

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

DATE: THURSDAY, AUGUST 12, 2010
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Board Member Ron Agor called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Ron Agor
Jerry Edlao
David Goode

Rob Pacheco
John Morgan

STAFF

Morris Atta/LAND
Paul Conry/DOFAW
Orlando Oxilles/HUNTER ED
Ed Underwood/DOBOR

Sam Lemmo/OCCL
Dr. Bob Nishimoto/DAR
Dan Quinn/PARKS

OTHERS

Julie China, Deputy Attorney General
Eric Leong: M-5, M-9, M-10, M-11
Yvonne Izu, K-1
Janet Schaffer, K-3
Huang Chi-Kuo, C-1
Laulani Teo, C-1
Christian Leialoha, D-5
Dave Cowen, K-2

Craig Nakano, M-6
Burt Lau, D-2
James, Leonard, K-3
Summer Nemeth, C-1
Marti Townsend: C-1, F-3
William Aila, Jr., C-1
Charles Littnan, F-1
Kelly Bronson, K-2

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

Item A-1 July 8, 2010 Minutes

Approved as submitted (Pacheco, Morgan)

Item M-6 Issuance of Right-of-Entry, U.S. Department of the Army, Kona International Airport at Keahole.

Craig Nakano representing Corp of Engineers testified asking for a Right-of-Entry and he explained.

Unanimously approved as submitted (Pacheco, Edlao)

Item M-5 Consent to Sublease of Harbor Lease No. H-05-24, Fresh Island Fish, LLC to General Services Administration, Situated at the Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Iwilei, Honolulu, Oahu, TMK:1st/1-5-42 (Portion)

Item M-9 Issuance of Revocable Permit to Battleship Delta Productions L.L.C. at Piers 19 and 20, Honolulu Harbor, Oahu, Tax Map Key: 1st / 1-5-39: Portions of 63 and 7

Item M-10 Issuance of Direct Lease, American Marine Corporation, Portion of Piers 13/14 Shed, Honolulu Harbor, Island of Oahu

Item M-11 Issuance of Direct Lease, Pacific Environmental Corporation, DBA Penco, Portion of Piers 13/14 Shed, Honolulu Harbor, Island of Oahu

Eric Leong representing Department of Transportation, Harbors Division Property Management presented above items.

Unanimously approved as submitted (Morgan, Goode)

Item D-2 Consent to Assign General Lease No. S-5187, Equilon Enterprises LLC and Aloha Petroleum, Ltd., Assignor, to Aloha Petroleum, Ltd., Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-1-09: 42.

Morris Atta representing Land Division conveyed that this predates staff's assignment policy and there is no assignment premium involved.

Burt Lau representing Equilon Enterprises testified that they are changing their business model and getting out of direct marketing to indirect marketing and shifts this interest to the existing co-tenant.

The interest situation was questioned by Member Edlao where Mr. Atta explained policies are renewed annually where staff monitors the current status of insurance.

Whenever they find the insurance is lapsing staff notifies the tenant to renew and issue staff a certificate.

Unanimously approved as submitted (Pacheco, Goode)

Item D-13 Issuance of Revocable Permit to Waikiki Roughwater Swim Committee, Inc. for Swim Race Event at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-37;por. 21.

Mr. Atta related that this is a routine request.

Unanimously approved as submitted (Morgan, Goode)

Item K-1 Request to Extend a Deadline Set by the Board of Land and Natural Resources to Submit an After-the-Fact Conservation District Use Application in Regards to Unpermitted Land Uses (Trails) by Secret Beach Properties Located at Kauapea (Secret Beach), Namahana, Hanalei, Kaua`i, TMK (4) 5-2-005:036

Written testimony was distributed.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) reported on item background and reminded the Board that they took up a violation case on March 11, 2010 for unauthorized uses on the private property in the conservation district. The property owner was fined a total of \$9,000 which was paid. The Board imposed a condition that the owner would have to file an after the fact CDUP or they would have to remediate the site and were given a time frame in which to do that. Mr. Lemmo raised some errors in the staff report. Page 2, condition #5 says 160 days which should be changed to 120 days. Also, on the same page in the last paragraph September 1, 2010 should change to July 11, 2010 and March 1, 2011 should change to January 11, 2011. The owners have hired a consultant to work on this matter and staff doesn't have a problem with the extension request.

But, Mr. Lemmo noted for the record that the land is being auctioned on August 23rd and apologized if that wasn't true. There was some discussion regarding the new owner who would be responsible with complying with this condition or they would be subject to daily fines as determined by the Board.

Member Pacheco asked if the Board decides not to extend this does that mean the owner is in violation because they should have had the trail remediated also. Member Morgan added and/or applied for the CDUP. Mr. Lemmo confirmed that saying the owners submitted in June a request for the extension, but because we're down to 1 Board meeting a month staff did their best to schedule it.

Member Pacheco queried at the last Board meeting on this didn't they have an extensive discussion about giving the length of time to remediate and apply for the CDUA. Mr.

Lemmo confirmed that was an issue. Member Pacheco wondered what changed to allow the owners to do this – whether the EA was done. Mr. Lemmo said he spoke to the consultants and he went to the property last month where there are a lot of things happening. Apparently, it's taking the owners a long time to get the survey in place to do the necessary environmental analysis and to get the documents in order, etc. After Member Pacheco's inquiry Mr. Lemmo said he has met with the owner's consultants on a couple occasions.

Member Edlao questioned where Mr. Lemmo's information came from which was from the public.

Member Agor asked whether the Board's decision from the last meeting that this came up prompted an environmental assessment and Mr. Lemmo confirmed that.

Mr. Lemmo noted that he had received an Aug. 10th letter which the Board did receive.

Yvonne Izu representing Secret Beach Properties confirmed that they did submit a request for an extension on June 10th however, the letter from OCCL stated 160 days which would have been September 1st. She was hired subsequent to the violations having occurred and the owner paid the fines. The owner asked her to process the CDUA application. Her law firm and Secret Beach also hired SSFM to prepare the environmental assessment. We had gone out there to talk to the owner about what they wanted to remediate as opposed to what they wanted to file for an after-the-fact application form. It's a big piece of property and it's very steep. One of the things the owners had emphasized to them as the consultants was that a number of first responder agencies were interested in continuing to have access to the trails through this property. One of the first things they needed to do was to determine which trails to get an after-the-fact permit for. Most of the trails that are there were constructed prior to the present owners taking possession of the property. It doesn't excuse the fact that there is no permit for it. A number of first responder agencies have been using the trails to get down to the beach. The owner wanted to talk to these first responder agencies to determine which trails were important for these agencies to continue to have access to and what to seek a CDUA for which took some time. Also, to advise the owner that not only was there conservation district use issues, but special management area permit issues that triggered discussions with the County as to what needed to be done on the County side and depending on what the issues are all of that needed to be rolled into the environmental assessment. The environmental assessment is being worked on right now and there have been meetings with the County as to what is required under the County's procedures. Ms. Izu has spoken to Mr. Lemmo a couple times regarding the CDUP process. She was surprised to learn that this property was on the auction block and she couldn't speak about it because she hasn't heard. When she returns to the office she will check with the owners on what the situation is.

It was questioned by Member Agor what the time frame was to publish an EA. Ms. Izu said from a draft EA to a final EA about 3 to 4 months. Mr. Lemmo said there is a 30 day public comment period, then a couple months to address the comments and prepare

the final EA. Ms. Izu said there is the study to support the EA before hand which is what is going on right now. Member Morgan asked whether the proposed extension is to January 11th for a draft and not necessarily the final approval. Mr. Lemmo confirmed that saying minimally you need to submit a CDUA with a draft environmental assessment.

Member Pacheco asked when was Ms. Izu hired? Ms. Izu said about 2 or 3 weeks after the March 11th Land Board meeting.

Member Morgan said he was confident with staff's recommendation and would go along with it. He made a motion to accept staff's recommendation to extend to January 11th. Member Pacheco seconded it. All voted in favor.

The Board:

Amended Page 2, condition #5 from 160 days to 120 days. Also, on the same page in the last paragraph September 1, 2010 should change to July 11, 2010 and March 1, 2011 should change to January 11, 2011.

Unanimously approved as amended (Morgan, Pacheco)

Item K-3 Conservation District Use Application (CDUA) HA-3539 for a Single Family Residence (SFR) & Related Improvements by Joan M. Shafer Located at Waawaa, Puna, Island of Hawaii, TMK: (3) 1-4-028:001

Mr. Lemmo conveyed that this SFR is in the resource sub-zone of the conservation district. The applicant is proposing to construct this single story residence on a 3500 square feet footprint which has gone through the normal CDUA process, an environmental assessment was prepared and published and a FONSI was issued on March 16, 2010. Mr. Lemmo reminded the Board that on January 11, 2010 the Board approved a CDUP for a SFR on a nearby parcel. This was the first residential use in the conservation district in this area. Staff had recommended that the SFR request not be approved because of the nature of the coastal eco-system in this area. They have received letters for years on the importance of this coastal eco-system and to protect it. The Board approved a SFR, but significantly reduced the size to 2000 square foot print under roof. Staff continues to have the same concerns regarding residential development in this area. It's setting a precedent of approving residential uses here. Mr. Lemmo noted on behalf of the applicant they seem to have a reasonable mitigation plan for the hala that would be removed by replacing it with more hala and other native species on the parcel. As noted in staff's submittal there is concern with increased human settlement in this area and recommends the application be approved, but staff asked to reduce the size of the SFR to a maximum of 2,000 square feet under the roof which would reduce the footprint and reduce the impact of the residence on the area which would reduce potential land speculation and reduce the density in this area which staff feels is consistent with the purpose of the conservation district. Staff recommends the application be approved and Mr. Lemmo read recommendation #3.

Member Pacheco referred to Exhibit 2 that staff's submittal says 25% has houses on it and asked where the conservation boundary line is? Mr. Lemmo pointed out Exhibit 1 where the circled area is the parcel location and that the conservation district is 300 feet from the shoreline as shown in orange. Mr. Morgan said that about 7 lots fall into this category of no choice. Mr. Lemmo replied that seems reasonable.

James Leonard representing Joan Schafer who is the owner and applicant testified they reviewed staff's report and recommendations and the owner is agreeable to all the conditions proposed with the exception of condition #3 which would limit the size of the proposed dwelling under roof. They understand the Board took up a similar application previously. He pointed out differences in foliage between this lot and the previous approved lot. Mr. Leonard distributed a Google satellite map of the area describing the number of trees on the Schafer property compared to the neighboring property. He referred to Exhibit 8 and presented a map where the house is at the far mauka end of the property. Most of the hala would be preserved, but one will be impacted by the driveway and the existing naupaka would be retained around the property. The owner is looking to put in additional hala along Government Beach Road along with a number of native plants. They don't agree with the characterization of the area listed in staff's statements that the construction will degrade the kipuka ecosystem of the Puna Coast and the species that inhabit the area. The owner will enhance the natural resources and not degrade them that lessening the size of the house will not lessen the impact on the land or serve to decrease the density of the area, the footprint impacts or affect speculation. Ms. Schafer went through considerable expense to meet the Department's rules to design this 3500 square foot house. They asked that condition 3 be revised to reflect the maximum developable area contained in 13-5.

Member Pacheco asked whether the pond would be under roof. Mr. Leonard answered that the pond would not be under roof. There was some discussion regarding the pond size and what is under roof. Mr. Leonard said they are down 700 square feet of living space when posing condition 3. The total development area is 3,500 square feet including the pond, garden, lanai and garage.

One of the Board members asked about the set back distance referring to Exhibit 7. Mr. Leonard explained that there is a certain distance for the turn in the driveway and part of the septic system is in that area as well.

Member Pacheco asked Mr. Lemmo about the last CDUA in the area that was reduced to 2,000 square feet because the house was in the middle of a hala grove? Mr. Lemmo confirmed that the house would impact the hala grove. There was more discussion about that site.

Member Morgan said he recently attended a judge confirmation hearing and it was asked whether you should legislate from the bench or not. This is one of those similar types of cases. This is a sub-division intended to have houses on it with an arbitrary conservation line going through it. The applicant is looking at an existing law, an existing sub-division with what appears to be clear intent. While he respects staff and staff's recommendation

there doesn't seem to be any benefit for taking out one wing of this house and he would be inclined to let the applicant build the house.

It was asked by Member Agor whether the applicant was aware of the prior Board action and Mr. Lemmo confirmed they were.

Member Pacheco said he didn't agree with the applicant's representative that they are improving the natural land by putting a house in, but he does agree, not knowing how much an impact to the area with the house on it, from 2000 or 3400 square feet. He moved to go into Executive Session in order to consult with their attorney on questions and issues relating to departmental permits, and questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it.

9:50 AM EXECUTIVE SESSION

10:06 AM RECONVENED

Member Morgan reiterated his position that the law allows the sub-division to build 3500 square feet and intended to have single family residences and he would amend #3 under the recommendation to comply with the applicants submitted plans.

Member Goode referred to the first page of the submittal where it says the use approximately 7,250 square feet and asked what does it mean? Mr. Lemmo says this area also includes the area cleared for landscaping purposes. Member Goode asked whether the driveway is considered part of the development area under the rule. Mr. Lemmo answered in the negative. Staff doesn't calculate the maximum developed area (MDA). The maximum developable area is the living area enclosed by 3 walls – the garage, the residential structure itself and there is a provision that water features have to be included in the MDA. Member Goode asked if the roof structure was less and elements of the home were built on the second story there would be a smaller footprint would the square footage change? Mr. Lemmo answered no that the MDA includes all board areas. The MDA allows going upward, but it doesn't relieve you of any developable area constraints. Member Goode posed his question to Mr. Leonard who agreed it would reduce the footprint, but said that going upward would make the house more visible and the owner prefers keeping the house on the ground floor as planned. Also, there is a height limitation in the area to 25 feet which limits the design of that roof. Member Agor suggested incorporating another floor space within the limit. Mr. Leonard said the roof allows for maximum ventilation and bringing that roof down wouldn't allow that.

Member Pacheco said staff's discussion mentioned previous Board action keeping everything under 2000 square feet which is the basis for this item. In that previous case staff recommended denial of the CDUP and the Board came up with the compromise. Mr. Lemmo acknowledged that.

Member Pacheco made a recommendation to approve staff's submittal amending item 3. Also, to keep the staff's desire in keeping a unique eco-system that you can't find

anywhere, to change item 3 to 3,000 square feet. There was some Board discussion regarding the taking out of the pond and lessening the footprint of the garage. Member Edlao seconded the motion.

Janet Schafer testified that this residence will be her permanent home – her retirement home. It's important to have her car protected while she travels. She said she will do all she can to enhance the area around her home and integrity is important to her. Ms. Schafer hoped the Board would approve the 3500 square foot because that is how she read the letter of the law and defined it. And, she doesn't feel they are destroying anything precious or if that was the case they would have done something.

Member Morgan said like what the applicant's representative said if you take off 1 room is it going to impact anything in the environment or the community or anything less and he has a hard time believing there is going to be any reduction in impact except for the applicant. If the applicant is the only one that suffers because of this type of decision I have a hard time thinking that is ok if the law provides if the intent of our forefathers who created the whole 3500 square feet and sub-division to begin with. If you have a win-lose and a win-win opportunity he asked why go for the win-lose?

Member Edlao agreed with Member Pacheco that he believes the applicant will maintain the area and the environment that the 3,000 square feet is a compromise because that is a huge house for 1 person. You can't have everything and that is why he supports the motion.

Member Goode said in the previous Board meeting regarding a similar sub-division he voted against approving it and then voted for the reduction of the 2,000 square feet then he thought that conservation district is a wide swath and land owners know this. That previous lot had a number of sensitive features and this lot has some of those. He would be in favor of 2,000 square feet and it would be a wonderful home and minimize the impact to the conservation district as much as possible, but he'll follow our Big Island Board Member's lead.

A vote was taken: Ayes – Member Pacheco, Member Edlao, Member Goode and Member Agor. Nays – Member Morgan. The motion passes.

Mr. Leonard requested for a contested case hearing verbally and will submit to the Chair.

The Board:

Amended staff's recommendation #3 from 2,000 square feet to 3,000 square feet. Otherwise, staff's submittal was approved.

Approved as amended (Pacheco, Edlao)

Item C-2 Request Approval to Issue a Request for Proposals and Authorize the Chairperson to Award and Execute Contracts for FY 2011 Statewide Watershed Partnership Program Grants (RFP WPPG11)

Paul Conry, Administrator with Division of Forestry & Wildlife (DOFAW), reported this is an annual cycle of awarding grants for our Watershed Partnership Programs. Staff goes through a procurement process of issuing an RFP where the evaluation committee comes in and grant any proposals then continues the process of awarding the contracts. Funding is down a little this year, but staff expects to award a good number of projects.

Member Morgan asked whether this item is project specific. Mr. Conry explained this item authorizes the Chairperson to go through the process to award the contracts. There was some discussion whether this was the application and it was not per Mr. Conry.

Unanimously approved as submitted (Pacheco, Goode)

Item C-1 Denial of Request for Contested Case Hearing by Summer K. Nemeth and Huang Chi Kuo

Mr. Conry reminded the Board that this pertained to the January 8, 2010 Board meeting where the Board approved an immediate right-of-entry to conduct conservation management for the Kaena Point Ecosystem Restoration Project on Kaena Point Natural Area Reserve and that is the rationale for the predator approved fence. As part of the process of a contested case hearing staff sought advice from the Attorney General's Office (AG) who advised denying the contested case hearing because the petitioner(s) do not have standing and are not entitled to a contested case. Staff outlined in the submittal what the advice was from the Attorney General's Office going over the sources of standing, potential sources of standing afforded by Statute or Rule, or that of the property interest entitled to protection. The analysis and advice the AG's Office provided to the Division basically identified Huang Chi Kuo's interest focused on the native biota indicating a challenge to the EA (environmental assessment) and is not entitled to a contested case. It would have to go through a 343 process. Mr. Kuo claimed property interest and they also identified that the action the Board was taking was a matter of internal management and was not subject to a contested case. Ms. Nemeth claimed family practice of subsistence fishing and exercise of traditional and customary Hawaiian cultural and religious practices. The AG's Office indicated although these interests have been held in other cases constituted sufficient basis for standing it is not the case here. The decision on the part of the Board was to erect a predator proof fence and was custodial management of public property that has been entrusted to DLNR and as such is not subject to the requirements of the Hawaii Administrative Procedures Act including the requirement to hold a contested case hearing. The AG's Office also advised that Summer Nemeth is not entitled a contested case from the Board's decision to allow the predator proof fence to be erected. Staff recommends the Board deny the petition for a contested case hearing by Summer Nemeth and Hung Chi Kuo based on lack of standing.

Summer Nemeth representing Lawaia Action Network distributed her written testimony reminding the Board that they've been dealing with this issue since 2008 where she testified from her written testimony. Ms. Nemeth related her concerns regarding not being notified of any permits or decisions brought before the Board. She objects to the proposed decision on standing and denial of a contested case hearing. Staff failed to

notify parties of staff's recommendation within a reasonable time. The May 22, 2009 BLNR vote approving the KPERP (Kaena Point Ecosystem Restoration Project) was taken prior to the decision on standing and is contrary to law. The May 22, 2009 BLNR vote approving the immediate right of entry for the KPERP was prior to completion of all State and Federal Environmental Compliance Requirements. A special use permit was not approved by the Board prior to the May 22, 2009 BLNR vote approving the KPERP. The BLNR vote approving the immediate right of entry was made without a current, applicable CDUP and therefore such a decision is contrary to law. The KPERP should not be classified as a matter of internal management. A contested case hearing is required for the KPERP. Petitioners have standing under prevailing Hawaii Law to require a contested case hearing. Due process: petitioners' due process rights to an evidentiary hearing will be denied if the BLNR rejects standing. Ms. Nemeth asked the Board to reject and not approve or adopt the immediate right of entry for the KPERP and listed her directions to DLNR staff or determine that petitioners have standing to conduct a full contested case hearing.

Member Pacheco noted because of Sunshine Law the item on the agenda is about standing and the issues about previous actions are not on the agenda. Ms. Nemeth acknowledged that.

There was some Board discussion with Ms. Nemeth regarding her notice from staff on the decision of her standing before the Board where Ms. Nemeth was told that she would be notified in 30 days after filing her petition back in January and she only heard now on the decision.

Huang Chi-Kuo, petitioner testified since the last Board meeting regarding the fencing he has found more evidence that eradicating could hurt the environment where he cited examples on Chinamen's Hat. He says the final EA has many incorrect information. Mr. Chi-Kuo asked the Board to approve the contested case to get more details about this case. He reiterated Ms. Nemeth that he was not notified in 30 days.

Marti Townsend representing KAHEA testified that they are concerned with the practice where staff decides what projects are internal, not needing an environmental review and don't have to comply with legal requirements. She related that this fence was authorized under a 1983 conservation district use permit having read it. It was about establishment of the Natural Area Reserves Program which they support. But, in the passive conservation program meaning where you set places aside where you cannot develop here are protected for cultural practices, recreation and it didn't mention any kind of fortress model conservation of any kind. You can't say the conservation district use permit issued in 1983 covers the construction of this fence. KAHEA is concerned with this policy that DLNR has and this fence represents a fundamental change in the management direction at Kaena Point Natural Area Reserve and warrants a National Conservation District Use Permit. This fence should have its own permit number and we should talk about the long term implications of this fence separate from the overall Natural Area Reserve Program. Ms. Townsend requested to require staff to do a CDUP on this (project).

Laulani Teo who is a Peacemaker with the Native Hawaiian Legal Corporation, Native Hawaiian Bar Association Peacemaking Project testified that she has been working with the cultural practitioners, the fishermen, lineal descendents, environmentalists, government people and people in different roles that are concerned about Kaena. Her job is everything that is important with everyone to protect to the greatest degree possible and goals are achieved in the least adversarial way possible. During her 3 years of working on these Kaena Point issues she found everyone cares about the same things – the birds, the sacred sites, protection of the land and the ability for future generations to go there to see this place the way it should be. Ms. Teo proposed active discussion of all possible options with real problem solving be engaged because she doesn't believe this happened yet because of some flaws. At this point it's necessary not to deny the contested case because it is a process for the Board/Department to take a more detailed look at a picture based on what everyone is saying here you have to take the opportunity to do this. If this is denied the likely result is court and that is not a cooperative scenario and that is something she doesn't want to see. A benefit of the doubt is needed so that problems can be resolved and everything can be protected without draining the resources.

William Aila, Jr. is an employee of the State of Hawaii, but today he is here as a citizen and testified in support of the motion before the Board because the folks he is associated with including the Waianae Neighborhood Board has been in support of this fence for several years. He believes Native Hawaiian gathering rights, to access and continue practicing will not be impeded by this fence because the fence will have 3 gates to allow access. Fishermen will access the area continuously. There is no separation of burial practices that he is aware of and he has done burials in the area above where the fence is going to go. We have gone 2-1/2 years without the additional protection which resulted in less birds being born there, less native plants recovering and it is these birds and plants that are part of the cultural practices. We've already lost the resources necessary for cultural practices because of this action. Mr. Aila encouraged the Board to move on and get the fence built.

Member Morgan noted there is more opposition today, but there is a lot of support for the project by the Native Hawaiian community as well as those concerned for the birds and plants. This project has been going on for a long time and there have been opportunity for voluntary discussions. He doesn't think a contested case hearing is a non-confrontational approach and voluntary meetings are less confrontational. He made a motion to approve staff's recommendation and Member Edlao seconded it.

Member Pacheco said whether putting up a fence per Ms. Townsend's testimony is not an issue for the Board to discuss here today and asked whether there is a legal issue to discuss in Executive Session. Deputy Attorney General Julie China recommended it.

Member Pacheco moved to go into Executive Session in order to consult with their attorney on questions and issues relating to departmental permits, and questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities. Member Goode seconded it.

10:58 AM EXECUTIVE SESSION

11:07 AM RECONVENED

Member Pacheco said he understands staff's position and to accept staff's recommendation to deny standing. The Board voted in favor.

Ms. Nemeth said she plans to file an appeal to the Federal Courts to stop this fence.

Unanimously approved as submitted (Pacheco, Goode)

Item D-5 Sale of Remnant (Triangulation Survey Station) to Leialoha Family Partners, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-4-06:80.

Mr. Atta reported that the site was a former Triangulation Survey Station no longer in use and there are two abutting property owners of which the Leialoha Family is one. The other abutting land owner was approached expressing interest in acquiring the property and staff request approval of the sale of the remnant to the Leialoha Family

Christian Leialoha testified describing the 13 lots each at around 3 acres and his lot is less than 3 acres where he asked if the State would want to make his 3 acres like all the others.

Member Pacheco asked what the process is and Mr. Atta said it's dictated by Remnant Sale Statute requiring staff to sale at fair market value and the process requires them to contact all abutting land owners. Member Morgan said also to take into consideration this is a tiny, landlocked parcel with no utilization. Mr. Atta said that is what the Board needs to determine that it is not feasible. Member Pacheco explained to Mr. Leialoha that the Board doesn't have the ability or authority to do what he asked.

Member Goode asked whether Mr. Leialoha can get his own appraiser. Mr. Atta said he doesn't think our official process is available to the sale of remnants. Under the Statute staff is not obligated to sell, but there is an accommodation or convenience to do so. He is certain that it's not subject to the appeal process.

It was questioned by Member Goode whether this is considered a remnant where Mr. Atta confirmed that by definition where there are certain limitations that renders it not usable as a separate unit and under the Remnant Statute staff is authorized to sell it to the abutting land owners.

Member Pacheco made a motion to approve and was seconded by Member Morgan. All voted in favor.

Unanimously approved as submitted (Pacheco, Morgan)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Charles Littnan, National Marine Fisheries Service, Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Juvenile Hawaiian Monk Seal Survival-Enhancement Activities

Bob Nishimoto representing Division of Aquatic Resources (DAR) said he has 4 items F-1 to F-4 permits. He thanked Danny Carter for bringing staff. Mr. Nishimoto described Item F-1 that the activity is focused on direct intervention of juvenile seals. Staff recommends the Board authorize approval of this permit.

Member Edlao asked what would trigger to bring the animal back to the island. Dr. Charles Littnan representing National Marine Fisheries Service said it depends on the condition of the animal. Pre-weaned animals, 0 to 6 weeks of age, would be difficult to free feed and would have to bring them into a controlled situation and force feed them. A juvenile that is already feeding is easier. Dr. Littnan described Ford Island as a potential rehab site is now delayed, but is working on a potential site at NELHA in Kona and temporary sites at Kaneohe Marine Corp Base and Waikiki Aquarium were options.

It was questioned by Member Morgan what percentage of seal pups is affected with parasites? Dr. Littnan said all seals have parasites, but what they are seeing from birth to 3 years of age monk seals are not getting enough food up in the Northwest Hawaiian Islands (NWHI) and described situations when a mother monk seal is killed or abandons a pup. About 4 or 5 animals are in the pre-weaned category or at a very low mass at 2 years of chronic malnutrition. About 25-75% of the juveniles are lost that year and his team hopes the worming trial will help animals. Almost 100% of the animals suffer chronic malnutrition. If an animal is born in the NWHI it's greater than 80% chance that animal will die before reaching 3 or 4 years old due to malnutrition and parasites. Breaking that trend will help increase these pups survival rate.

Member Edlao made a motion to approve staff's submittal. Member Morgan seconded it.

Unanimously approved as submitted (Edlao, Morgan)

Item F-2 Request for Authorization and Approval to Issue a Papāhanaumokuākea Marine National Monument Research Permit to Drs. Jay Barlow and Erin Oleson, National Marine Fisheries Service, for Access to State Waters to Conduct Cetacean Surveys

Dr. Nishimoto reported that this Research Permit is a renewal relating some background and staff recommended the Board authorize this permit.

Member Edlao asked what the Exclusive Economic Zone (EEZ) was. Staff said it is US waters mandated by Federal Statute.

Unanimously approved as submitted (Morgan, Pacheco)

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Master Gregory Hubner, National Oceanic and Atmospheric Administration (NOAA) Ship McARTHUR II, for Access to State Waters to Conduct Shipboard Support Activities

Dr. Nishimoto said these activities are similar to those previously conducted within the Monument which he described from staff's submittal noting that this is a new ship going to the Monument grounds. Staff's recommendation is to approve this permit and the 4 conditions.

Marti Townsend representing KAHEA distributed her written testimony and testified that they are concerned with this permit which is the reason why she is here every time. Ship operations can't be exempt because State regulations don't allow it. An environmental assessment (EA) has to be done before this ship can be issued a permit to access the NWHI. They recognize the work being done on the ship is important - they want invasive species monitored as well. It is problematic issuing permits to allow ships to go to the NWHI without undergoing an environmental review. She recalled 3 ship groundings in the past 5 years and there were probably more before that. A reef takes a thousand years to grow back and how long does it take to write an EA? Comply with the law and possibly prevent any disaster. Ms. Townsend described an incident where the depth finder was broken and could have been prevented by requiring an EA. Her written testimony is KAHEA's comments on the proposed exemptions by the DLNR which are so broad that the Division was exempting everything they did which was ridiculous and part of the reason why we have HEPA (Hawai'i Environmental Policy Act) is for the public to participate in these kinds of decision making. Exempting everything overturns the law. Ms. Townsend emphasized the seriousness of the grounding situation and they shouldn't have to resort to litigation.

Unanimously approved as submitted (Morgan, Edlao)

Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Dr. Russell Brainard, NOAA Pacific Islands Fisheries Science Center, for Access to State Waters to Conduct Reef Assessment and Monitoring Activities

Dr. Nishimoto conveyed that this permit is for work previously done and is known as the RAMP project. The activity is mostly visual observation and photo documentation with some collecting requested as listed on page 2. The Division recommends approval of the renewal of this permit.

A motion to approve was made by Member Pacheco and seconded by Member Edlao.

Unanimously approved as submitted (Pacheco, Edlao)

Item K-2 Conservation District Use Application (CDUA) MA-3533 by Kaheawa Wind Power II LLC for a Wind Generation Facility on State Land Located at Kaheawa Pastures, Ukumehame, Lahaina District, Maui, TMKs (2) 4-8-001:001 & 3-6-001:014

Mr. Lemmo communicated that the facility is on 2 unencumbered State Land (DLNR's) parcels and the location is just above Ma'alaea on the Island of Maui which is in a general sub-zone. The applicant wants to establish a 21 megawatt wind power facility and will be constructed along the existing access road to the existing wind energy facility approved by this Board several years ago. That facility generates 30 megawatts of energy similar to the existing project where energy would be supplied to MECO. It would consist of 14 1.5 megawatt wind turbines and the towers will be similar to those already on the site. There are photo exhibits for the Board's review. The applicant will renovate the existing operation and maintenance building. A new maintenance building and electrical sub-station will be built – a battery energy storage system. Also, a permanent meteorological tower and a temporary one will be built to measure wind speeds. Plus a fiber optic network will be installed. The facility life span is about 20 years at which time it will be extended or be removed. There was a public hearing on Maui, but no one showed up. The applicant did prepare an Environmental Impact Statement (EIS) and it was accepted by the Chair on May 17, 2010. The applicant published a draft EIS with a preferred alternative in it and during the assessment period they found a better site for the preferred alternative. The applicant then published a new draft environmental assessment with the preferred alternative and took this through the new EIS process which is the one the Chair approved. This new site is better because it's lower than the original site and it's along the existing access road which mitigates having to build new access roads.

Mr. Lemmo related discussion where 90% of Hawaii's energy needs rely on fossil fuels and the State's Clean Energy Initiative set a goal of 70% by 2030 where wind power is critical in reaching that goal. This area is sited for renewable energy production due to the fire development that already exists and a lot of infrastructure is already in place. Staff believes this is an appropriate use of the site. There was some concern of using rye grass to re-vegetate the area which is a good soil stabilizer and the long term plan is to bring in natives. The applicant has to do a habitat conservation plan and will have to get an incidental take permit. There are cultural resources associated with the site, but in the EIS the affect will not be significant on the cultural resources of the site. Staff didn't receive any objections from the community for this project and the applicant addressed issues raised in the environmental review process. Staff feels this is a good balance with using our conservation lands and reducing our dependence on fossil fuels. Staff recommends approval of the project subject to a number of conditions and mitigation measures.

Member Pacheco asked whether the State is getting anything for the use of State Land. Mr. Lemmo said there is a fee which is the next step that the existing wind generation facility has a lease.

Dave Cowen representing First Wind's Environmental Affairs testified in appreciation of staff's work and he is available for any questions.

Member Morgan asked how much of Maui's energy they are producing right now. Mr. Cowen said on the average 10%. This new project is 2/3 the size of the existing facility which will commensurate Maui's load and ability to take the power.

Kelly Bronson representing First Wind testified and explained the battery load is about 20% and is used when the wind is low. It was asked by Member Morgan if there were any issues and Mr. Bronson said he wasn't there for the first project, but there were lessons learned with how to operate with the State and challenges with working with local agencies.

There was a question by Member Edlao on what will happen to the trail. Mr. Cowen said the trail will continue to go through there and they continue to have discussions with Na Ala Hele on how best to work with the trail. They did do some GIS work, talked about adding some signage and a possible rest station or shelters. During construction they will have a safe way through the site using fencing to discourage people from wandering through the construction.

Member Morgan commented with approval to reduce dependency on oil.

Member Goode asked where the water will be coming from. Mr. Cowen said water is trucked up from a base yard below which is fed by a pipe. If they decide to hold water in the area it would be trucked up and held in a tank. They are considering putting in a septic system and if they do they will be back before the Board. There was some discussion regarding condition #8 and Mr. Cowen said they would obtain all permits.

Member Edlao moved to approve as submitted and Member Morgan seconded it.

Member Goode suggested amending condition #8 by adding a sentence "Approval with appropriate government agencies." Mr. Lemmo agreed to it.

Member Edlao moved to approve as amended. Member Morgan seconded it. All voted in favor as amended.

Unanimously approved as amended (Edlao, Morgan)

Amend Recommendation #8 by adding Approval with appropriate government agencies.

Item B-1 Request Approval to Seek the Governor's Approval to Indemnify the City and County of Honolulu Department of Parks and Recreation for the use of the Koko Head Shooting Complex on September 18 & 19, 2010 for National Hunting and Fishing Day Celebration

Orlando Oxilles representing Division of Conservation Enforcement (DOCARE) conveyed that this event has occurred for the past 20 years.

Unanimously approved as submitted (Morgan, Pacheco)

Item C-3 Request Approval to Issue an Invitation for Bid and Authorize the Chairperson to Award and Execute a Contract for Fence Installation at Kanaio Natural Area Reserve, TMK (2) 1-003-054, (2) 1-003-050, Districts of Makawao and Hana, Maui

Item C-4 Conservation District Use Permit Approval for the North Kona Protective Fencing Project by Hawaiian Silversword Foundation, Inc. at North Kona District, Island of Hawai'i

Mr. Conry communicated there were no changes.

Unanimously approved as submitted (Edlao, Goode)

Item D-6 Forfeiture of General Lease No. S-5598, Pat S. Bravo and Aude R. Bravo, Lessee, Hakalau-iki, South Hilo, Hawaii, Tax Map Key: 3rd/2-9-02:47.

Mr. Atta noted that the annual amount was set at \$17,000, but is actually set at \$1,700 other than that the rest of the submittal reflects the correct rental amount.

The Board:

Amended the submittal by correcting the annual rental amount from \$17,000 per annum to \$1,700 per annum. Otherwise, the Land Board approved staff's recommendations as submitted.

Unanimously approved as amended (Edlao, Goode)

Item D-1 Amend Prior Board Action of February 8, 2008, Item D-1, Consent to Assign Grant of Non-Exclusive Easement S-5725; Consent to Assign General Lease No. S-5725, Carrie Riley and Shawn Riley, Assignor, to Molly V. Hall and CD Skiven I/S, Assignee, Kapaa Homesteads, 1st Series, Kapaa, Kawaihau, Kauai; Tax Map Key: (4) 4-6-07:por. 12.

Item D-3 Set Aside to County of Hawaii for Park Purposes, Piihonua, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-3-04:01.

- Item D-4** Mutual Cancellation of General Lease No. S-4018; Re-Issuance of a Direct Lease to First United Protestant Church of Hilo, United Church of Christ for Religious Services and Educational Purposes; and Consent to Sublease Between the First United Protestant Church of Hilo, United Church of Christ, Lessee to the Trustees of the Estate of Bernice Pauahi Bishop, Sublessee, Piihonua, South Hilo, Hawaii, Tax Map Key: (3) 2-3-27:16.
- Item D-7** Agreement in Concept for the Issuance of Direct Lease to Mauna Kea Moo, LLC for Dairy Purposes, Niupea-Kaala, Hamakua, Hawaii, Tax Map Key: 3rd/ 4-1-04:33 and Manowai kohau-Kekualele, Hamakua, Hawaii Tax Map Key: 3rd/4-2-07:02.
- Item D-8** Agreement in Concept for the Issuance of a Direct Lease to North Kohala Community Resource Center, Kahei, North Kohala, Hawaii, Tax Map Key:3rd/5-5-03:25.
- Item D-9** Amend Prior Board Action of December 12, 2008 (D-7),Grant of Term, Non-Exclusive Easements to The Nature Conservancy for Educational "Respecting Coral Reefs" Sign Purposes, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-1:portion of 2 and 6-9-6:portion of 3.
- Item D-10** Grant of Perpetual, Non-Exclusive Utility Easement to Hawaii Electric Light Company, Inc.; Issuance of Construction Right-of-Entry for Installation of Concrete Pad-Mounted Electrical Transformer, Hienaloli, North Kona, Hawaii, Tax Map Key: 3rd/ 7-5-008: portion of 010.
- Item D-11** Issuance of Revocable Permit to Hilton Hawaiian Village for Portion of Performance Stage at Duke Kahanamoku Beach, Honolulu, Oahu; TMK (1) 2-3-037:portion of 021.
- Item D-12** Issuance of Revocable Permit to Na Wahine O Ke Kai for a Canoe Race Event at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of: 021.
- Item D-14** Amend Prior Board Action of January 27, 1989, Item F-8, Set Aside of State Land for a Microwave Tower Site at Puu Ualakaa, Honolulu, Oahu; Rescind Prior Board Action of February 14, 1986, Item F-12, TMK (1) 2-5-019:003 portion.
- Item D-15** Issuance of Revocable Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:021 portion.

Item D-16 Delegation of Authority to the Chairperson of the Department of Land and Natural Resources For Hawaii Administrative Rules Covering Unencumbered Public Lands §13-221-4, 5, 9, 10, 12, 13, 14, 15, 17, 20, 23, 24, 27, 28, 32, 35, 45, 46, 47, and 48.

Item D-17 Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department and the County of Kauai ("County") for the Remediation / Removal of Upper Kapahi (Dam) Reservoir (HI ID #K-0013) and Lower Kapahi Dam (HI ID #K-0060), Kapahi, Kauai County, located at TMK Nos. (4) 4-6-007:011, 006:007, 008:999, and 032:022.

Unanimously approved as submitted (Morgan, Pacheco)

Item E-1 Approval of a Memorandum of Understanding (MOU) Between the United States Department of Interior - National Park Service, the Department of Land and Natural Resources, the Department of Hawaiian Home Lands and Ke Aupuni Lokahi, Inc. for the Planning, Construction, Management, Protection and Public Use of the Proposed Ala Pala'au Trail, Located in Pala'au State Park, Island of Molokai, Maui County.

Item E-2 Permission to Solicit Bids and Enter into a Service Agreement to Collect Entrance Fees at Diamond Head State Monument, Oahu

Dan Quinn representing State Parks said there were no changes. He related Item E-1 that an EA was done. For Item E-2 the parking vendor decided not to renew their contract when they were going to. Staff needs to put in an RP to carry staff through as they go through the bidding process which maybe the second vendor and not the same vendor.

A Board member asked why the vendor pulled out. Mr. Quinn said they underbid.

Unanimously approved as submitted (Pacheco, Morgan)

Item J-1 Approval for Extension of Contract 56410, Refuse Collection Service for Small Boat Harbors on the Island of Hawaii

Item J-2 Approval for Permission to Purchase Goods and Services, Statement of Work with Hawaii Information Consortium, LLC

Item J-3 Consent to Sublease, Harbor Lease No. H-82-4, GKM, Inc., a Hawaii Corporation, Lessee to Sublessee, The Commander, CG SILC - Product Line Division, Portfolio Management Branch, on behalf of the UNITED STATES OF AMERICA (United States Coast Guard),

**Honokohau Harbor, Kealahou, Kailua-Kona, Hawaii, Tax Map Key:
(3) 7-04-008: 42**

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) said there were no changes to Items J-1, J-2 and J-3.

Member Goode asked how much is collected in just boating fees alone. Mr. Underwood said around \$7 million dollars. Member Goode asked whether this is a ½ million dollar contract which Mr. Underwood confirmed. This will handle all the permitting, the revenue system that ties all of our facilities statewide. He explained a situation where a boat goes to Kauai without paying on Oahu and the Kauai staff wouldn't know without calling around. This system will automatically recognize the boat. The current system was built in 1996 and it has failed because all 2000 accounts were inputted by hand on Oahu every month which is very redundant. Staff went with this company because they had experience building the vessel registration program and it costs less than an outside contractor. Mr. Underwood described the difficulties at the Harbors that this system would be a good management tool.

Unanimously approved as submitted (Morgan, Pacheco)

- Item L-1 Appointment of West Maui Soil and Water Conservation District Director**
- Item L-2 Certification of Election of Mauna Kea Soil and Water Conservation District Director**
- Item L-3 Permission to Contract with Consultants and Contractors for State Parks Projects Funded by Transient Accommodations Tax or Hawaii Tourism Authority Funds**

Unanimously approved as submitted (Edlao, Pacheco)

- Item M-1 Amend Prior Board Action of July 11, 2008, Item E-2, as amended, Grant of Perpetual, Non-Exclusive Easement to Department of Transportation, Airports Division, for Remote Noise Monitoring Station Purposes at the Wailoa River State Recreation Area, South Hilo, Hawaii**
- Item M-2 Consent to Sublease of Lease No. DOT-A-91-0021 Pacific Aviation Services, Inc. to RD Calibrations, Inc. DBA RD Technology of Hawaii Honolulu, International Airport**
- Item M-3 Authorizing the Department of Transportation to Dispose of Portion of Parcel 52, Kaumualii Highway, Project No. 50C-02-87, at Eleele, Wahiawa, Koloa, Kauai, Hawaii**

- Item M-4** Authorizing the Department of Transportation to Dispose of Portion of Parcel 77, Kamehameha Highway, Project No. S 223(2), Waialua Beach Road, Waialua, Oahu, Hawaii, Abutting Tax Map Keys (1) 6-6-34:35 and (1) 6-6-34:76
- Item M-7** Modification No. 3 to Master Lease No. DOT-A-07-0013, FAA Agreement No. DTFAWP-07-L-00044, Federal Aviation Administration (FAA) Honolulu International Airport
- Item M-8** Issuance of Revocable Permit to Royal Hawaiian Movers for Inconsistent Use Ualena Street, Honolulu International Airport

Unanimously approved as submitted (Pacheco, Edlao)

The Board may go into Executive Session pursuant to Sections 92-4 and 92-5(a)(4), Hawaii Revised Statutes (HRS), in order to consult with its attorney on questions and issues relating to departmental permits, Chapter 343, HRS, and personnel matters, as pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Adjourned (Morgan, Edlao)


There being no further business, Chairperson Thielen adjourned the meeting at 12:00 noon. 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