, but they operate a wide variety of vessel sizes including smaller vessels that transit taking people inside atolls, taking supplies on shore to places like French Frigate Shoals or Laysan. Mr. Polhemus thinks there is some confusion on what permit that they are dealing with which is the manager's permit for management activities clarifying that they are not dealing with the large vessel permits. The lawsuit filed was in regards to research permits. There is an environmental assessment for the Management Plan with over 500 pages of responses to comments from that EA which was publicly noticed and went through a series of public hearings. If entities were dissatisfied with that there was an opportunity to litigate that during a certain open window. In this case staff has compliance for NEPA and Chapter 343 which staff has gone through and presented it openly to the public which the public had a chance to look at and staff feels based on this and the advice of our counsel and those with the co-trustee agencies are in compliance with Chapter 343.

In terms of cumulative impacts, Mr. Polhemus continued saying that there is an analysis on cumulative impacts in this document. In addition for activities that had been carried out there had been annual reports of cumulative activities site by site in various portions

of the Monument that had been provided to this Board each year since joint permitting went into place which was the last two years. An analysis of cumulative impact requires some degree of a time series and it's only been two years where the time series is limited. It was clear to the Board when this came out that this would be plan to plan because there are many things that needed to be done. Progress is being made on a variety of those plans, but there is a lot that needs to be done in the Monument and they've been prioritized on what needs to happen first. This is just the environmental compliance; the Management Plan is many more volumes reiterating that staff met the requirements of 343 and NEPA in regard to the management activities being sought under the co-managers activity requested.

Member Pacheco asked whether Ms. Townsend is disagreeing with the Department on what has been done, is done or is she saying that's not enough. Where Ms. Townsend replied saying both because what has been done is inadequate and what staff is saying has been done has not been done. There were promises made to KAHEA that cumulative impact assessments would be done and were concerned with research and looking for the Science Plan. Ms. Townsend didn't act on the inadequacies of this EA and missed the window which is why she has to act on every permit because that is the only opportunity she has. Every time you approve a permit and you don't have an environmental review it's a violation. She doesn't want to stop activities that are happening that are legitimate value to this resource or improves management, but if there is no room for negotiation and staff is going to make the effort to do the cumulative assessment that needs to be done there is not much other choice. Ms. Townsend understands that staff has legal counsel that says this is sufficient, but she reiterated appealing to the Board that a cumulative assessment is needed to make an informed assessment and asked to at least get a calendar to make it happen.

Mr. Polhemus noted that vessels are prohibited from discharging in State waters of the Monument and given the vessel discharges are zero under Hawaii State law working a cumulative impact of zero over a period of time is going to be no negative impact, reminding the Board that the issues brought forth here are an attempt for the Board to expand its oversight to areas beyond the jurisdiction of the State of Hawaii specifically Federal waters which the Proclamation does not permit.

Chair Thielen said that the Board is being asked a legal question and policy position that they've asked their counsel on what to follow on the legal side, but on the policy side she is less concern with the management permit because it has gone through a tremendous amount of review on the management of that area and that plan requires a cumulative approach for management activities. On the research side she thinks it's important for the Monument Management Board be evaluating that Science Plan on how we are going to monitor the cumulative impacts of the research because that is not being conducted by the managers which is suppose to be consistent with the Management Plan and to further the Management Plan particularly in areas where additional studies are needed. That Management Plan could be used to direct researchers to say we are going to look more favorably upon research requests that are in this area and require you to do this and get universities to do the research needed. The Chair and Mr. Polhemus have discussed that

the Science Plan is to evaluate the cumulative impacts. This is being done through multiple agencies, plus there have been changes in DLNR's staff and things will not be moving as fast as before. The Chair can't give a firm date and is not comfortable imposing that on DAR now because there are a lot of negotiations and legal issues that have to be addressed between 3 agencies, 3 sets of Administrative Rules between Federal and State with 3 sets of attorneys which will take awhile. But, the Chair feels comfortable in pressing from our perspective of the SUV and MMB that Science Plan does need to take into account cumulative impact of research that has been done and permitted by us by outside parties.

It was questioned by the Board whether staff can do this. Mr. Polhemus described the Data Integration Group, based in Hawaii Kai, that collects this sort of information and in that way forms the annual report of activities that the Board receives. Staff gives the Board an analysis at a certain level of detail, although the information collected is finer detailed than that, confirming that the information necessary to work out cumulative impacts at a variety of scales is being collected and is not being ignored. The evidence of that is the Board's annual report, demonstrating that staff does track these things. In terms of environmental impacts, the establishment of the Monument did not obviate any of the other existing State and Federal authorities that prevail. All of the activities have to be consistent with the Endangered Species Act, the Marine Mammal Protection Act (citing monk seals), Migratory Bird Conservation Act, etc. so we don't get carte blanche; in relation to all the new restrictions laid upon staff with the establishment of the Monument, there are a large number of previously existing authorities staff have to deal with. For monk seals, staff has to go through a bunch of filters that might pertain to either monk seals or the habitat they occupy.

Ms. Townsend clarified those permits are issued for people who intend to affect monk seals. The concern with the cumulative impact is there are a lot of activities there and no one has any intention of interacting with a monk seal if something happens. Her point is that we need to have a birds eye view on these cumulative impacts of operations. The majority of permits issued so far are for French Frigate Shoals, an area where monk seals are pupping. A majority of the activities are happening in that area and the next area is Midway and none of those permits come before this Board. The most fragile and important with the most endangered species in Hawaii is getting the most human activity in a place where human activity should be kept at a minimum. And, Ms. Townsend is afraid that the Board is not getting that information to assess whether you should be approving permits or not.

It was noted that both NOAA representatives were attending another meeting.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-6 Amendment of General Lease No. S-3849 to the United States of America for the Pohakuloa Training Area, Kaohe, Hamakua and Puuanahulu, North Kona, Island of Hawaii, Tax Map Key: (3) 4-4-15:08; 4-4-16:05; and 7-1-4:07.

Mr. Atta described request to amend their lease. What was previously the Old Saddle Road is not being used and the Army requested to incorporate it into the existing lease that they have because it was intended to be part of the training facility.

Craig Ho'okano, Chief of Real Estate for this District asked for this parcel because it is within the Army's training area and if they have it they can maintain it.

Unanimously approved as submitted (Pacheco, Edlao)

- Item D-2** **Consent to Assign Grant of Easement No. S-4206, Sun Sun Lau, Ltd., Assignor, to 1055 Kionoole, LLC, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-20:16.**

- Item D-3** **Consent to Sublease General Lease No. S-5848, David S. De Luz Sr., Trustee of the David S. De Luz Sr. Trust dated October 23, 1991, Sublessor, to ARC of Hilo, Sublessee, Waiakea Houseslots, Lots 15 & 16, Block 39, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-37: 63**

- Item D-4** **After-the-fact, Grant of Perpetual, Non-Exclusive Easement to the Water Board of the County of Hawaii for Water Meter Purposes at Piihonua, South Hilo, Hawaii, Tax Map Key: (3) 2-3-032: portion of 011.**

- Item D-7** **Issuance of Right-of-Entry Permit to the University of New Mexico, Department of Anthropology, onto Lands Encumbered by General Lease No. S-5599, at Kaihooa-Pahinahina, North Kohala, Hawaii, Tax Map Key: (3) 5-9-003: 004 and 5-9-004: 008.**

- Item D-11** **Grant of Perpetual, Non-Exclusive Easement to Board of Water Supply for Waterline Purposes; Issuance of Right-of-Entry, Honolulu, Oahu, Tax Map Key: (1) 2-4-005:portion of 018.**

- Item D-12** **Set Aside to City and County of Honolulu for Addition to Waimanalo Wastewater Treatment Plant Purposes, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-009:262 and road.**

- Item D-14** **Sale of Remnant to Guillermo Geldermann, Kaaawa, Koolauloa, Oahu; Tax Map Key: (1) 5-1-011:055; Rescind Prior Board Action of July 22, 2009, Item D-13**

- Item D-15** **Issuance of Revocable Permits to Hawaii Reporter, Inc. at the State Capitol, 415 S. Beretania St., basement level, Honolulu, Hawaii 96813.**

- Item D-16** **Cancellation of Revocable Permit No. S-7333 to Milton K.C. Ching and Melanie-Ann P. Ching, and Issuance of Revocable Permit to**

**William J. Sanchez for Pasture Purposes, Lihue, Kauai, Tax Map
Keys: (4) 3-9-02: portion 01 and 3-9-01: portion 02.**

Mr. Atta said there were no changes.

Unanimously approved as submitted (Agor, Pacheco)

Item E-1 Request from the Duke Aiona for Governor Campaign Committee to use the Large Pavilion at the Wailoa River State Recreation Area in Hilo, Hawaii for a Political Fundraiser

Member Agor recused from this item.

Mr. Quinn pointed out that this item delegates future decisions for activities like these in the park to the Chairperson.

Unanimously approved as submitted (Pacheco, Edlao)

Item E-2 Consent to Assign General Lease No. SP-147, Richard Taubman, Workstar Occupation Health Systems, James and Tracy Wise, and Elizabeth Freeman, Assignor, to Richard J. Taubman, Elizabeth Freeman, James Wise, Tracy Lyman, Workstar Occupational Health Systems, Inc. (by David Scott McCaffrey, its President), and Kauai Kuleana LP (a limited partnership, by its General Partner, Moloa'a Mala LLC, a Hawaii limited liability company, by Kimberly Phillips its Member), Assignee

Chair Thielen asked for a deferral and asked if there was anyone here to testify.

Deferred (Edlao, Pacheco)

Item K-1 Conservation District Enforcement File OA-09-22 Regarding Noncompliance with Permit Conditions for Pier Construction by the Sevath S. Tanaka Trust Located at Kaneohe, Koolaupoko, Oahu Island, TMK: (1) 4-5-001:039

Mr. Lemmo reported that the applicant didn't get construction plan approval for a pier which the Board had approved previously. The pier was not built to specification, it was 200 square foot larger than what was proposed in the original application and staff recommends a \$ 2200 fine. Chair Thielen asked also either remove the pier or redesign it and do it as planned. Mr. Lemmo said give staff the as built plans.

Board member Goode asked how the fine was derived. Mr. Lemmo said that there is a \$15,000 possibility for a relatively minor infraction for the 200 square foot overbuilds which went from 590 square feet up to around 790 square feet.

The Board had more discussions with Mr. Lemmo that this is Kaneohe Bay, no resource impacts, that the owner did not approve the plan with the increase, that the owner was given notice on the hearing today and that the owner has not been cooperative. Also, the owner still needs to get an easement for everything.

Unanimously approved as submitted (Edlao, Goode)

Item K-4 Conservation District Use Application (CDUA) KA-3524 for the Kuhio Highway Roadway Plan by the State Department of Transportation, Located at Lumahai and Waikoko, Hanalei District, Kauai, TMKs (4) 5-7-003:003 and 5-6-003:004

Mr. Lemmo reported that DOT has a road that's not in the Right-of-Way. The purpose of this application is to put the right-of-way around the road to do a sub-division of State and private lands to achieve that and to do some repairs to the road as discussed in the report and staff recommends the project be approved.

Unanimously approved as submitted (Agor, Goode)

Item J-1 Approval for the Award of Contract IFB 09-001-06, Removal and Disposal of the Debris from the Ala Wai Trap

Mr. Yim presented the contract background and described what happens at the trap.

Chair Thielen related that Janet Mandrell wanted to share her annoyances regarding this, but Ms. Mandrell has left.

Unanimously approved as submitted (Pacheco, Edlao)

Item J-4 Consent to Subleases, Harbor Lease No. H-82-4, GKM, Inc., a Hawaii Corporation, Lessee, Honokohau Boat Harbor, Kealakehe, Kailua-Kona, Hawaii, Tax Map Key: (3) 7-04-008:42.

Mr. Yim said that staff recommended approval referring to page 5 which had incorrect dates – Kona Coast Marine is September 1, 2009 not August 1, 2006.

The Board:

Approved staff's submittal with an amendment to page 5, under TERM OF SUBLEASE, Kona Coast Marine, Inc date from [August 1, 2006] to September 1, 2009.

Unanimously approved as amended (Pacheco, Edlao)

Item M-3 Issuance of Non-Exclusive Easement in Favor of Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. Honolulu International Airport

Item M-5 Amendment No. 2 to State Lease No. DOT-A-98-0017 Application for Additional Space United Airlines, Inc. Honolulu International Airport

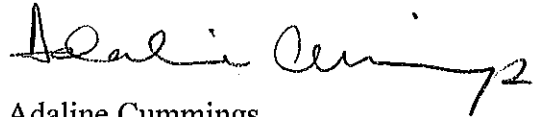
No representatives present. No public testimony.

Unanimously approved as submitted (Pacheco, Edlao)

Adjourned (Edlao, Pacheco)


There being no further business, Chairperson Thielen adjourned the meeting at 4:00 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 Thielen
Chairperson
Department of Land and Natural Resources