

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

DATE: THURSDAY, SEPTEMBER 9, 2010  
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 9:05 a.m. The following were in attendance:

**MEMBERS**

Laura Thielen  
Rob Pacheco  
Jerry Edlao  
David Goode

Ron Agor  
Dr. Sam Gon  
John Morgan

**STAFF**

Mark Young/DOCARE  
Ed Underwood/DOBOR  
Curt Cottrell/PARKS  
Randy Kennedy/DOFAW  
Sam Lemmo/OCCL

Morris Atta/LAND  
Paul Conry/DOFAW  
Lisa Hathaway/DOFAW  
Russell Tsuji/Acting Land Deputy

**OTHERS**

Colin Lau, Deputy Attorney General  
Mike Brant, M-4  
Eric Leong, M-3  
Jim Dittmar, J-3  
Chipper Wichman, C-2  
Lynn Cabato, D-15  
Yvonne Yarber Carter: E-4, D-3  
Kathleen Kong-Kaulupali, E-4  
Brock Stratton, E-1  
Lieutenant Colonel Mitsayoshi, D-3  
Senator Kokubun: C-1, D-3

Heidi Mecker, M-4  
Janice Takahashi, M-5  
Rory Frampton, D-10  
Trae Menard, C-2  
Alan Rito, C-2  
Haunani Kalama: C-1, D-3, E-4  
Keoki Carter: D-3, E-4  
Ed Boteilho, D-4  
Rick Campbell, D-3  
Kat Brady, D-3  
Kano Kajihoro: C-1, D-3

Terry Lee Kako'olani, D-3  
Pat Reas, D-3  
Graduate Davis: C-1, D-3  
Sam Monet: C-1, D-3, J-2  
Henry Curtis: C-1, D-3  
Dana Yoshimura, D-18  
Dave Gedeon, D-17  
Bob Duncan, K-2  
Glenn Omalza, K-2  
Pam Matsukawa, Deputy Attorney General, J-2  
Carol Wilcox, J-2  
Bruce Lenkeit, J-2  
Dave Cooper, J-2  
Janet Mandrell, J-2

Marjorie Ziegler: C-1, D-3  
Richard Pomaikai Kinney, D-3  
Cadet Mitchell: C-1, D-3  
Michael Lee: C-1, D-3, K-2  
Brig. Gen. Gary Ishikawa, D-3  
Jason Moniz, D-17  
Yvonne Izu, K-2  
Kevin Rathbun, K-2  
Alicia Maluafiti, K-2  
Barbara Robson, J-2  
Stephen Holmes, J-2  
Bill Mossman, J-2  
Mark Meyer, J-2

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

Numerous written testimonies were received via e-mail, fax and postal mail.

**Item A-1      August 12, 2010 Minutes**

Member Gon recused himself.

**Approved as submitted (Pacheco, Goode)**

**Item B-1      Request Board Approval to Delegate Authority to the Chairperson to Review and Approve Standard Grant Agreements for the Division of Conservation and Resources Enforcement (DOCARE)**

Mark Young representing Division of Conservation Enforcement (DOCARE) conveyed that DOCARE enters into these grant agreements with Federal partners to carry out management actions on State lands and waters under DLNR authority. These grant agreements allow DOCARE to receive reimbursements of Federal funds on project expenditures. He asked for approval which will allow greater efficiency and expediency of DOCARE operations.

**Unanimously approved as submitted (Gon, Edlao)**

**Item M-4      Special Acquisition of Private Lands and Set Aside to Department of Education for Educational Purposes, Honouliuli, Ewa, Island of Oahu, City and County of Honolulu, Tax Map Key: (1) 9-1-069:027.**

Heidi Meeker, a planner representing Department of Education (DOE), Facilities Branch asked to accept the land and set aside to DOE where she related more background details

about the project. Ms. Meeker reminded the Board that this Land Board approved the acquisition of this property on July 11, 2008.

Mike Brant representing Gentry Homes was present.

**Unanimously approved as submitted (Morgan, Gon)**

**Item M-5      Accept Conveyance of 45.068 Acres from Hawaii Housing Finance and Development Corporation to the Board of Land and Natural Resources and Set Aside to the Department of Education for Kapolei High School at Honouliuli, District of Ewa, Oahu, Tax Map Key No.: (1) 9-1-016:074.**

Janice Takahashi, Chief Planner with Hawaii Housing Finance and Development Corporation (HHFDC) said that Karen Seddon sent here regrets and related that HHFDC acquired 800 acres of Kapolei land from DLNR where the 45.068 is part of. She asked the Board's approval.

**Unanimously approved as submitted (Morgan, Edlao)**

**Item M-3      Amendment to Prior Land Board Action of August 28, 2009 Under Agenda Item M-1, As Amended, Regarding Issuance of a Lease by Direct Negotiation to Seafood Hawaii, Inc., Unit FV3, Domestic Commercial Fishing Village, Pier 38, Honolulu, Harbor, Oahu**

Eric Leong representing Department of Transportation, Harbors Division Property Management spoke on this item asking for approval.

**Unanimously approved as submitted (Goode, Edlao)**

**Item D-10      Grant of Term, Non-Exclusive Easement to Koolau Properties, LLC for Seawall Purposes, Spreckelsville Beach Lots, Wailuku, Maui, Seaward of Tax Map Key: (2) 3-8-002:051.**

Morris Atta, Land Division Administrator communicated that this item involves seawall encroachment on State lands. Staff consulted with Office of Conservation and Coastal Lands (OCCL) who had no objections to granting a term, non-exclusive easement to Koolau Properties, LLC. Staff recommends issuing the standard fine for an area larger than 100 square feet and to go ahead with the easement.

Rory Frampton representing Koolau Properties, LLC testified that they agree with staff's recommendations and conditions.

**Unanimously approved as submitted (Edlao, Goode)**

**Item J-3      Grant of Term Non-Exclusive Easement to the Benevolent and Protective Order of Elks Honolulu Lodge No. 616 for a Seawall Encroachment and Swim-Step Ladder Purposes, Waikiki, Honolulu, Oahu, TMK: 3-1-32(06)**

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reported that the Elks Lodge wants to install a swim-step which will be on the makai side of their property. Staff went through Chapter 343 which they don't believe it applies in this case and they agreed to grant a non-exclusive easement.

Jim Dittmar was present.

Joan Koff testified that she wants to get in the ocean and these ladders allow her - the handicapped and elderly folks to access the ocean.

**Unanimously approved as submitted (Morgan, Gon)**

**Item C-2      Conservation District Use Permit Approval for the Wainiha Conservation Project by Kaua'i Watershed Alliance for McBryde Sugar Co., Ltd. at Hanalei District, Island of Kaua'i, TMK: (4)5-8-001:001.**

Member Gon disclosed that The Nature Conservancy (TNC) is not a part of the Kaua'i Watershed Alliance, but is involved in the management of those lands and that he should recuse.

Paul Conry, Administrator for the Division of Forestry and Wildlife reported that the fence is to protect the watershed which is part of the Watershed Partnership Program. An EIS was done, no significant impact was issued and was published on May 23, 2010. Staff recommends the Board approve the permit to proceed.

Trae Menard, Director of The Nature Conservancy's Kauai Program testified that they are coordinators of the Kaua'i Watershed Alliance and this project is to protect the upper valley of Wainiha from feral pig and goat damage using remote baited traps and wireless cameras. They have primarily been doing invasive plant control up to this point. Chair Thielen approves of the technology used.

Chipper Wichman, Chair of the Kaua'i Watershed Alliance testified in support and agreed with Chair Thielen's comment. The smallest fence will protect the biggest area acknowledging TNC and the technology used.

Chair Thielen thanked all the watershed partnerships across the state working together with all land owners in habitat conservation and watershed efforts.

Mr. Wichman reported the next issue is public hunting on private lands and they hope to establish a successful program.

Alan Rietow, Chairperson for the Kauai Invasive Species Committee on Kauai testified in support of the invasive weed control and they've partnered with TNC.

**Unanimously approved as submitted (Agor, Pacheco)**

**Item D-15 Issuance of Direct Lease to Honolulu Community Action Program for Preschool and Related Programs and Administrative Services Purposes, Kunia, Oahu, Tax Map Key: (1) 9-2-5:12.**

Mr. Atta reminded the Board had approved in principle and this item is to approve the actual lease. There is an issue with HCAP (Honolulu Community Action Program) requesting a waiver of the non-profit minimum rent or in kind contribution. Staff recommended against that and he wanted to alert the Board.

Lynn Cabato representing HCAP testified that she was here to answer any questions, but as far as the conditions raised by staff HCAP is in agreement.

**Unanimously approved as submitted (Morgan, Gon)**

**Item E-4 Establishment of a Volunteer Curatorship Agreement for a Section of Lapakahi State Historical Park, North Kohala, Island of Hawai'i**

Curt Cottrell representing State Parks conveyed that staff stands on their submittal.

Haunani Kalama, the Kakou Omua for Na Haumana La'au Lapa'au O Papa Auwae (NHLLOPA) testified that they've been at Lapakahi for 17 years caring for the area and iwi (bones). They've assisted staff with activities and helped staff rebuild after storms and the earthquake. She asked for approval.

Member Gon acknowledged and thanked NHLLOPA for stepping forward and assisting.

Yvonne Yarber Carter, a haumana (student) with NHLLOPA testified relating her training and perpetuating what Papa Auwae shared by working with them and the community. Take care of the land and the land will take care of you. Ms. Carter described NHLLOPA and asked to move forward.

Keoki Carter, a haumana of Papa Henry Auwae testified while NHLLOPA was with Papa Auwae they learned about Lapakahi and how to care for it relating the challenges to malama (care) Lapakahi after the earthquake and asked for the curatorship to continue the up keep and to share with the community which Mr. Carter asked the Board to consider.

Kathleen Kong Kaulupali, a haumana of Papa Auwae from Oahu testified that she goes to Lapakahi to help care for the land and for future generations. They appreciate the DLNR for providing this opportunity and they want this curatorship/partnership to continue their work and cultural practices.

**Unanimously approved as submitted (Pacheco, Gon)**

Chair Thielen related her experience at Lapakahi and appreciated NHLLOPA's help in caring and protecting these jewels.

**Item D-4      Approval in Concept for the Issuance of Direct Lease to Boteilho Hawaii Enterprises, Inc. for Dairy Purposes, Opihipau-Hukiaa, Kokoiki, North Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 5-5-003: 4, 5 & 6, 5-5-005: 1, and 5-5-006: 2, 3, 4 & 15.**

Mr. Atta conveyed that Boteilho Hawaii is one of the last two dairies in the State and wants a 30 year lease to justify putting in improvements. Staff agreed and this is in principle because they still need to discuss the terms on how that will work.

Ed Boteilho representing Boteilho Hawaii Enterprises, Inc. testified relating some background that they are using all of that property for dairy, but there are some restrictions on them noting that some of the land is planned for an AG park where he questioned how much of that will be in dairy. They provide 50% of the milk on piece meal pieces of land where other dairies have whole pieces. Mr. Boteilho asked for completion of an old time dairy which is a benefit to the community.

Member Morgan asked how many cows he has. Mr. Boteilho said they have a 800 cow dairy farm, but now it's about 600 because of the drought. They are making improvements now that the irrigation ditch is back, but he had to fight to get it and he wants to expand which is why he wants his lease secured.

Member Goode asked if Mr. Boteilho's insurance has gone up dramatically? Mr. Boteilho confirmed it has somewhat, but they have bonds and they are currently insured. Mr. Atta confirmed that Mr. Boteilho has been current on his insurance.

Chair Thielen said as Mr. Boteilho discusses the terms of the lease with staff ensure that it doesn't kick up the cost of insurance to make it harder to operate. Mr. Boteilho agreed and said that other dairies have had leases paying less for more valuable land with rainfall and hopes staff takes that into consideration because they are in a much drier part of the island. The Chair said those things can be brought to the attention of the appraiser for consideration.

**Unanimously approved as submitted (Pacheco, Morgan)**

Chair Thielen noted that this is an agreement in principle and there will be a future Board with a different Chairperson to negotiate with. Stability of a lease is important for a dairy over other agricultural operations because of the smell. Mr. Boteilho said they are a grass operation which is different and he understands.

**Item E-1      Requesting Approval to Issue Month-To-Month Revocable Permits (RP) Pursuant to HRS Section 171-55, to Two Commercial Companies: Aloha Kayak Company and Kona Boys, Inc. for Landing and Launching Kayaks to Kaawaloa, Kealakekua Bay State Historical Park, to Include Parking at Napoopoo Landing as Part of a Guided Kayak Tour, on Terms and Conditions to be Negotiated by the Chairperson.**

Mr. Cottrell said on the advice of the Office of the Attorney General he needs to amend the title by removing the comma after Kona Boys to read "Kona Boys Inc." Previously four kayak companies were eligible to get revocable permits to operate kayak tours in Kealakekua Bay. Adventures in Paradise and Hawaii Pack and Paddle had fulfilled those requirements based on the previous Board action and have been operating on year to year RPs. Subsequently the two other kayak companies – Aloha Kayak Company and Kona Boys Inc. have submitted all the paperwork necessary to qualify to be eligible under the conditions prescribed by a previous Board action. Staff recommends authorizing the Chair to issue two additional month-to-month RPs pursuant to 171 to Aloha Kayak Company and Kona Boys Inc. for landing and launching commercial kayaks at Napo'opo'o to Ka'awaloa Flats.

Chair Thielen noted that Mr. Cottrell joined State Parks after Chair Peter Young and before her tenure.

It was asked by Member Pacheco whether the permit was renewable at the end of the State fiscal year or at the end of the anniversary date. Mr. Cottrell said anniversary date, but staff is moving to have all their RPs come up at the end of the calendar year.

Brock Stratton representing Kona Boys Inc. and Aloha Kayak thanked staff for getting this submittal in and hoped to move forward with the permits and related the tours they will give. He noted at the Konawaena meeting that the community wants these tours and he appreciated getting the permit(s).

**Unanimously approved as amended (Pacheco, Morgan)**

**Amend staff's agenda title by deleting the comma after Kona Boys to read "Kona Boys Inc." Otherwise the submittal was approved.**

9:56 PM      RECESS

10:05 PM      RECONVENED

**Item C-1      Acceptance of a Hearing Master Report on a Public Hearing for a Proposed Addition to the Natural Area Reserves System, and Withdrawal of Portions of Governor's Executive Orders 1225 and 1588 and Re-Set Aside as an Extension of Puu Makaala Natural Area Reserve, and Immediate Management Right-of-Entry, for TMK (3) 2-4-08:09 (POR), South Hilo, Hawaii    *(Related to Item D-3)***

A number of written testimonies were distributed.

Member Gon disclosed on the advice of our Deputy Attorney General that Puu Makaala Natural Area Reserve is part of the Three Mountain Alliance of which The Nature Conservancy is in direct partnership and asked whether he should recuse.

Colin Lau, Deputy Attorney General asked whether Member Gon had an interest in this? Member Gon said if there was any funding going through the Three Mountain Alliance (TMA) he would recuse himself. Chair Thielen said it's no different than any party in the room having an interest because we're dealing with. It's whether this portion of the land should be accepted into the Natural Area Reserves which is under DLNR lands and DOFAW's jurisdiction. Mr. Lau said if you don't feel there is any consequence Member Gon should be ok.

Mr. Conry conveyed that Item C-1 is a request for setting aside additional 6600 acres of high quality forest in the Kulani area to the Natural Area Reserve. The area is currently under Executive Order to the Department of Public Safety (DPS) as Kulani Prison farm facility. Items C-1 and D-3 will be separated. Staff is proposing the forest and conservation areas are appropriate for forest conservation and our native species conservation be set aside as a Natural Area Reserve. Under Item D-3 is where the remaining portion which moves over about 600 acres to be transferred from DPS to Department of Defense (DOD). The set aside for the area of the Natural Area Reserve which has been of great conservation interest under DOFAW's management for the past 20 years. They currently have a partnership with DPS through the Olaa-Kilauea Partnership along with the National Park and the State where they started the conservation watershed partnership in 1994. A great deal of conservation work has gone through that area by building fences, removing feral ungulates and that area has recovered over the past 20 years. What is being proposed is the most pristine areas for this recovery is to be withdrawn and be put in a NARS area approximately 6600 acres. The area was identified in 1994 for the partnership. In 2008, the NARS Commission prioritized the Kulani area as a biologically important area where the Department wanted to do some evaluations on to determine if it should have higher conservation status. In August 2009, the NARS Commission nominated that portion to be considered as NARS. Since then, there have been 5 Sunshine public meetings that discussed the set aside. In January 2010, the NARS Commission recommended the area be set aside. June 2010, this recommendation came before the Board as an authorization to conduct a public hearing for the set aside to the NARS. Staff held a public hearing on the Big Island in July 2010. During that public hearing there were 71 individuals where 55 or 83% expressed support for the NARS proposal, 5 opposed and 6 presented comments. Additional written testimony has come in to today's Board meeting on that proposal. For the NARS, staff proposes the Board take action to:

- 1) Recommend to the Governor a withdrawal of the 6600 acres from the existing Executive Order (EO) to the Department of Public Safety (DPS). With this action is to remove those high quality forest areas out of that set aside to the Department of Public Safety.



- 2) Then recommend to the Governor the issuance of an Executive Order to set those aside as a Natural Area Reserve.
- 3) Grant the Department an immediate right-of-entry to continue managing the area.

Mr. Conry said Lisa will speak on the area proposed for withdrawal.

Lisa Hathaway representing DOFAW pointed out on the map the area that will be excluded from the Natural Area Reserve is approximately 600 acres in the interior outlined in orange and the area outside of that is about 6600 acres. Mr. Conry said the areas that are not withdrawn are the areas necessary for operations of the facilities. There are about 600 acres that are not being proposed for withdrawal to be put in the NARS which are reserved for Item D-3 or other future use.

Chair Thielen said that because the proposed use for Item D-3 is for the purpose of the Youth Challenge Academy they would invite the applicant up to explain the proposed use to the Board as part of the presentation where she asked staff to come up.

**Item D-3      Cancellation of Governor's Executive Order Nos. 1225 and 1588 and Reset Aside Portion to State of Hawaii, Department of Defense, for Youth ChalleNGe Academy and Hawaii Army National Guard Training Purposes, with an Access and Utility Easement Reserved to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09 por.;**

**Cancellation of Governor's Executive Order No. 3678 and Grant of Perpetual Non-Exclusive Easement to Department of Defense for Access and Utility Purposes, Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-4-08: por. & 1-8-12: por. (Related to Item C-1)**

A number of written testimonies were distributed.

Mr. Atta reported that Land Division's role is to facilitate coordinating the withdrawal of lands for the NARS as well as accommodating a request from the Hawaii Department of Defense (DOD) for use for the Hawaii Youth Challenge and training purposes. But, staff had to coordinate the mechanics of getting that land set aside from Public Safety to DOD and accommodating the various use issues because easement issues were built in this request. The Land Division's portion is based on DOD's request to occupy the improved areas from the former Public Safety's Kulani Prison that are shown on DOFAW's map. In order to do that staff cancelled the set aside from Public Safety (DPS) and issued a new set aside to DOD for the purposes they are requesting building into that certain easement rights. There are some ancillary issues regarding the use of Stainback Highway which staff had to accommodate by building in certain easements that were granted to either DOFAW or DOD. As for the actual use of the area, it is more appropriate for the applicant to speak to that.

Rick Campbell, Director of the Hawaii National Guard Youth Challenge Academy (YCA) introduced two of his cadets from the Academy and a current student's parent. Mr. Campbell testified describing the Youth Challenge Academy which is for 16-18 year old at risk youth who did not complete their high school diplomas. They've had about 3000 youths who completed the program where over 65% received their diplomas. The program has been in operation since 1994. Currently there is a need to expand since there is 6000 drop-outs per year from DOE schools. The current Kalaeloa site graduates 200 per year and they will look for another 200 plus at the Kulani Youth Challenge. Everything is in place for vocational training at Kulani – auto shop, wood craft, welding, masonry, carpentry, etc. The goal is for students to graduate with a GED then go into the vocational technical training and then the community to work.

Member Gon asked about the characterization of the proposed uses by the Army National Guard training activities.

Lieutenant Colonel Mitsayoshi, Chief Engineering Officer for the DOD testified that the Army Guard is looking at military operations in an urban terrain primarily in the Boy's School. It involves breaching rooms where students are trained the proper technique to do this and will tie in with local authorities and the FBI. IED (improvised explosive devices) training is the primary killers of service members overseas. Primarily it involves training and identifying road side bombs. Also, there will be possible air mobile operations which involve dropping off and pick-up of soldiers in the pasture area. The potential for a 25 meter Short Range would be used for 9 millimeter qualifications which would benefit the local law enforcement since the KMR range was closed and they would have to go all the way to Pohakuloa. There are still a number of things they need to do before determining whether they will execute that training. In compliance with 343 under HRS they must comply with all the EA and EIS as well as any permitting requirements which will have to be vetted through that process as required by law and also require public input at that time. At this time the military operations that they are looking at cannot be immediately implemented until they go through that process.

Member Pacheco asked where the training is held at and what types. The Lieutenant Colonel said it goes up to PTA (Pohakuloa Training Area). Kulani would be another site that they would have available for other types of training not available at PTA like the urban terrain training.

It was asked by Member Agor who referred to C-1 whether DOD intends to do exercises in the surrounding forest and the Lieutenant Colonel answered no that they do not.

Member Pacheco asked where would the IED roadside training occur. The Lieutenant Colonel said that would be on the roadway that connects between the main campsite and the Boy's school noting the training is minimal involving identification or the signs of road side bombs.

Member Gon asked whether the Army National Guard intends to enter the Three Mountain Alliance to continue the watershed partnership responsibilities. The Lieutenant

Colonel said DOD is actively speaking with the Three Mountain Alliance (TMA) participating in their quarterly meetings to give the Alliance updates and actively providing access to both DLNR and TMA personnel. Mr. Campbell said the YCA is interested in any partnerships that benefit the cadets in the long run leading up to jobs. Youth Conservation Corp. is one of the organizations they are interested in working with to learn about the pristine areas and why they need protecting and is the reason why they are working with Three Mountain and NARS.

Member Pacheco asked whether the funding is strictly for the YCA or is it tied with the National Guard training. Mr. Campbell said it is strictly for the YCA and comes from the Secretary of Defense where 75% is federally funded and 25% funded by the State. The cadets do not participate in any National Guard activities and are there for the program to fulfill their high school diploma.

Member Pacheco asked what are the requirements for the Academy to qualify for funding in terms of land tenure. Long term lease, own the land? Mr. Campbell said a minimum 25 years MOA between DPS and the Academy. The Academy would be tenants of a National Guard compound.

It was asked by Member Pacheco after the cadets graduate from the Kalaeloa program will these cadets go to the Kulani program or are there new cadets expanding the Kulani program? Mr. Campbell said there is a program called Job Challenge and there is one in Louisiana primarily state funded. It takes cadets from each of the programs that graduate who are interested in going into vocational technical and would come to Kulani to work in the 6 month program. They would be trained certified in safety and health and other things. Cadets would continue training at Kulani after graduating.

The Board noted that you may testify on one or the other or both Items C-1 and D-3.

Colleen Cole, Coordinator for the Three Mountain Alliance (TMA) read from their written testimony describing who they are and supports the addition of the forested lands surrounding the former Kulani Correction Facility to Puu Makaala Natural Area Reserve (NAR). She went on to describe the forest, the benefits – increased watershed value, increased biological resources, protection of cultural resources, increased ecosystem services and recreation. The lands here are most vulnerable because they lack any type of designation ensuring preservation or management. The TMA has supported and will continue supporting the management of this area. The community supports this proposal and whatever happens to the former Correctional Facility should not change the surrounding forest needs which deserves the designation of long-term protection and dedication afforded by the Natural Area Reserves System for future generations.

Member Goode asked whether TMA manages the surrounding areas or the 6600 acres. Ms. Cole said the 6600 acres and she confirmed that they receive funding yearly.

Kat Brady, Coordinator on Community Alliance on Prisons testified that they support the NARS designation as long as access for Native Hawaiians is not denied. They are in

opposition to Item D-3. Hawaii is one of the most militarized places and on Hawaii Island the military has 114,000 acres and now they want another 600 acres which is not in keeping with protecting pristine forests. The Community Alliance is in opposition of the transfer of Kulani lands because there has been no public discussion about it. When the closure was announced they heard about the Youth Challenge and now the military training which is disingenuous because the community has not been consulted. Today's meeting should be held on the Big Island because it affects the community there and we shouldn't be talking about them without them. Ms. Brady suggested convening a series of discussions on Hawaii Island and other islands with people who care about the land and have a fully transparent discussion. The inmates at Kulani protected the forest by building fences, propagated koa seedlings and planting them in the forest. Her organization is pushing democracy. She had questions whether this transfer taken into account the 2007 Memorandum of Understanding between Three Mountain and DPS, does it comport with the 2008 Three Mountain Management Plan, does it comport with the 2008 Wetland Restoration Project around the Boys School, does it comport with the 1999 EA and Management Plan for the forest partnership and does it comport with Conservation District rules and regulations. This administration only has 90 days left and asked why are we rushing this through? This forest belongs to all the people of Hawaii and we can't just slide this through that we need full disclosure, full discussion. Instead of giving this land to the military do what the community wants which is to create a wellness center. In 2007, the Legislature passed a Community Safety Act which is Hawaii's reentry law. This re-establishes activities at Kulani and help people integrate into the community as contributing citizens. Ms. Brady expressed to the Board not to approve the transfer and not to support Item D-3. She supports Item C-1.

Senator Kokubun had submitted written testimony earlier along with his colleagues on the Big Island testifying in opposition to Items C-1 and D-3. He is a leading advocate in support of the NARS and the watershed partners. By combining Items C-1 and D-3 we are taking a comprehensive look at that parcel and he thinks that is the way it should be addressed. He doesn't disagree that these are important lands and should go into that kind of (NARS) designation, but he is concerned that there should be compatible uses there that can help and enhance the NARS system. We have to rethink the closure of Kulani and it can only happen by looking at the entire piece (of property). The Senator asked the Board to defer on this measure because there should be more deliberate consideration on what the future of that parcel should be. To him there is no rush and notwithstanding he knows the concerns expressed by the NARS staff, but indicated while the opportunity is there they would like to see this struck. But, there also needs to be acknowledgement about the other compatible uses that should be allowed on this parcel. In Revised Statutes Chapter 171-11, there is a provision for set asides and/or withdrawals that provides the Legislature to disapprove those actions. The Senator encouraged the Board to re-consider acting on the two items today by deferring it and to work with the Legislature, the NARS and the Youth Challenge which Senator Kokubun has no problem with, but he thinks this is an inappropriate place for the program and for the training for the National Guard can be accommodated elsewhere. This has huge ramifications for the State and asked to defer action today to allow them to come together to figure out the best solutions.

Member Goode asked that based on the Senator's testimony the 6600 acres is the best thing for that parcel and it's the 600 you want to defer action on. Per the NARS commission testimony it is a prime candidate that is already matched. Sounds like the original 600 acres of the former Kulani Prison is the heartache. Senator Kokubun confirmed that was correct and spoke about the previous day's site visit looking at the 600 acres where it was commented that much of the 600 acres could be considered as part of the NAR, to be restored for that purpose and that is why he thinks it's important to have further discussion to get more detailed information with exactly what the needs are. The Senator said he would like to see Kulani re-open as a correctional facility. There are some areas that need to be discussed to get more information on and not sure what the rush is. They need to be thoughtful in the decision making.

Member Pacheco asked Senator Kokubun whether the footprint at the facility is around 300 acres. The Senator said there is lots of potential and he would agree with that amount reiterating the need for more detailed information. Chair Thielen said that it's always possible to add more acreage to the NAR so why not support adding that minimum amount into the NAR and continue the conversation. There was a concern with access issues if the prison were to re-open and that means stopping the effort on the NAR pending the decision on the prison. Senator Kokubun said if the prison were to re-open there is a good working relationship between TMA and the Kulani inmates. What the Chair said is doable, but the Senator's concern with respect to the proposed uses those needs would either be highly restricted or there needs to be discussion about that. The use of the Boy's School could involve fly overs and would have a direct impact to the threatened bird species there. The Chair clarified her question that she understands the Senator's concern about transferring over to the DOD and their uses, why hold off the designation to the surrounding NAR even if later in the discussion it would be determined its better for more land to go into the NAR. Why not support that effort? Senator Kokubun said he does support that effort. He just wants to look at this as a comprehensive whole which is his major concern and made it very clear to the Board members that he does support the program for the NAR especially after seeing what is up there. His concern is he doesn't want to piecemeal this parcel comparing it to Kahoolawe as an island within an island with resources there found no where else. There is a need to take the right comprehensive approach and the right protocols to see that what is done there is appropriate.

Chair Thielen said that the Legislature has the authority to disapprove a Governor's Executive Order transferring property and asked if this Board were to move forward with the transfer the Legislature would have the option next session to say we are going to put a hold on this and initiate public discussion on the future use of the property. Is that correct? The Senator nodded in confirmation. And it is his understanding under the MOA between the DPS and DOD that the property could be pulled back to reopen as a prison even if it's during that 25 year period. The Departments could say we are not going to continue with this transfer and restart the facility and that option is on the table. The Senator acknowledged that.

Yvonne Yarber-Carter a resident of the Island of Hawaii testified that she grew up around the military through her father. She related caring for the land, protecting what we have, concerned with losing species where things rarely go back. Ms. Yarber-Carter has worked in oral history and land planning and they should plan in comprehensive ways. She appreciates the partnerships and the Youth Challenge, but having training with devices on a nearby road with children who might jump the fence hasn't been well thought out and suggested having Youth Conservation Corps be the ones to manage through DOD. Have clean, healthy la'au for well being and access. Ms. Yarber-Carter supports Item C-1. Item D-3 could be at other places with the right combination of support.

Keoki Carter, originally from Waianae testified that he and his brothers were involved in the military. He finds it disturbing with the bombing of Pohakuloa comparing it with Kahoolawe and the destruction. Mr. Carter asked how much land does the military need to take to do whatever they think they need to do.

Haunani Kalama testified she represents the Committee that deals with Culture and Traditions for the Commission for Environment, Economic and Social Policy which falls under the International Union for the Conservation of Nature. It works more in a global perspective and heavily in the Pacific Region because of the all the climate changes where we are experiencing island losses. She related that humans are the most fragile that we can't separate ourselves from each bio-life that exist. There is a pu'u that feeds this environment and pre-dates it where she would like to have the Board look at that because the area teaches us how to move in the environment and where to step and where not to step. She spent 40 years in health education and in a health environment it's important to recognize what is happening around the planet. Ms. Kalama supports Item C-1 and is not in favor with D-3's situation. Her brothers were all in the military and she supports the need to be well prepared, but she questions whether that is the appropriate location for that particular program and supports the need for the Youth Challenge. The partnership with DOD is short visioned and suggested that there are other groups on the island that may make better partners or for programs for youth and to look at a larger perspective with a longer vision.

Kyle Kajihiro testified that he is the Program Director for the American Friends Service Committee in Honolulu which is a peace and justice organization that has long been involved in advocacy for the clean-up and restoration of lands that have been used for military training like Makua Valley or Kaho'olawe. His organization is in strong support of Item C-1. They are in strong opposition with Item D-3. He reiterated previous testimony regarding the closing of Kulani where the community needs to decide and he is glad Senator Kokubun will revisit this issue. The transferring of the land to DOD would complicate the ability to revisit that decision and would commit resources to a certain kind of use of these lands that might foreclose on other possible uses. As previous testifiers mentioned groups wanted to establish a Native Hawaiian based treatment program – substance abuse offenders as opposed to incarceration that could either happen in conjunction with or alternative to Kulani Prison. Also, there are Native Hawaiian charter schools whose philosophy would support the establishment and protection of the

NARS. These are options that would not be explored if we didn't have a broader community discussion about these options. Military training, in their experience and history, is incompatible with protecting these vital natural resources and cultural resources of Hawaii. The military has hundreds of thousands of acres of land lost to us for other uses because of military contamination. There is over 600,000 acres under National Guard jurisdiction which is larger than the rest of DOD where Mr. Kajihiko questioned why the need for this precious parcel. The proposal for training snuck in because it wasn't brought up before which is an example of mission creep where one mission grows to move into other areas that originally was not intended and we can't afford to have that happen with this parcel. Mr. Kajihiko urged the Board to exercise its wisdom to get all the information and involve the public in that discussion to make an informed decision. Reject the proposal for Item D-3. A precautionary tale is the Superferry and we can't afford that to happen to this parcel.

Karen Kahoolani from Oahu testified that as a child she spent a lot of time in the area in question and opposed Item D-3. She reiterated that military training is incompatible with protecting Hawaii's rare, endangered species and their habitat. The affected community has not been fully informed about the DOD plan that public hearings must take place and further options on the use of the land must be considered like establishing a Hawaiian based healing center and asked to defer Item D-3.

Marjorie Ziegler representing Conservation Council for Hawaii testified that they are a wildlife organization committed to protecting native plants, animals and eco-systems for future generations who are long time supporters of the NARS and supports Item C-1. They oppose Item D-3 reiterating previous testimony that this is not the area for military training that there are more appropriate developed areas for that type of training. Ms. Ziegler's concern was the military will say one thing, but it changes over time and they can do this training at Pohakuloa. The training and Youth Challenge is not compatible in this area. Move forward with the NARS designation. Her organization supports Senator Kokubun's suggestion to have the larger discussion on the 600 acres. She noted that she did submit written testimony.

Pat Reas testified that she has a son who is a cadet with the Hawaii YCA and prior to entering it he got into a lot of trouble due to peer pressures. After 9 weeks his attitude has totally changed. He is more outspoken and has goals now. Ms. Reas couldn't be more proud of him since she is a single parent. The Youth Challenge is a good program. More youths are dropping out getting into trouble, crimes and this is a place for them to go which has a positive affect on these young men and women.

It was asked by Member Gon where this program was located and if that was the only location. Ms. Reas said Kalaeloa is the only location she knows of. It would be nice to have another location so her son can further his education.

Richard Pomaikai Kinney, a Hawaiian Kingdom National Royalist distributed his written testimony and read from it. He spoke against the use of Kulani Correctional Facility by the military powers of the United States for warfare. Under the laws of the Hawaii State

Admission Act, section 5(f) the Congress of the United States provided that the State of Hawaii hold these Trust Lands "for the support of public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use." Nothing in this law speaks about the use of these lands for military purposes and don't justify public use. This violation needs to come to an immediate stop. The State has violated far too long its own State Admissions Act. Mr. Kinney is not anti-military having served in the navy and his brothers served in the military. He related the deceit and betrayal by the United States to the Hawaiians. The desecration and misuse by the United States military. He supports Item C-1 and opposes Item D-3.

Graduate Davis introduced herself and Cadet Mitchell. Cadet Mitchell testified on behalf of the Hawaii National Guard YCA. He related that he knows Ms. Reas's son who is currently enrolled in an auto body class that counts his experience toward future job opportunities. The YCA gives people with a troubled pass a new chance because he used to be one of those troubled youth and 9 weeks into this program he has a more mature type of character, a better outlook on things and is more appreciative. The Academy teaches you how to accept criticism and appreciate praise. Cadet Mitchell would like to have an extension of the program because it helps him to prepare for what he wants to do after Youth Challenge. It's something he had no chance with in regular school and he can achieve it in Youth Challenge because it gives you a second chance.

Graduate Davis testified that she understands previous testimony about taking care of the aina. Youth Challenge not only teaches them to be better, but to also give back. She understands that people are so worried about the land there. The youth and those going to Kulani will give back to Kulani and she doesn't think they would use that land for nothing. She is giving back by working for Youth Challenge because it taught her a lot and that is what they are taught to do. Cadet Mitchell explained they teach us how to give back with service to the community and he doesn't see any problem with them using the land.

Sam Monet testified that he is born on Oahu and is a Lindsey from Waimea. He is here to support the testimony of his cousin Terry Lee Keko'olani and to support the Senator's (Kokubun) contention and the lady who spoke about democracy. The DLNR and this Board will change in two months and the candidates for Governor plan to make some changes. For the Board to be rushing through decisions they are making right now that will affect the long term condition on this State is unfair and unconscionable. Member Agor corrected him because his term is until 2012 and other Board members are longer. Mr. Monet said he stands corrected on that, however, there will be changes to the DLNR based on what the candidates have stated. The Board is supported by the Lingle Administration and clearly that Administration has used the Executive Board to make changes that the Legislature might not have agree with and in many instances you folks have made decisions that affect all of us without a public hearing and we're opposed to that and many of us are shocked by it. I am born and raised here and I've never seen a Board like this that has over the years consistently made decisions that have impacted



negatively to most of us born and raised here, Native Hawaiians and kama'aina. Mr. Monet supports the Senator and others who said to defer this matter. Give it over to more talk to a new Board Chair and deal with the issue down the road with the new people at the top and give the people and democracy a chance.

Michael Kumukauoha Lee who is a Native Hawaiian practitioner of lapa'au related his background and who his family is. Mr. Lee testified that he opposes Item D-3 and supports Item C-1. If you take the Youth Challenge out of the picture this would be an easy decision. He has family members in the military whom he related and this situation with the military needs to be taken out. If it is not deferred he will push for a contested case based on his family genealogy which was approved by the Oahu Burial Council on April 14, 2010 and as a Native Hawaiian lapa'au practitioner recognized in the First Circuit Court. Mr. Lee hopes that the testimony given will help as a whole to postpone decision on Item D-3 and allow public hearings. Item C-1 is very admirable.

Henry Curtis representing Life of the Land testified that they oppose Item D-3. Hawaii ranks 5th in the United States in the failure of recidivism and its interesting in the last few years we have closed Hale Na'au for mental health and Kulani for having the best sex offender treatment program in the country and leads him to believe whether the State wants to be #1. Mr. Curtis likes the NARS.

Chair Thielen explained under the Sunshine Law this Board cannot discuss items that they will be taking a vote on except in front of the public. We are about to go into Board deliberation and discussion. We have not had a chance to talk about either of these items together as a group. We may discuss things amongst ourselves. We may have questions and may call staff or other people up to ask questions for clarification. It does not open public testimony. This is an opportunity for the Board to discuss amongst itself, but they do that in public. Then the Board may make a decision to take action and if so will take a vote in front of you.

Member Agor asked whether the funding for the Youth Challenge depends on military exercises. Lieutenant Colonel Mitsayoshi answered no it is not. Member Agor asked whether he saw the Youth Challenge and the prison co-existing. The Lieutenant said no sir. Member Goode asked why not? Mr. Campbell said the two are incompatible because you have felons. The (Youth Challenge) program is designed so that felons cannot get into the program. The facility is large, but is not that large. The housing areas are contiguous to have inmates on one side and students on the other, but you'll have a mix.

The Chair noted there is one dining area and she asked Mr. Campbell to describe what areas the YCA will use that was formerly the prison site. Mr. Campbell said they call them barracks because it's military terminology where there are 7 in a semi-circle. The administration building is in the middle and the dining facility is attached to that. The shop area is below the barracks and administration area. There is a classroom area, a gymnasium, a carpentry shop and a visitor center that they plan to use as their visitor center as well and that is separate from everything else.

Member Goode asked how many students they envision there at the program. Mr. Campbell said they can house up to 300. Member Goode asked how many inmates. The DPS representative said 200 inmates.

Member Edlao said the Youth Challenge is to educate the kids getting them back through training and asked how is that compatible with military training. Mr. Campbell said the whole idea is it's a quasi-military program. It gives the kids parameters to operate. It's a definite plan on how they can be helped and taught given the opportunity to be exposed to a lot of different things. It is a residential program, 22 weeks. We ask them to be volunteers and not be put in by the courts or police or their parents. The parents can't do it without the student's approval. When the students come to the program the (YCA) staffs have them think about what they used to do and how they can do those things better. The idea is to intervene and reclaim the lives of these students and help them become productive citizens of the State of Hawaii. Member Edlao said with the military training there is a disconnect somewhere. Mr. Campbell said it's military in the respect that it's about discipline.

Chair Thielen clarified that the question is you have a quasi-military Youth Challenge Program, but there is also a request to conduct training for military. How are those 2 compatible? Lieutenant Colonel Mitsayoshi explained that in the DOD there are different divisions – Army Guard, Air Guard, State Civil Defense, the Youth Challenge Academy and Office of Veteran Services and when the Department went in the use of the property they looked at it holistically and looked at all the potential benefits that their Department could have from acquiring the Executive Order for the property, but the primary purpose for the use of that property is the YCA. If the Department does not have the military training benefit on the property that would be ok with our Department to not have that ability. They really need to have the YCA because what is unique about this property is there are existing facilities. The facilities need to be provided prior to the Federal funding coming in to operate the program. Without that facility it could take millions to create, there would be no way to set up a YCA which is the priority. If the military training piece was separated and deemed so by the public and the Board as not compatible use for the said property that would not be an issue for the DOD.

Member Agor asked whether every 22 weeks the Youth Challenge is graduating a class. Mr. Campbell said that the program at Kalaeloa has 45% or 126 is neighbor island kids. Member Goode asked if having a facility on the neighbor island will bring in more neighbor island kids. Mr. Campbell confirmed that the kids will continue to be drawn from the whole state and put into programs based on their academic standings. If they know they can pass the GED they come to Kalaeloa. If they need help with their academic support and are tending toward more technical/vocational that would be the Kulani program's primary responsibility. Member Morgan asked how many youth have they turned away. Mr. Campbell said they receive about 400 applications for a 100 spaces so about 300 each class. They bring in about 140 at the start.

Member Pacheco asked whether the YCA operate on the property without a set aside through DOD perhaps through a lease situation. Mr. Campbell said it's a possibility, but

it is something they would have to look at because of the amount of money they have to operate with it would be difficult to pay a lease. There is no financial return back. Member Pacheco said if lease terms were agreeable to that it is something your funding could exist under which Mr. Campbell acknowledged.

Chair Thielen asked that earlier Mr. Campbell mentioned a minimum time requirement to get the Federal funding. What is the minimum time requirement he needs to get the Federal grants? Mr. Campbell said at least 25 years because the Federal Government wants to make sure there is a return to them. The cost for operating the program every year is expensive and the Federal Government needs to see there is going to be time to spread the money out so it's used properly. Member Morgan said he understands on the business capital side of it, but if you are just graduating kids on a yearly basis you don't need to advertise that at all. The Chair asked whether they are competing with other states for Federal grants. Mr. Campbell said they are guaranteed the funding and have to show they are using the money properly. The Chair asked in order to get that Federal guarantee is what you have to show the 25 year commitment for and Mr. Campbell confirmed that. Member Pacheco asked whether the funding is annually and have to re-apply every year for the funds and Mr. Campbell confirmed that. Member Pacheco said that there is no long term commitment of DOD funds for the program because they could pull the plug next year. Mr. Campbell said correct. The Lieutenant Colonel explained that the Federal Government won't even consider letting you start the program if you cannot commit to them that you already have an established facility to run the program for 25 years. Chair Thielen said you don't get into the pool of the block grant unless you meet that criteria if the Federal Government de-funds the program, but as long as the program is funded your in there. The Lieutenant Colonel confirmed that. The Chair said what you are putting in each year is not a competitive application its more saying your continuing to meet the requirements of the program and asked whether it is a formula funding the way the funds are allocated. Mr. Campbell couldn't say.

Member Pacheco asked whether to consider DOD as a sister agency. Chair Thielen asked Mr. Atta the State DOD is a State agency and is a sister agency as far as procedurally done by EOs is still State of Hawaii. Mr. Atta said the managerial jurisdictional use of property is through the set aside that is signed by the Governor.

Member Gon asked how closely tied are Items C-1 and Item D-3. If Item D-3 were to defer can Item C-1 proceed with the NAR program for that area? Mr. Conry acknowledged that is how Item C-1 is structured that it can proceed. Member Gon asked if there was a NARS designation for the majority of the lands surrounding the 600 acres that's in contention the ultimate fate of those 600 acres and the ability of managing or the facility using agency or entity would be equal with regards to the NAR. Do you foresee any difficulties in working out co-management or other cooperative uses of those lands? Mr. Conry said they would work with their partners. If you are talking about the designation of the 600 acres they have a partnership agreement with DPS and will have one with DOD or Youth Challenge. Staff will try to bring in the landowners in partnerships. Lisa Hathaway, DOFAW staff said they are willing to work with whoever is at the facility. They've partnered well with Kulani and will work with YCA or

however it works out. Important to management is access across some of the roads that will be within the 600 acres, but those types of things could be worked out with an MOU or an MOA. Member Gon asked there was a MOA with Kulani Prison when they had full jurisdiction over that whole area, both the infrastructure and the surrounding high quality native forest. If Item C-1 is approved by the Board is that how the NAR would have the primary managing responsibility for those native forests and whoever happened to be nested in those 600 acres there. Do you see any complexity related to the requirements of the NARS and its management and the future occupants of those 600 acres? Mr. Conry said that would be more on the ground management. Ms. Hathaway said she thinks the footprint of the facility is fairly disturbed in terms of biological disturbance. The thing to know is there are endangered species within that 600 acres. Her view is whoever comes in to use those facilities as long as they are cognizant of the need to manage for those rare species then they would be willing to assist with that. But, there are a lot of opportunities for whoever is there to help with management as well as the prisoners did by constructing fence lines. They fully envision continuing working with the TMA in partnership. A number of the management units up there actually cross boundaries into Kamehameha School's property so fence lines that are checked regularly. TMA staff along with NARS staff work up there together.

It was noted by Member Pacheco and Member Gon besides endangered species there were activities Kulani Prison was doing that would require a conservation use permit that all Federal and State laws with regard to endangered species will be made very clear to whoever occupies those 600 acres.

Member Pacheco asked whether there are any easements tied between Items C-1 and D-3. Mr. Conry said that within the status quo of the 600 acres DPS would continue in the future if we didn't act on it in time for Item D-3. That Executive Order includes Kulani Road and would stay with DPS. One of the provisions of D-3 was that it would come back to Forestry and Wildlife. Member Pacheco asked whether there was some question about that – the status quo and easement. Mr. Conry said it's within a Forest Reserve that was never taken out of the Forest Reserve and it was EOed. Member Pacheco said then the property was EOed and Mr. Conry confirmed that it was double EOed.

Member Gon asked the basis for the cooperative effort for all the fencing and all of the management that has occurred on the former Kulani facility was based on a MOA that was established when they partnered with the Ola'a-Kilauea and TMA. And in your view has that evaporated since the Kulani facility no longer exists? Does that survive the transition to another entity or would that have to be re-established with any entity that occupies that space? Mr. Conry said there was a provision that new partners can be added on. Yes, land ownership changes and DPS could step away and a new land owner could enter into that watershed partnership.

Member Gon said that putting that land (600 acres) into the NAR would guarantee continuity of the management efforts that are going on there and they wouldn't have to worry about re-establishing an MOA with a future entity there. That makes him support separating these two items and going with Item C-1 at least.

Member Pacheco was concerned with non-use of those facilities and whatever happens in the interim if they are not being used there will be deterioration of valuable State assets and it is their job to protect those. He would like to see the facilities used in some way. He is glad to hear from DOD that is not a deal breaker for them because the training aspect is inappropriate for that area for many reasons. There was the impression that the training came in when the door opened for YCA which he is uncomfortable with plus the lack of public input. They had public hearings on the NARS, but nothing for the disposition of the land to DOD from DPS. The Boy's School area and the pasture area need to be managed for conservation. All the resources up there, the quality of them are unsurpassed and need to be moved into our highest protection status which is the NARS as soon as possible. He has questions for YCA's ability to operate because the operational costs are tremendous particularly water, water treatment, sewage because there is no water up there and they will have to truck water up – an incredible cost.

It is Member Pacheco's understanding that the land was EOed for a particular purpose for the prison now that's not happening that the land can't be used by DPS for any other purpose than running a prison and asked is that correct? Mr. Atta said that the EO says it's for a prison or related purposes and they are not using it for that purpose. Technically, it's under their (DLNR) set aside. The lands are supposed to come back to us.

Member Pacheco asked whether there is a timetable and there is none per Mr. Atta. The way it's worded is if it ceases to be needed for that purpose it's suppose to come back to us (DLNR). It's subjective. Member Pacheco said that the land could stay with DPS indefinitely. Mr. Atta said that we have situations like that with other set asides which is a long time concern of Land Division that lands have been set aside to other agencies that are not being used for the purposes as stated in the EO and yet the agencies have been hanging on to them. A form of land banking which has been a long term issue the Department has had. The law does state that it has to come back to us (DLNR). Member Pacheco asked lets say we are following the law and land comes back to us and we have no idea what to do with this land would it go to Land Division as unencumbered lands and Mr. Atta confirmed that. Member Pacheco asked if that land did go to Land Division then it would be available for a long term lease agreement with a sister State agency that we could do a nominal lease amount. Is that correct? Mr. Atta confirmed that. Once it becomes unencumbered lands it would be subject to whatever management decisions the Board decides to make. Member Pacheco said that it's possible to bring the land back in to DLNR as far as the facility land of 600 acres and then do a long term lease back to the YCA or DOD. Mr. Atta said he imagines that's possible. Again, your concern is the maintenance of the facilities because they are valuable assets, but if they were to pull it back to Land Division it would be difficult for us to maintain it. Member Pacheco asked whether DPS has any legal responsibilities to the facilities or anything. If this land stays with DPS would they be required to maintain the facilities? Mr. Atta said technically they are because that is what the management jurisdiction is. They are supposed to maintain it. As a government agency they (DPS) have a duty to maintain public resources. Whoever has control over the land has a duty to maintain it and currently that responsibility is with DPS.

Member Pacheco agrees with the public testimonies that there are a lot of unanswered questions about the disposition of this land turning it over to DOD. He supports the YCA, but at this point he cannot support Item D-3 especially with the training aspect. There is an opportunity to have a much broader vision for those lands. Those facilities situated where they are, it would be nice to align some use of those with the nature they are in.

Chair Thielen said because of something that came up with one of the staff she wanted to have a higher level representative from DOD come up to answer one of the questions because on the testimony she heard in opposition there were 2 primary things raised. 1) Whether the prison should be closed down or not? 2) Many people testified that they didn't support the military training there. Almost all were respectful of what DOD does on why they didn't feel comfortable adding lands to the military for training in Hawaii, but they didn't have that same concern with the YCA. One of the DOD staff said taking military training out of the equation was not a problem. What she wanted to hear from the DOD representative overall is whether you would want to put on the table to move Item D-3 forward where it would be used exclusively for the YCA and not include military training? Deputy Adjutant General Gary Ishikawa representing DOD said absolutely, take military off the table because it was a thought and they threw it on the table. Who would recognize that you would have to go through a huge process? It hasn't even started yet and that is not the primary purpose. The primary purpose is the YCA. Totally take military off the table that he has no issue with that. YCA is competitive in the aspect where only certain amounts of money are available each year. This is the only YCA in the nation and the reason was they looked at the facilities and said this would be a long term investment. It takes a big effort to move monies. YCA gets about \$16,000 a year per cadet. They are well aware of the infrastructure which is some of the shortfalls there. Take military off the table and please consider YCA. The Federal monies are flowing now and if they tell them no some other state will scoop it up and he would not know where they will be in the future in the line of competition.

Chair Thielen asked if military training was not appropriate there what would you do with the remainder of the property. In that 600 acres of Item D-3 that is suppose to be set aside to DOD that one section at the Boy's Home and the road was primarily for the military training. If you took that military training off the table to say we want to move it forward and amend it where it's exclusively for the YCA would you change the proposed boundaries? The Adjutant General said he feels strongly to start the YCA he is willing to do that, but to expand on it in the perspective of the part-time guardsmen. The guardsmen only have a weekend where they have to move to Oahu, get the training and then sent back to the Big Island. If it's an issue of moving that road and facility back to conservation he is willing to give it up which is how strongly he feels about the YCA. Please consider some of the other aspects. On the 9 mm pistol range, although it's for guardsmen they accommodated all the local law enforcement at KMR which is no longer available. That area is in the quarry which is a greatly disturbed area and he can't see that to be incompatible. Even with that, if it's an issue he'll take it off the table.

Member Morgan asked he heard him say that the monies are available now and if we don't get it somebody else might and that's for this year. Is there an implication for future years? Because what we are looking at is starting a YCA on a State facility that might further in disrepair. If we don't get it this year will it impact our future ability to start up a YCA? The Adjutant General said the current YCA has been running 16 years and there are certain expectations that you will get it. If we give it up this year I can't say with any degree of certainty what their chances are next year. His sense is if they decide not to take it this year and come back next year they will look at them with a funny eye and wonder how serious are you? He isn't saying it was right, wrong or different all he knows is in his perspective he wanted this campus and was very aggressive to get a whole new campus.

Member Pacheco asked Mr. Campbell mentioned that they wanted to start operations next January? Mr. Campbell said the first class is scheduled to start the 3<sup>rd</sup> week in January. There is a transition of changing the campus from an incarceration institution to an education institution. The Chair asked whether students are applying now and Mr. Campbell confirmed that. If they did not have Kulani would they be able to meet those commitments at Kalaeloa? Mr. Campbell said about 400 applications will come in where 150 will go to Kalaeloa and 100 to Kulani.

Member Edlao asked if they gave the EO to Youth Challenge can they take it back. Mr. Atta said the Board can always request the Governor to cancel a set aside or issue a new one. The act of a set aside can always be taken back by the Governor with the recommendation of the Board and subject to disapproval. The Chair said that if the set aside were defined exclusively for the use of the YCA and specifically excluded the military training if that is something the applicant wants to take off the table and the Board wants to consider legally, at that point, they have a set aside for a particular limited purpose. Is that correct? Mr. Atta confirmed that. The Chair asked what is the remedy if that were to be expanded beyond the purpose of the set aside. Mr. Atta said any use beyond the purpose of the set aside is not authorized. He would assume the remedy would be for the Board to approach the agency and tell them not to do that because it's a use outside of the purpose of the EO. The Board retains jurisdiction of all other uses outside of the specific purpose of the EO and only the Board could authorize that use subject to the approval of the Governor and the Legislature. Whatever purpose that the set aside states the agency receiving that authority must stay within the confines of that purpose and can't go outside of that.

Member Edlao said it was said whether they wanted to utilize that as a prison again which could happen, but then again he'll be confused with the aspects for the youth and these 2 aspects cannot be combined together. Chair Thielen said that what the Board member is saying is this is a question for this Board. To her whether the prison should have shut down or not there was a debate about that, but the reality is it has closed. Our role as the Board is taking a look at the land management of the area. Whether that area re-ups as a prison, whether the Legislature chooses to disapprove a transfer down the line because there certainly a process at the Legislature with public testimony, whether there is other entities that come forward to talk about a public health facility there – she thinks

the role of the Land Board is how do you manage these areas at this time? What we have now is a Public Safety that has shut down operation and restarting is not going to be quick. We have the DOD that has a grant for a YCA that is ready to start come January. We have a self interest for the surrounding lands for the NAR. She related going up to Midway that it is nothing like the main Hawaiian Islands and the term used is "abundance." The Chair has never seen an abundance of nature in the mains until she visited Kulani. That forest is like nothing else in the main Hawaiian Islands and the sad thing is that is what it used to be. And, while they did have a good relationship with the DPS the reality is those lands did not come over to the Department for the NARS under Public Safety and there would be continued concerns if they put a prison back in there about having jurisdiction go to DLNR. Although staff was being polite she is aware with working with the people on the ground there are access issues despite the MOA. If you can't get to that area for a particular period of time or there is uncertainty or issues with future partners we risk losing that last native forest because if those fences go down and the animals get in they will destroy a lot of area in a very short time. While she respects the good Senator, if he were to sit on this Board, his request to not move forward with both items I can't in good conscious say that would be the right thing to do particularly in Item C-1. And, what happens to the facilities? We don't have the ability to take care of them and Public Safety is not there. We have a partner that is there right now who would like to start a Youth Challenge Program and has committed part of that Youth Challenge Program to be working with our Youth Conservation Corp and help manage the area plus work with the TMA. It may not be in perpetuity because EOs are subject to change and EOs are subject to Legislative disapproval. But, if the DOD were willing to say amend the recommendation to make it clear in the EO that military training is not permitted and is for the YCA. It talks about the accessible areas and changing those boundaries at least for the interim while that discussion continues on what to do about public safety and everything else it provides them with some certainty and provides us with management and a partner there for limited use. It's a compromise that addresses many of the concerns that came up today. Not all of them. But, she was thinking we are sitting here as the Board of Land and Natural Resources and that is our focus. This Natural Area Reserve possibility that has never come up before, I don't want to miss it.

Member Gon asked if the recommendation of this Board were to go forward on Item D-3 it would require the Governor to take action with an EO I don't know what the time frame for that is. Also, it would require the Legislature to confirm it or disapprove it and he doesn't know what the time frame of that is. Member Pacheco said that the Legislature doesn't have to approve it. Member Gon asked with your experience of land transactions of this sort what is the typical timeframe of that procedure? Mr. Atta said it could vary a lot, but generally speaking once the Board approves a recommendation to the Governor for a set aside it usually takes about 3 to 6 months for the EO to be prepared and signed by the Governor. By that time the Legislature will be in session where they will have the opportunity to hear the matter.

Member Gon asked he had a problem understanding how the YCA could be intending to double their participant listings when the 3-6 months to EO and the reaction from the Legislature would put it well past the January 2011 start. Chair Thielen said YCA is on



the site now. Mr. Atta said under the submittal the DOD is given immediate right-of-entry for the use until the set aside document is finalized. Member Pacheco asked there will be a survey and Mr. Atta said that is the requirements of the applicant.

Member Pacheco asked we have done a lot of set asides on the Board. Is there any precedent for public hearings or public information hearings on the disposition of the land? That is a big problem he has with this that the Board is being asked to make a long term decision on a very important piece of property that has a lot of potential uses for the public referring to Item D-3. We got very little public input on it and most of the public input they got on it is against it. Do you recall the Department ever doing any kind of public hearings for executive set asides? Mr. Atta said talking generally he is not aware for set asides that has ever been the case. Actual dispositions for uses we do certain kinds of leases and we have statutory requirements for public hearings like in the case of renewable energy on ag lands that recently passed legislation that says they have to have public meetings on the island where that action is taking place. For set asides I haven't seen that similar requirements being the norm.

Chair Thielen said one of the things she was surprised because of the issue that came up about the Legislative disapproval is why it is written into the law for set asides. One or the other house may disapprove a set aside by resolution with a 2/3rds majority or a majority of both houses by resolution. There is subsequent sessions an opportunity for public hearings and resolutions to be brought forward to disapprove a set aside where in this case it would revert back to whatever the status quo is a resolution back to the Department or set up subsequent discussion.

Member Edlao asked whether there were any other entities interested in this property. Mr. Atta said he hasn't had a chance to discuss that with the Hawaii District land agent. The Chair said the only thing she heard today was a possible health center, but there are funding questions and how it would pay for itself.

Member Pacheco agreed with the Chair to move the surrounding lands around Kulani into the NARS is an important opportunity for them and he can't conceive of another designation for that land. He would hate for us to lose that opportunity for Item C-1 and supports accepting staff's recommendation on Item C-1. He is prepared to make a motion on that, but he is still uncomfortable with Item D-3 even without the training.

Member Gon said before we do that there was a reason for the Board to take the 2 items into consideration together which forms that block and he was concerned by a statement made with regard to environmental law requirements going into the future and the timing of these things and the precedent that would be set making this decision particularly on Item D-3. 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.

12:40 PM EXECUTIVE SESSION

1:10 PM RECONVENED

Member Morgan said there is overwhelming support for Item C-1 which he supports. As for Item D-3 the Board's job is to look over the facilities there and need to be used. He agrees with the opposition regarding military use. Was the closing of the prison a public benefit? That was a money thing which the State has to pay for and it has a high cost. It wasn't shut down because it wasn't successful. He likes the YCA because it's federally funded that the community could use them and would be a good use of the facilities.

Member Pacheco moved to accept staff's recommendation for Item C-1 and was seconded by Member Gon. A vote was taken and all were in favor.

Member Pacheco can't support Item D-3 even without the military training because to dispense those facilities in that way requires more public input and more consideration needs to be made before the Board makes a decision. And, he doesn't want to see that land stay with DPS and not sure how they can move it out.

Member Morgan asked what happens to the January group if Item D-3 doesn't go forward. Chair Thielen said there is a Memorandum of Agreement that is in place currently, but the use of that facility for the YCA program would not be consistent with the Executive Order to the Department of Public Safety. While that MOA is workable during the period of transition and if this Board were to vote down to keep the property under DPS it may raise issues with the uses on the property and whether it was consistent with the EO.

Member Morgan asked whether there will be kids there or not in January. The Chair said she didn't know what that might do to the program pending this Board's decision. DOD would have to assess its options.

Member Pacheco said one thing they could entertain that he doesn't think they could do at this meeting because of the Sunshine rule, but to reset the land back to DLNR and then DLNR can turn it into a direct lease negotiation with YCA for the facility. Chair Thielen asked that would be a question for our legal counsel whether an agenda item has been posted the topic is changing an Executive Order and the underlying management authority for particular parcels of land. If the Board were to then end up in deliberations to decide to revert it to a different State agency is that something that would require a separate notice or is that something allowable under deliberations? Mr. Lau said you would probably have to re-Sunshine to a subsequent meeting because you can't do that.

Member Agor said with respect to Board Member Pacheco he is going to support the Youth Program excluding all military training and exercises and requiring DOD to hold a public informational meeting in that community letting them know what they are all about which would be a condition to the recommendation. The Chair said that would require amending staff's recommendation in a number of areas. The only purpose for the Boy's Home and roadway was for the training. Member Agor agreed.

Ms. Hathaway said that is around 5 acres. The Chair said that wouldn't substantially change the acreage, but it would change where they would not have the ability to use that area. Member Goode asked whether it would go to DLNR. Chair Thielen assumed it would go into the NARS. Member Goode asked whether that changed their motion for the NARS.

Randy Kennedy representing DOFAW said that when they send the EO on they can make minor changes. They can add parcels. It can be done.

Chair Thielen said approximately 600 acres because she doesn't think the acreage for the Boy's home and the road is that large. They would have to amend C-1 to say that the Board accepts staff's recommendation, but amend it so that the road and Boy's Home would also be included in the NARS. Amend D-3 to exclude the road and Boy's Home and have the remaining portion transferred to DOD subject to the condition that they not use it for military training and it is for the exclusive purpose of the Hawaii Youth Challenge Academy.

Member Agor accepted that amendment for his motion. Member Morgan seconded it.

Chair Thielen summarized that the motion and the second is to support the recommendation in D-3 with the following amendments:

1. Exclude the road leading up to the Boy's Home and the Boy's Home itself.
2. That the portion transferred to DOD would be specifically limited for the purpose of the Youth Challenge Academy and specifically exclude military training.
3. And, the DOD be required to hold a public informational hearing in that community to explain the Youth Challenge Academy program.

Member Pacheco described the cattle pasture, nursery facility and piggery and asked whether they are better suited for the NARS. Chair Thielen said after talking with DOD that what they will be doing there with the youth is similar to what was done with the prisoners. One staff person is still there and shared that staff person with DOD and will be working with Department of Ag on some technical training. They could call them and have it be the scope of the meeting. Have them come back with a recommendation to the Board whether that area remain DOD or come back to the NARS. Member Pacheco asked whether that is something done later or is there a way the language proposal allows for that negotiation to happen. The Chair said we can ask DOD now whether the pasture is a component of the YCA. Mr. Campbell said that the pasture would be for cattle and agriculture purposes. It will give them many more options for the program.

Member Gon suggested amending recommendation items 2b and 4b by deleting [Hawaii Army National Guard training purposes, or for]. Chair Thielen agreed to remove any reference to training and any other reference to training to be deleted. She reiterated adding a condition limiting to Youth Challenge Academy excluding military training and add a condition for the public informational meeting.

Member Goode said he is in full support of C-1 which is the right thing for that environment. He agrees to have the YCA program becomes of the demand and the number of directionless kids and he would like to see them have that opportunity.

Member Gon said that now that this is explicitly clear this doesn't open the door to military training in that area he does support the amended motion.

Chair Thielen took the vote all were in favor except Member Pacheco who opposed. The motion passed.

**For Item D-3.**

**The Board:**

**Amended the submittal by: 1) excluding from the area to be set aside, the area encompassing the former boys school and the road leading to it from the main site of the former Kulani Prison; 2) specifically limiting the purpose of the set aside to use as for the Hawaii National Guard Youth ChalleNGe Academy; 3) explicitly prohibiting military uses, training or otherwise; 4) deleting any references to military training uses from the submittal; and 5) adding an additional condition that the Applicant conduct a public informational meeting on the Island of Hawaii regarding the Academy, its mission, and its intended uses and activities at the site. Otherwise, the Land Board approved staff's recommendations as submitted.**

**Approved as amended (Agor, Morgan)**

The Chair said we are re-considering Item C-1 to re-make the motion to accept staff's recommendation with a boundary change to include the roadway and the Boy's Home in the recommendation for the NARS area.

Member Pacheco agreed to amend his motion to Item C-1. Member Gon seconded the amended motion. All voted in favor. The motion passed.

Kat Brady, Kano Kajihiro and Michael Lee asked for a contested case hearing. Chair Thielen had staff meet with the petitioners to obtain the form and submit it within 10 days.

**For Item C-1.**

**The Board:**

**Amended staff's recommendation by including from the area to be set aside, the area encompassing the former boys school and the road leading to it from the main site of the former Kulani Prison. Otherwise, the Land Board approved staff's recommendations as submitted.**

**Unanimously approved as amended (Pacheco, Gon)**

**Item D-18      Cancellation of Governor's Executive Order No. 2850;**

**Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Hana Boat Launching Ramp Site and Related Purposes;**

**Set Aside to the Department of Transportation, Harbors Division for Hana Wharf and Related Purposes; and**

**Authorize the Issuance of a Management and Construction Right-of-Entry to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation and the Department of Transportation, Harbors Division, Hana, Maui, Tax Map Keys: (2) 1-4-4:36 and seaward of the County Road and Parcel 1.**

Mr. Atta conveyed that staff is here to talk about the details of the work on the area.

Dana Yoshimura representing the Department of Transportation testified that the Hana wharf has been condemned. Along side of it is a boat launching ramp that serves the recreational purposes of the local fishing community. Staff has had meetings with the community about the Hana Wharf Development Plan to find options. Most of the community's concerns were the boat launching ramp. DOBOR has proposed and contracted to improve that boat launching ramp. Due to a shortage of funds they were not able to proceed with that contract. DOT agreed to partner with DOBOR to meet the shortfall in the budget and proceed with the project.

It was questioned by Member Goode whether this boat ramp serves bigger boaters. Mr. Yoshimura said only recreational boaters – small fishing boats.

Member Goode asked about the wharf development where Mr. Yoshimura said that project is on-going. They are doing a re-development study for that wharf and options will yet to be seen about the end of this year. The options are demolish the wharf, renovate it or renovate it in a different fashion. The Chair said this allows some improvement to go forward which will benefit people in the short term to get in the water.

**Unanimously approved as submitted (Edlao, Goode)**

**Item D-17      Approve the Withdrawal of Approximately 2,176.822 Acres from General Lease No. S-4475, K.K. Ranch, Inc., Lessee, Parcels 7-A por. and 7-B, Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3<sup>rd</sup>/4-4-14:02 por. & 03;**

**Approval In Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of such 2,176.822 Acres for Addition to the Mauna**

**Kea Forest Reserve, and Issuance of Immediate Management Right-of-Entry, Parcels 7-A por. and 7-B, Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3<sup>rd</sup>/4-4-14:02 por. & 03; and**

**Consent to Extension of Lease Term, General Lease No. S-4475, K.K. Ranch, Inc., Lessee, for Approximately 5,105.178 Acres of Remaining Lands of Parcel 7-A por., Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3<sup>rd</sup>/4-4-14:02 por. & 11.**

Russell Tsuji, Acting Deputy of DLNR reported this is a withdrawal of 2,176.822 acres from the current KK Ranch lease. 2) An approval in concept for the area to be withdrawn to be set aside to DOFAW for addition to the Forest Reserve. 3) Authorize the Division of Forestry to conduct public hearings to consider allowing that to the Forest Reserve. That will come back to the Board. 4) For an immediate right-of-entry for DOFAW for that same area. 5) To authorize or consent to the Lessee's request for an extension of his lease which excludes the area they are withdrawing. This is related to the Saddle Road Project, Phase I that has already occurred. Phase II is to occur and the palila mitigation area that was required by the U.S. Fish and Wildlife Service.

A Joseph Moniz, a lessee raised the issue to remove water tanks and water lines and he asked to take that off. Also, there was an RP to the U.S. Forest Service for an Experimental Station and Mr. Moniz asked to remove the ash tree. Mr. Conry explained that the Experimental Station is on a revocable permit and they are going to discontinue with that. The trees were planted there as a commercial test during the 1960s and 1970s. Maybe add a condition that the Lessee would provide access for the removal of the non-native trees. Staff would offer it up to someone who would be interested in logging it and as part of the deal they be part of the control on the adjacent ranch lands. Mr. Tsuji said that Mr. Moniz also raised the use of herbicides to kill the weeds because he plans to use that area to grow organic grass. Chair Thielen asked on the removal of the white ash are we talking about the 2,176 acres and Mr. Moniz confirmed that. The Chair asked whether this is a separate piece of land that is not part of either parcel being discussed here. How does forest service have access to it now? Mr. Tsuji said they have an RP there.

Mr. Tsuji asked Mr. Moniz whether those 11 acres are not included in the general lease. Mr. Moniz said its 15 acres, but it's permitted to USDA.

Mr. Tsuji said the other issue is the fencing that keeps breaking. Mr. Conry said it's a recurring maintenance on a fence that is in between the border. They have entered into a grant to obtain some funding to assist with the maintenance and repair. They are under a grant agreement to assist Federal Highways. Mr. Tsuji said that all the issues raised on the fence, the ash, the water tanks and waterlines all will require a right-of-entry.

Chair Thielen asked whether the Federal Transportation Administration responsible for maintaining the habitat area and staff is doing that under a grant agreement with them.

Mr. Conry said they constructed the fence. Part of the deal is staff would cooperate under a grant. The Chair wanted to clarify that DLNR is not taking on the responsibility to maintain that area. Mr. Conry said that is covered under an easement given to the Federal Highways that is going for another 2-1/2 years.

Mr. Tsuji asked because this is in relation to the Saddle Road Project Phase I & Phase II and the Palila Mitigation Area has to be perpetual in nature for the funding of this fence and can we count on it. Dave Geddeon of the Federal Highways Administration said their commitment is under a 10 years easement plan which was entered by the Hawaii DOT. As well as a 10 year Palila Mitigation Plan issued by the U.S. Fish and Wildlife Service and they will work with them to ensure these lands are set aside long term.

Chair Thielen asked if the reason for the permanent set aside is because of these federal requirements is your agency going to commit to continuing the repair and maintenance needed to keep that fence in operating condition. Mr. Geddeon asked for perpetuity. The Chair said even what he is willing to commit to. Mr. Geddeon said the current commitment is to November 2012 and have not looked beyond that where that question has never come up before. The Palila Project is not responsible for the Saddle Road Project. They have made a commitment to the Palila Recovery, but at some point their obligation ends and then it becomes the Fish and Wildlife Services' responsibility and/or the DLNR if that is one of their purposes.

Chair Thielen clarified that staff can commit to meeting the actual repair and maintenance at this time that they can do under the Federal grant, but they are not provided alternative funding for perpetuity which is something we all have to keep working to figure out what to do and there are negotiations continuing on the Federal level she assumed. There may be further commitments from DOT as part of that consultation. Mr. Conry suggested calling up the Lessee to identify. It was his understanding that there is some design problems with the fence and those can be resolved over the next 1 or 2 years, but the funding support is coming through Federal Highways. Longer support – the U.S. Fish and Wildlife continues to support the palila restoration on Mauna Kea. He thinks the issue Mr. Moniz has is a design flaw. Mr. Moniz said his issue is the failed design of the fence. It is way overbuilt for cattle. He doesn't want to do something long term.

Member Goode suggested since you're going to rent re-opening why not take responsibility for the fence after 10 years and adjust your rent accordingly because you are out there everyday. It would be cost effective. Mr. Geddeon said there aren't so much deficiencies of the fence, but the ones on Mr. Moniz's property are problematic. They can be fixed.

Mr. Moniz said as far as taking out the infrastructure that was left up there was because when the easement was placed there was a discussion in the 2001 Board meeting that if grazing was to be used that the ranches affected would have the first right to graze those areas which is why they left the pipelines. He has a couple metal tanks and a few miles of pipe that he can't afford to buy nowadays where he would like to take it out and use it

at the bottom of the ranch. The tropical ash is at the opposite end of the ranch at the very bottom. The experimental station was in place when they got involved with the ranch in 1990 and he has never met anyone up there. One is white tropical ash which puts out a seed which is invasive. He wanted to keep that plot organic and open, but if it can't be controlled without herbicide then deal with it. He doesn't think it should be their problem if you got a permit with USDA Forest Service. If it's written up right they have to clean up the problem before it leaves.

Member Pacheco asked for clarification that Mr. Tsuji mentioned 5 items, but he sees 4. Mr. Tsuji said he was reading off of the recommendation section and suggested that they should add a #6 for the appropriate right-of-entries to the Department as well as to Mr. Moniz to accommodate the fence, the ash, the water tanks and waterlines. Chair Thielen summarized that staff give Mr. Moniz a right-of-entry to be able to take your tanks and waterlines and if necessary Mr. Moniz will give staff right-of-entry for the white ash removal and the fence.

There was some discussion about the lease which can be done by re-visiting the Federal grant and there was some discussion about the fence which was built to control sheep. Chair Thielen said the minutes will reflect that DOFAW will take on the obligation to work with the Federal agency under that grant to fix that fence area, hopefully do a design fix. As for the on-going relationship on the maintenance staff will work with Mr. Moniz. Mr. Conry said that if Mr. Moniz's cattle does any damage he would need to fix that.

Chair Thielen suggested since the lease is an auction lease we can't change the terms and this is an extension which is allowed under the terms of the lease. The Board might want to consider putting this in as a condition. Discuss and come to terms of a Memorandum of Agreement (MOA) of how you would approach the long term maintenance of that fence because in that way you put it down in writing, but we can't necessarily amend the lease. And until the lease is amended under the lease it is what it is. We could put that down as a condition to instruct the staff to work with the tenant to come up with a MOA and how to maintain that fence at a level required for habitat mitigation which is above what is required for cattle ranching.

Member Pacheco made a motion to approve as amended. Member Agor seconded it.

#### **The Board:**

**Amended the submittal by: 1) adding another recommendation requiring K.K. Ranch, Inc. ("Lessee") to provide the Department a right-of-entry for the purpose of removing invasive tropical white ash trees from the area of the former USDA Forestry Service site and for repairing and maintaining the fence along the mutual boundary between K.K. Ranch, Inc. and the Palila Critical Habitat ("PCH") Mitigation Easement area, and for the Department to issue Lessee a right-of-entry to remove his water tanks and water lines from the PCH Mitigation Easement area; and 2) directing Department staff (DOFAW) to negotiate and prepare a memorandum of**



**understanding with Lessee regarding the terms, conditions and duration of the obligations for repair and maintenance of the fence. Otherwise, the Land Board approved staff's recommendations as submitted. The Land Board also directed the Board Secretary to have the minutes reflect the Department's (DOFAW) commitment to work with the U.S. Dept. of Transportation (Highways), subject to available federal funding, to repair and maintain the above referenced fence.**

Chair Thielen asked Mr. Conry to report back to the Board on the progress of the MOA.

**Unanimously approved as amended (Pacheco, Agor)**

**Item K-2      Amendment to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel at Honouliuli, Ewa, Hawaii by Haseko (EWA), Inc. on State of Hawaii Submerged Land at Honouliuli, Ewa, Oahu; TMK: Makai of plat (1) 9-1-012**

Sam Lemmo representing Office of Conservation and Coastal Lands reminded the Board that they approved on April 26, 2000 a decision to develop the Haseko Marina and dredge the ocean channel. July 2001 the Board approved an amendment to reduce the size of the marina. Later the Board approved another amendment to reduce the size of the marina which was later rescinded. Today Haseko is asking the Board to reduce the size of the marina. Staff recommended approval. It would result in an amendment to reduce the size of the marina from approximately 70 acres to 54 acres which are subject to all conditions.

Chair Thielen asked the reason Haseko withdrew their request to reduce the size of the marina and the reason they rescinded that decision was. Mr. Lemmo said there was a request for a contested case hearing and at that time it was during the economic downturn where Haseko didn't want to pursue the matter. Once the matter was rescinded the contested case was no longer relevant. However, they are back today seeking to reinstate that approval. The Haseko representative is here.

Yvonne Izu representing Haseko answered the Chair's question on why they withdrew their request. The Board actually approved this request and at the time Mr. Mike Lee asked for a contested case. Initially, the Department recommended he be denied a contested case for lack of standing. At the time the agenda item was for a denial Mr. Lee raised another issue and the Board determined to allow him to amend his petition. The marina was about a year old by that time and it was during the economic downturn. It wasn't in Haseko's best interest to do a contested case and they didn't want to spend their resources in that way. The economy is improving and the future looks good now which is why Haseko is coming back. At the time Haseko withdrew its request they did reconsider whether they wanted to go ahead with the 70 acre marina or pursue a 54 acre marina. There has been a lot of discussions with community groups and they support the 54 acre marina which is why Haseko is back to ask that.

Chair Thielen noted the Board had a long discussion this morning and will have more this afternoon that the Board has gone through this discussion once and asked the Board whether they want hear the presentation again from Ms. Izu where the Chair assumed it hasn't changed much from the last one. Or do you want to go to the public testimony?

The Board decided to go to public testimonies.

Robert Duncan a long time Ewa Beach resident testified in favor of more public areas to provide jobs. He hopes this harbor will not be Ala Wai #2 and hopes to have a beautiful place to visit. There were 7 other individuals who were here that were in support.

Michael Kumukauoha Lee a Native Hawaiian practitioner of lapa'au who related some background and who his family is. The papers handed out are from the Oahu Island Burial Council, April 10, 2010 which recognizes his cultural descendants of this area and that he is connected to royalty. He made a recommendation to SHPD (State Historic Preservation Division) on the 7 burials and also, the Hawaii State Supreme Court ruling for right of standing on burials. How can you have burials there and not protecting the land? There was lack of due diligence on Haseko's part because he found 2 springs where the Haseko marina is which is part of an underground cavern. Haseko broke into it saw all this fresh water and buried it up thinking this is not a great idea. These caverns are where his family's iwi (bones) are buried. Mr. Lee described how these underground springs affect the limu (seaweed). A female skeleton of his great grandmother was found. Haseko originally did the plans for this marina for 120 acres and if a marina doesn't have the flow it becomes noxious it's a toxic area. They've shrunk it down so small and they haven't done an environmental impact statement with the shrinking of this marina. If it becomes toxic it will kill all the fish and all the limu that is outside of it. The Supreme Court ruled at Turtle Bay and had to revisit the EIS. A lot have changed with 7 burial sites and the complex is now up for protection. The noxiousity they've been doing tests on because they don't want another Ala Wai. But, if there is no current flowing through it will be a disaster and this has not been taken into consideration with the native gathering rights. The original model from 25 years ago is not there anymore and for public safety and health this is an important issue. There are scientists that can do the models and if he does a contested case which he will those scientists will be there. Before putting in a 54 acre marina you should have this information that these issues are taken care of.

Kevin Rathbun distributed his written testimony testified that he is an eight year Ewa Beach resident. Haseko has done a lot for the community, the schools, jobs created and an overall good partner to the families. There will be access to boats and is a positive for the Ewa community.

Glenn Omalza, Ewa Beach Community Association President, member of the Neighborhood Board testified that he is opposed to Haseko covering up. He followed Haseko since they came into the community and lately they have not engaged the community in discussions with their project. He testified against their project over the past 25 years because they haven't mitigated everything to traffic, to communication and

to unilateral agreements that they were responsible for where Mr. Omalza wrote letters to politicians and people of concern about that unilateral agreement which hasn't come true. He is going to file for a contested case hearing because he felt throughout his years, starting with the drainage, the wall, the downsizing of the marina, the alignment of the golf course eventually overflowing and flooded Oneula Beach Park. Plus they should be up to par on the EIS since Haseko hasn't done one since over 20 years ago. The community is concerned because they've isolated the community. He opposes the shrinkage because Haseko has not spoken to them about it.

Alicia Maluafiti, Board Treasurer for the Hoakalei Foundation testified that they are tasked with stewarding the archaeological, cultural and preservation sites on the Ewa plains founded by Kupuna Arline Eaton and Aunty Mary Serrao. Aunty Arline has worked with Haseko and the previous developers who formed their organization so that Native Hawaiians have a say. They have worked collaboratively and in a coordinated effort with Haseko on these developments. The Hoakalei Foundation supports the reduction of the marina. Ms. Maluafiti said she could not live on the Ewa plain without the developers who brought affordable housing to their area. Most of the community sees the opportunity and they will do everything in their power to ensure that the Native Hawaiian issues are addressed and since that time Haseko has been wonderful partners to them. They've come before you in the past so that you know there is a voice for Native Hawaiians and the many cultural issues. Also, did you know our Ewa Neighborhood Board was suspended for 2 months because they fought so much. Hawaiian Memorial Park sat down with their Foundation because they liked the model in which the Hawaiian community came together to work and collaborate with the developer and Hawaiian Memorial is using that model. It is better to work together instead of constantly hammering each other because the bottom line is in the long term it is not going to be in the community's best interest. Aunty Arline has repeatedly addressed a number of the issues that Mr. Lee had brought up. They had a community workshop to have everyone hear Mr. Lee's issues. Our Foundation Board is in disagreement with Mr. Lee with the statements and accusations he makes. The Foundation not only uses their own mo'olelo (stories) from kupuna, but they have their own scientists, cultural experts and archaeologists. Mr. Lee did not mention that these burial sites are from visions he had. Not from fact or science or even verifiable data. This is simply in-fighting amongst Hawaiians and has nothing to do with the reduction of the marina. This project is something Ewa has not had and this is an opportunity to educate local people and the malihini that will use this marina.

Chair Thielen apologized that she was trying to spare the emotional that they appreciate the work and focus they do and that the Board understands the problems going back and forth.

Chair Thielen asked Ms. Izu whether her client has thought through the ramifications with court cases and everything else and what this will do to their timetable and plans if this goes through a contested case hearing. Ms. Izu said if there is a contested case they are willing and ready to go through it.

Chair Thielen asked counsel if this Board makes a decision and there is a contested case because what is being contested is the Board decision the Department has a obligation under the Administrative Procedures Act pay for the court reporter, pay for the hearings officer and that all comes out of their existing budgets, but it takes a significant amount of time from the Department staff and the from the Attorney General's Office defending a Board decision. There may be some issues that are up for appeal if the Board makes a decision today and it goes into contested case that she doesn't know whether her fellow Board members are concerned with. Is it possible to have a contested case process go through where they pay for the court reporter and the hearings officer and let the parties duke it out and staff doesn't spend any time on it? Mr. Lau said it's possible.

Member Morgan made a motion to approve staff's recommendation. Member Agor seconded it.

Mr. Lee and Mr. Omalza requested contested case hearings. The Chair asked staff to provide them the form noting that they must prove why they have standing for the reduction of the harbor and it must be turned in within 10 days.

Chair Thielen said to Ms. Izu if her clients decide to withdraw again she recommends not to come back because of cost of time for staff and if she could convey that to her client. Ms. Izu said she will and noted that this is not on a whim, but they made a considered decision to come back.

**Unanimously approved as submitted (Morgan, Agor)**

**Item K-1      Contested Case Request as to Petition for Deviation from Permit Conditions and Rules Prohibiting Vacation Rentals of Properties in Haena, Kauai, Hawaii. TMK Nos. (4) 5-9-002:018, 021, 022, 035, 039, 041, 043, 044, 050, 051, 052, 061; (4) 5-9-003:046; (4) 5-9-005:21 by Roy A Vitousek III of Cades Schutte on behalf of Mark Moran, Edwin Cryer, Murcia-Toro, Inc., Michael Tiernan, Barbara Baker, Gary Stice Caroline Simpson, Earl G. Bart Trust, Pieter Myers, Smith Family Trust, Diane G. Faye Trust, Helferich Family Trust, James Greenan and Ive Revocable Trust at Haena, Island of Kauai**

Mr. Lemmo asked to withdraw on Item K-1 because the notice that staff sent to the legal counsel for the various petitioners requesting a contested case hearing on the Haena Vacation Rental issue was flawed. They will re-submit later.

**Withdrawn (Gon, Goode)**

2:42 PM      RECESS

2:48 PM      RECONVENED

Item J-2

**REQUEST FOR APPROVAL TO INITIATE RULE-MAKING PROCEEDINGS REGARDING COMPREHENSIVE AMENDMENTS, REPEAL, OR NEW SECTIONS TO TITLE 13, SUBTITLE 11, OCEAN RECREATION AND COASTAL AREAS, PARTS I, II, and III, HAWAII ADMINISTRATIVE RULES; IN THE AREAS OF PART I - SMALL BOAT HARBORS: CHAPTER 230 - GENERAL PROVISIONS (definitions, residency); CHAPTER 231- OPERATIONS OF BOATS, SMALL BOAT HARBORS, AND PERMITS (use permits, mooring permits for vessels owned by business entities, length of stay aboards on transient vessels, exchange of berths, vessels as principal places of habitation, personal partners of permittees, vessel inspections, issuance & reissuance of commercial use permits); CHAPTER 233 - MOTOR VEHICLE AND PARKING RULES (administration of parking rules by authorized representatives, parking permits & decals); CHAPTER 234 - FEES AND CHARGES (reduction of late fees and interest, gear locker fees, permit processing fees, passenger vessel fees, service charges on dishonored negotiable instruments, vessel inspection fees, commercial vessel fees for boating facilities other than small boat harbors); PART II - BOATING: CHAPTER 243 - VESSEL EQUIPMENT REQUIREMENTS (repeal of recognition of marine examination decals); CHAPTER 244 - RULES OF THE ROAD; LOCAL AND SPECIAL RULES (operation of power driven vessels; authorization for regatta, marine parade, boat race or exhibition); PART III - OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES: CHAPTER 256 - OCEAN RECREATION MANAGEMENT RULES AND AREAS (commercial use permits including high speed boating & water sledding, fees, thrill craft operations, recreational thrill craft operations, tow-in surfing, Kauai tow-in surfing and thrill craft operating areas, North Shore Kauai Ocean Recreation Management Area Rules (commercial vessel operation requirements, commercial use permits, reporting requirements for permit holder changes, fees, Anini Ocean Waters, Hanalei Bay Ocean Waters, Kee Beach/Lagoon Ocean Waters), South Shore Kauai Ocean Recreation Management Areas (Nawiliwili Bay Restricted Zones, Koloa Landing Restricted Area, Wailua River Restricted Area, Kihouna Bay), Windward Oahu Ocean Recreation Management Area (definitions, Kualoa Water Restricted Zones, Kaneohe Bay Ocean Waters and commercial use permits, restrictions on large & small full service permits, large snorkel tour, & small sail/snorkel tour, & glass bottom boat tour permits; replacement vessels, shuttling restrictions, permit issuance & revocation, temporary mooring of commercial vessels at Heeia Kea Small Boat Harbor), Kaneohe recreational thrill craft zone.**

Numerous written testimonies were distributed to the Board.

Board Member Morgan disclosed that he has to recuse because he has 2 permits that is part of Item J-2 where he left the room.

Chair Thielen explained what we have before us today is Boating (DOBOR) asking to begin an administrative rule making process which is to start public hearings that staff runs. It starts us going before the Small Business Regulatory Review Board and a gathering of public comment to report back to the Small Business Regulatory Review Board as well as to the Land Board before any decision making on the rules. This is to start the first step of that road beginning the formal public discussion and receipt of public comment. For those testifying, the best information you can give to the Board now is what particular rule or rules do you have concern with because when Boating comes back to the Board if they do forward it to public hearing we will know what comments were received on that topic or what changes, if any, did you make. That is the kind of most helpful testimony for this Board.

Mr. Underwood said staff is coming before the Board to request authorization and begin the rule making process. The rule package before the Board has been in the making for over a decade and includes a wide variety of rules. Some of the rules are Legislative mandates. Others came about because of court cases. For instance, the Kaneohe Bay rules are now complete and are before the Board now and were worked on by the Kaneohe Bay Task Force and the Council. Also, rules regarding Hanalei Bay. It took a long time working on these rules. Joe Borden, District Manager flew in to be here. The Hanalei community put together a comprehensive list of draft rules, but when staff took those rules before the Attorney General's Office they said "no" you cannot write the rule in that manner because it's violating a court order. Staff amended the rule to address what the AG's Office wants and still be in compliance with the law. We also have rules that deal with commercial limits on the number of permits. It's a wide variety of rules on the harbors and ocean recreation management areas. Staff wanted to note that they did delete 2 rules and over 2 definitions that related to the catwalk and the bow to stern mooring where they received a lot of comments. They will put a moratorium on applying that rule for now until they get more input. Staff began the process January 2009, did public outreach and came before the Board in August 14, 2009 which was the big package. Out of that big package staff originally came to the Board with, staff took out all the commercial rules related to commercial activities on the waters because those will take a lot more work to get into place with issues involving Federal law and State law. Advisory panels were established to give input which was made up of lawyers, harbor users, commercial operators and NTSB where staff received a lot of input. Mr. Underwood received a lot of written testimonies from those present today and has been considered. Staff made amendments to rules where they deemed needed to be made. With others they didn't make amendments. At a previous Board meeting a gentleman came in who lost his mooring permit. The way the rules are written staff didn't have the discretion to issue that permit. The Board asked us to go back to come up with a way if this should happen in the future to give someone the opportunity to get their permit back. Staff worked with the Attorney General's Office and with their direction came up with a rule that basically says "if you can show that under unforeseen circumstances." For instance say you were in the hospital or a natural disaster or something to that effect that

prevented you from coming in within the 90 day period prior to the rule expiring that prevented you from renewing that mooring permit then the Board should grant them the ability to reinstate their permit which is in this rule package as well.

Board Member Edlao asked whether the catwalk and bow stern mooring can be applied now. Mr. Underwood said staff started July 2010, but at this point staff is going to put a moratorium on it until they look at it. It could continue as written there or maybe amend the whole mooring category itself because there is no bow stern mooring in our harbors. There are Mediterranean moored vessels and suggested amending it to address that category of mooring and go from there.

Member Pacheco asked whether there are people with 2 boats sitting next to each other that are paying different rates for the same mooring. Mr. Underwood said there are, but not on the Big Island. There are a few on Maui and Oahu where staff is looking to address that now and are in discussions.

Member Agor inquired at the end of the County road at Hanalei there is a ramp and is it a County or State ramp where Mr. Underwood replied it is County.

It was also asked by Member Agor whether they can regulate tourists walking in the water and jumping into a boat. Mr. Underwood said that is where the big issue is. He believes the 9<sup>th</sup> Circuit Court of Appeals said you cannot tell a commercially documented boat that it cannot traverse over the waters. It's got the right to be there. How do we address that issue? We could do it by land by regulating how many vessels land on the beach, but if a vessel is out on the water and people walk over a sand bar to get to that vessel he doesn't believe they can prevent that. It is the County's jurisdiction regarding people walking on the water from the land and would have to address the land side activities. Those are the commercial rules that staff pulled back on. What can or can't they do? If a vessel can pull off and stay 3 feet offshore and load and off load passengers throughout the State than it will be a free for all. That is what staff wants to get a handle on in Hanalei Bay now. We have rules in front of us that we can use and we could go back and tweak it more if the community wants, but right now there is nothing. Chair Thielen said it was her understanding, and Pam (Matsukawa) who is the Deputy AG on this who would know more, under Cayetano's term commercial activity was banned on the water in Hanalei. The 9<sup>th</sup> Circuit issued a rule you can't ban under the interstate commerce clause, but she thinks the door is open to do reasonable regulation but that would get into the commercial rules and capacity limits of Hanalei Bay and what would be reasonable under Federal Laws or the State's. Pam Matsukawa, Deputy Attorney General said that we can still regulate for safety and the environment, but we cannot stop a licensed vessel from dealing with commercial activities in Hanalei Bay. The way the Hanalei rule had been amended was to regulate for safety and environment without discriminating against commercial vessels. It's not safe to have a propeller amongst the swimmers or you don't allow it. It's not only the motored powered commercial vessels that can't come in the swimming area. The rule is intended to regulate for safety and the environment even handedly. And, it also addresses who can land on the ground. If you're offshore and you have a Federal license to do commercial activities we can't stop

you from using your vessel there and letting people walk through the water to get on your vessel.

Chair Thielen said you get into questions whether you can regulate the capacity of the bay for numbers that would come under the commercial rules which are still under discussion. Mr. Underwood said that staff did put some capacity into these rules which they are now and is working to date.

Member Pacheco asked Mr. Underwood to explain that these (rules) have been in the process for 10 years and there was a series of informational meetings that happened throughout the islands associated with this whole rule package and he also wanted to know what kind of turn out there was because a lot of people contacted him through written testimonies that there is a need for another round of informational meetings for the whole package and to give him a wrap up of how those informational meetings went? Mr. Underwood agreed and reported that staff was compiling this package for some years now. They got to the point with what they felt they needed to go forward with at that time reminding the Board that was when staff came before them for the Recreational Renaissance Plan and as part of that outreach staff went out to statewide meetings and met with the community. Ads ran, the PIO office put out notices and staff went out. Part of that were the mooring fees, vessel registration fee as well as the rest of the package and they completed the first two. The Chair requested staff to set up advisory panels to get in input. Staff put up notices throughout the harbors – if anyone is interested sign up and staff will notify you of these meetings where they held several. Staff created a bulk e-mail list and sent all the rules out. This was all in addition to Chapter 91 which was in addition to all the other requirements to try to get the rules out there. People have been contacting him constantly on these rules. Various attorneys from various islands call him representing their clients because they knew these rules were out there requesting certain things. Some of their attorneys' recommendations are in these rules. They had a lot of comments on the rules such as movement of the vessel. Part of this is defining what a dormant vessel is. We're saying a vessel has got to move once a quarter and that's 1% of the year where the boats move out of the harbor. According to the Hawaii Revised Statute it's very clear on what the use of those vessels in our harbors are supposed to be which is actively navigated outside the confines of the harbor. Clearly they are not. Basically it's a parking lot, its wet storage and some of it is housing. We are trying to get back into what the intent of the Legislature is. No body can say they don't know about these rules. That is not right. It's been on the DLNR website. Staff updates it every time there is a revision. People will call asking for the rules and staff will send it to them always accommodating them.

Member Agor asked if we are allowing a minimum number of permits like 5 how are you selecting them. Mr. Underwood said it's normally done by wait list. For Hanalei Bay what staff wrote into the rule was there were 3 operators that were part of that 9<sup>th</sup> Circuit Court of Appeals lawsuit. Those operators that were in business or were permitted in November of 2000 have the first right to those permits and from then on staff would do it by wait list. Member Agor asked not by lottery. Mr. Underwood answered in the negative that it went back and forth and there was a lot of opposition to that (lottery).



Barbara Robson and Carol Wilcox from Hanalei where Ms. Wilcox testified relating some family history at Hanalei. She was part of the 1976 North Shore planning process and subsequent updates. She sat on the ad hoc meeting for the North Shore Boating Plan. She was the Coastal Zone Management Planner and helped shepherd through the Hanalei Estuary Management Plan. Ms. Wilcox is testifying on the rules that refer to Hanalei which is Section § 13-256-39 and her recommendation to the Board is to withdraw this section and deal with it separately. The issues here are who has jurisdiction and who will take the lead responsibilities of the commercialization of Hanalei Bay and Beach. What you decide here will affect every place else in Hawaii because if the boats can have commercialization in Hanalei they can do it anywhere. These proposed normal rules assume the Department of Land and Natural Resources will take the lead. And, they also seemed to assume the commercialization of Hanalei Bay is a permitted activity and she thinks there are some problems with those assumptions.

- 1) That over this long period of debate on these issues in Hanalei it is her opinion that the Legislature and administration court decisions is that the County should take the lead in planning the level of commercial activity, if any, in Hanalei Bay and the North Shore generally.
- 2) That any level of commercial activity which expands over the Hanalei Estuary Management Plan limits will trigger an environmental impact statement.
- 3) These rules ignore the intent of the County that history shows to minimize to the maximum extent possible of commercial activity in the North Shore in the water.

To support these conclusions, she thinks the Department is in support of these by its action last year by turning over the beach area around Black Pot Park to the County. There was discussion on the Board at that time on the intent and said it was so the County could manage for recreational purposes and it was made clear at that time it would not be for commercial purposes which was part of the set aside or action that it was. Subsequent to that the County of Kauai initiated the Black Pot Park Plan to deal with all of these issues. There is a process now. The community has met with DOBOR and other County Representatives to draft language in anticipation to what these rules would look like. Ms. Wilcox understands that language which has been agreed to or discussed by the community has been recently deleted and submitted the language that is before the Board today. This is problematic both from a procedural and consequential point of view. It was suggested they could revise this language during the course of these hearings for these rules; however, the difference is so great that the changes if it went back to the original would be so significant would probably have to go back out for hearing again. Ms. Wilcox suggested taking the issue of the North Shore out and deal with it separately. And, to put out the implementation of these rules, if they were to pass, an implementation of giving out additional commercial permits would trigger an EIS. The human, financial and economic cost has been enormous. She believes this is the opportunity to rectify a lot of damage that has been done in our community as a result of previous actions and decisions. Ms. Wilcox conveyed the history of this area since 1976. These rules as they stand are not collaborative and would tear their community apart again. She urged the Board to remove this section from the rules and to proceed with them separately. Ms. Wilcox left a copy of her testimony with the Board.

Barbara Robson representing the Hanalei-Haena Community Association testified requesting to remove the proposed amendments to HAR § 13-256-36 and 39 because these two sections relate to Hanalei Bay which she highlighted in their written testimony. Ms. Robson referred to Exhibit A and Exhibit B. After the community worked 2 years on the rule changes that were tossed out they believe this is opening the doors for commercialization of Hanalei Bay. The proposed rules promotes commercial interest over recreational interest and conflicts with DLNR's public trust responsibilities. She related some background information between the community and DOBOR, but this latest version disregards everything the community did.

Chair Thielen asked Mr. Underwood that he mentioned earlier that staff brought the community's proposed rules to the AG's Office and they said we can't do that. What came out in August 2010 is the revise rule from the AG's Office after looking at what was proposed. Mr. Underwood confirmed that. Chair Thielen said the question for the Board is whether they want to move this section of the rules forward for public hearing now or not. What she would like to do is address that question. Ms. Robson said there was a lot of back and forth between the community and DOBOR. Chair Thielen suggested let them get to that first question and let them work on their written testimony because the point by point is only going to be relevant if it goes out for public hearing.

Member Goode asked what the date was for that court decision. Ms. Robson said December 2001. Chair Thielen said there was a court decision in 2001 and these rules were in the works for some time as Ed mentioned. When it got down to the final versions from the community the AG's Office took a look at it and said in light of that court decision there were certain things that the Department can and cannot do. What was brought before the Board today was that detailed discussion was not brought back to the community and that community has some concerns with moving this version of the rules forward.

Member Agor was concerned if they take this portion out where do they go from here? Will it take another 2, 3, 5 years and in the meantime there is going to be abuse. He would like the County to get involved and come up with their solutions. At that public hearing we'll hear from our legislators and our mayor to pull it out. Certainly we can look at that. Ms. Robson said one of the problems is when you get to the point of a public hearing there is a time limit of 3 minutes and there isn't enough time to go over and discuss that which is why they wanted to pull it out, discuss it and then go to public hearing. Member Agor said he was going to volunteer to meet with the North Shore people between now and the public hearing to act as liaison between the community and DOBOR so we can have something comprehensive at the public hearing. The Chair suggested what would help that discussion is we would be supportive of funding the Deputy AG to go to that hearing, if she is willing to go, because she thinks this will be the lawyers talking about what they agree on or disagree on, but probably having that prior to the public hearing on Kauai. Member Agor agreed. Chair Thielen said one of the concerns is this is amending existing rules on the books. Without them the status quo rules apply and they may not be able to do the limitations that are wanted. It still gives us

the option when people are sitting down and things get amended to do it before the public hearing then it may not trigger another public hearing after that. If it looks too complicated then drop it out. Not saying that it will go forward to final rules over community opposition, but to allow the process to start and maybe have some extra work done with extra people at the table on Hanalei Bay rules before we get to the public hearing on Kauai.

Ms. Robson referred to items #10 through 15 that these are specific examples of what are in the existing rules and what are in the proposed rules. When we read that we see the whole thing being opened up potentially for commercial use. Currently, there are specific areas for commercial use and the commercial use is going to impact the recreational use. We're concerned with the people who live there and the people who come for recreational purposes being driven out of the water by commercial people like surfboard schools, etc. The Chair agreed and said we lost our Deputy AG who had to go to another meeting. That is the one that needs to be in there with you explaining why. Are we getting the advice about what has to be in there because of the court case? It's your attorney in there to say did you consider this? At the end of the day we have to listen to the Deputy AG, but we have the choice. We are not going to amend the rules. At least then that information comes back to us. Ms. Robson noted one of the issues with #17 and 18 on the list is this landing on the shoreline without a permit. She related 205A regarding going to court and right now it's in an ingress, egress zone. And the wrong definition is being used in the proposed rules. They will be in touch with Member Agor.

Stephen Holmes has a yacht at the Ala Wai Yacht Harbor since 2005 testified reiterating that there was no community meeting or input. He related difficulties of taking off from work for the yearly run to run his boat having to take off days to get 1 run done. There is no haul out facility to fix their boats. Staff is not enforcing existing rules where some boats never move once a year and staff hasn't billed the current boat owners since June 2010 because staff is overworked.

Chair Thielen said the law requires active boats in the harbor and asked Mr. Holmes whether he had an alternative approach that could be managed by the harbor staff. Mr. Holmes suggested a turn around in the basin is doable, easier and safer. Also, as of July 15<sup>th</sup>, 20% of the temporary boats exceeded their 4 months stay to over 6 months. The Chair said tell us what you want changed and she understands many of you have concerns like this – rules not being enforced – but understand in some cases these rule changes are going into place because the courts have ordered us too. In some cases it was a request of people. And, yes they will always be dealing with the issue whether staff can enforce everything they have in place, but the example they are looking for and what is most helpful is if I don't think a buoy run is helpful here is a better alternative. Mr. Holmes said that the community would love to work with you and make things better.

Chair Thielen suggested at the public hearing come with written testimony and have the specific changes that you would recommend putting into those rules and send a copy to our Board Secretary so the Board members get it as well. That is the specific input you can have through the public hearing process. Mr. Holmes agreed that they can do that.

Another rule – can't stay aboard pass 10 pm - he asked who is going to enforce this which doesn't make sense to create rules you know you can't enforce. He opposes the rules as are they exist now and this needs to be dealt with on a more specific level as they go forward. Have more a community input process. Member Pacheco asked whether anyone from his group was involved in the informational process. Mr. Holmes said he would have to ask Janet Mandrell, but Mr. Underwood says these rules have been around for 10 years and Mr. Holmes has been around for 5 years and heard nothing about them. The Ala Wai Association meets at the Hawaii Yacht Club once a month who deals with the drug issues, bringing HPD down, but as a group they have not met Mr. Underwood. Many of these public meetings are held during the day when it's difficult to get out. Chair Thielen suggested putting in specific comments, the alternatives and send a copy to the Board Secretary as well as at the public meeting if these go forward to public hearings and those alternatives would be very helpful.

Bruce Lenkeit testified that he lived at the Ala Wai since 1965. He related the buoy run rule, an existing rule that says you have to get your boat underway within 30 days. Don't have to create a new rule. He has a girlfriend who can't live with him because of the current rules and asked the Board to pass 13-230-21 under the definition section on personal partner. The second section 13-231-26(E) which is allowing a person on a habitation permit is underlined incorrectly and eligible for parking 13-233-29(A)2. It was nice that Mr. Underwood allowed the habitation permit, but did not allow the parking. Right now DLNR comes around midnight shines lights in the boat to get everyone up to see who is sleeping in there. Chair Thielen said the rules are what they are until they change them. They don't want to govern people's personal behavior, but there is a lot of illegal transfer of slips going on and they agree to fix it. They will take Mr. Lenkeit's testimony in support of this and will go back and look at the underlining and will work to make these changes as fast as they can. Mr. Lenkeit expressed to the Board to please look at these rules – pass the good ones, throw out the bad ones because there is so much duplication. Mr. Underwood has come down and talked to them, but it is a waste of time. The Land Board is there savior. They are trying to make the harbor a better place.

Bill Mossman a slip holder at Keehi since 1979-2002 testified that there is an alienation problem between DOBOR and the customers it serves. Mr. Underwood and his staff welcomed their input, but only 5% actually get realized. It's one thing to say you are listening, but largely there is nothing done about it and is a waste of time. These rule changes should be held up because there are a lot of bad ones. He questioned what the crossed out paragraphs are amending? Mr. Mossman referred to a West Hawaii Today article he distributed and his written testimony. He calculated out the number of hours required to do a buoy run. The 90 day requirement should be deleted. Parking for cruise ships is \$1 a trip and is probably the lowest cruise ship passenger fee in the world. Chair Thielen said that they have his written testimony and if he wants to give more he can. If the Board decides to go to a public hearing they welcome any written testimony and encourage testifiers to come up with alternative suggestions. In regards to Mr. Mossman's earlier question on the section that was struck out that item has been removed

from the recommended rule changes due to the moratorium to go back for further discussion which was part of the presentation that Mr. Underwood gave.

Dave Cooper has a boat at the Ala Wai who testified that he has been to a number of harbors around the world and that Hawaii has the most challenging rules and regulations. He related to Chair Thielen that they sent input on 60 different issues on the rule packet to Mr. Underwood and not one was addressed. The Board has his written comments and suggestions. He does not support the rule package, but welcomes public informational meetings. 1) Changing the word "shall" to "may" regarding issuing of habitation, slip, mooring permits and inspections on all sections of this document needs to be changed. Changing the word to may could allow DOBOR not to issue permits as timely as they do today. 2) Changing the definition of 13-230-8 buoy runs to see if a boat is seaworthy. A barge is seaworthy, but doesn't meet the terms of a recreational boat and to reconsider the use of the word "seaworthy." There is no staff on duty when he takes his boat out on a Sunday and when he returns the following Sunday and he would have to make an extra run during staff's working hours which makes no sense. It takes a full day to prepare a crew for a full run. 3) Introducing mandatory boater education. He questioned the justification for this. In 2008, Hawaii had 5 boating related drownings. Hawaii boaters are more respectful which comes with living on the sea. Further study needs to be done to see if these issues are being covered. Mr. Cooper proposed and reiterated having a series of open public information meetings. He suggested cleaning up the document so that it reads correctly and he recommended deferring this package in its entirety.

Sam Monet distributed a petition by the boaters in the Ala Wai community who are members of the Ala Wai Community Association and we have another hundred names who have also signed on. These people ask you to defer any action on any more new rules until the new administration comes to power. That's the voice of the people. I've done some research on the U.S. Supreme Court level just to take a look and see how the high court has determined on states on municipalities that have chosen not to listen to the constituents of the people under which their boards or states create rules. What the Supreme Court has consistently said is that these boards and these agencies and commissions are required to take into heavy, heavy weight and consideration the people that are directly impacted by their decisions. Ed Underwood claims that he has been listening to everything that they've been saying, etc, but along with this petition he served the Board with a request for documents – financials, things that he is entitled to. Financials, minutes of the meetings that Ed claims to have had and where he gets his information and he hasn't received anything from the Board or the DLNR and he is entitled to that information. Along with that he knows he can get that under subpoena. Some of the people who signed the petition have agreed to fund a lawsuit that they will file and serve upon some of these members especially the administrator here before the elections that this thing will continue with you long after that and that's a promise because they made it very clear that they don't like being pushed around and we're not taking it any more. Also, my research at the high court I looked up the Statute. The Statute says the recreational boat shall be taken out of the harbor on a regular basis, regular basis. And the Supreme Court has defined regular as traditional. What has been the tradition? Since 1976 the tradition of the harbors has been agreed to use. I had a

meeting with Ed and I said "Ed how do you define regular?" He goes it could be anything we want. It could be every 4 days, every 3 hours, every 90 days or once a year. I said "no, no, no, Ed. You see you're not looking at it the way the guys upstairs look at it. Their regular is traditional. What has been the tradition? The tradition has been for the last 35 years, every 2 years." So we believe that we can hold this Board and this State, feet to the fire on that one, alright, to a court of law. We believe we can get a judge to agree with us at the high court's definition of regular is traditional and traditional is every 2 years. I would like you to take into consideration that you're on the Board, we're the public, you're public servants, ok, and we are the people that are impacted. If you come to meetings you don't see 20 people stand up and say "hey yes Land Board's great these people have been the nicest folks in the world they are the smartest people on the planet." You don't hear that at any of our meetings. And you are not hearing that here right now. If you look at the way the Supreme Court looks at how to deal with decisions made at municipalities at state levels you are dealing with the public and the people that are mostly impacted. The Supreme Court has constantly said over and over and over again – listen to the people. That's your job. It's not up to you to just make rules that make you feel good and think are great. You have to listen to your constituents. And, there is one more issue at the Ala Wai I would like to deal with and again I'm going to ask you to defer all of these rule changes. Stop doing what you are doing and listen to the people. There is one more thing at the Ala Wai and Federal Courts have dealt with this a lot too. It's the super funds site at the former boat yard. Chair Thielen said Mr. Monet your 5 minutes are up and I don't believe that has anything to do with the rules. Mr. Monet said he'll go over one more thing with the rules. One minute. Marie who has worked in the office there for many, many years I saw her in the hospital in December last year while his mom was there. I asked her what has the annual buoy run done to your staff there at the office. And she was really candid well we don't have enough people to take care of it because we are under staffed because we got our hours cut because we are spending all this time scheduling, re-scheduling and for every buoy run that's a half hour that someone has to sit there. You put that into the math that's a half hour that's not a 5 minute run that's a half hour that guy has to sit there. What Marie told me was that because they spend so much time dealing with scheduling, re-scheduling and re, re-scheduling the buoy runs they don't have time to do the regular leasing paper work. They don't have time to do the purchase orders to get toilet paper in the lavatories. So it's gross mismanagement that keep piling on more duties on the people where they don't have enough time to do what they have to do.

Mark Meyer asked for clarification on Board member John Morgan who recused himself for what reason? Chair Thielen said that he recused himself because his company has a boating permit. Mr. Meyer said then he is a commercial owner and thanked the Chair. Mr. Meyer said they had an informational hearing where DLNR is telling the people what they are going to do, but they never had an open forum that would allow input from the people on what would help on some of these HAR revisions. Only what staff is going to do and no feedback allowed whatsoever. It easy to find a dormant vessel, but workers don't have the time to look around. He objects to all these new rule changes because there was no feedback from the people. He hopes BLNR will object for that reason and cited poor management.

Janet Mandrell testified that she is a boat owner for 22 years and has sat on numerous committees including the current package that she was there at the beginning of the 10 years. It was her understanding from an insider that this item was a procedural matter and it was already decided that it would pass and asked whether that was true? The Board said they still have to hear everything. The current HAR package is not ready to proceed to public hearing stage and referred to written testimony from Reg White, David Cooper and Gordon Wood to why it is not ready. There are Ramseyer format problems, issues with compound and obscure sentences and it's not clear what it means. The rules tend to be reactive to lawsuits rather than proactive and the reason why they've become so convoluted to the point that is conflicted in the rule package referring to the Bernard Morry case. Mr. Morry only wanted to renew his permit within the same month having missed the deadline by 4 or 5 days. There is a provision in the rule package that says if a permittee utilizing a property or facility fails to renew a use permit on or before the date in which it expires the applicable renewal fee costs a penalty of \$1.00 per month shall be collected from the permittee for each month or fraction of a month. The permittee is late in applying for the renewal of the permit and any other permit fee as provided by these rules. Per Mr. Underwood they can't use that rule because they have a wait list. If you give up your slip you have to give a 30 day notice and you're financially responsible for that extra month even if your boat is gone. A harbor agent doesn't know if a permittee is going to give up their slip until you give a 30 day notice or fail to renew. If you fail to renew staff has to prepare and mail you a mooring request. You have 2 weeks to pick that up and you have 2 weeks after you signed at the post office. There was always a provision in the present rules. Ms. Mandrell recommended to the Board to hold the package, go to the public and have your workshops and develop from there similar to OCCL's process.

Debbie Owen-Smith testified that she works with the Hawaii Community Stewardship Network which is a non-profit organization that empowers Hawaii's communities to care for its environmental heritage. She is here on behalf of the Hanalei Watershed Hui and she supports testimonies shared by Barbara Robson and Carol Wilcox earlier. Staff has a good collaboration between the community and the agency through conversations with Joe Borden on Kauai and it would be a shame to breach the trust that has been established by putting the Hanalei section of the rule package forward for a public hearing when the community has been blindsided by the changes they've seen to take that piece out and continue the conversations outside of a public hearings format. She understands the desire to go ahead with public hearings through the Chapter 91 process, but public hearings aren't always a great form for discussion and the community wanted to have the conversation outside of the pressures of a public hearing and have with the attorney mentioned earlier and then go to a public hearing. If you go ahead and put the Hanalei rules forward as is it will affect other good collaboration between DLNR and the community.

It was questioned by Board member Agor whether the Hanalei Public Hearing on October 13<sup>th</sup> was set. Mr. Underwood said no and explained that Joe has been working with the Hanalei community and the issue will always be DOBOR cannot prevent a

commercial boat from loading passengers from the water. They can't do it and what they did was limit the number landings on the beach which is 3 for commercial vessels. Member Agor said someone is not hearing it and he is offering himself to meet with them. Mr. Underwood said that the County has to step up there and Member Agor agreed. Chair Thielen said she understands what Debbie (Owen-Smith) is saying. They had amendments based on the advice of the AG's Office taking a look at cases on what they could or could not do and there are people in the Hanalei community who have attorneys that may agree or disagree which is not unusual and you want to get them together in the room to have that dialogue and at the end of the day the community has to understand regardless of whether they agree with what the AG's Office is advising staff and as a State agency they have to follow the advice of the Attorney General and they cannot go forward with rules if the AG's Office says it's not legal or defensible, but they want to make sure that conversation takes place. Do we try to do and do that while we are putting these rules forward for possibly be included in the public hearing or is just that effort going to create a problem if it covers those discussions? It's up to Member Agor and his relationship with that community and whether they can have an honest discussion with them with the Deputy AG there. Member Agor agreed and suggested having that conversation later than October 13<sup>th</sup> and Mr. Underwood said that was possible. If they reach a point they are not in agreement staff could pull it right out of the package and Member Agor agreed. Mr. Underwood said Joe has been doing a good job keeping the commercial guys at bay and they all know staff is getting numerous requests to run commercially out of there. Staff has told them they are in rule making, to hold off and not to issue any permits. The commercial operators are gearing up to go big next summer and it will happen. The Chair noted this is the district where they have that district court decision that says if you got rules that authorize permits then you don't have a reason to not give it. Mr. Underwood said that this gives them something to work with.

Member Pacheco asked to explain that you can't regulate people loading up on the water, but have to get on the sand bar to load up on the boat. You can't stop that. What are the landings Mr. Underwood mentioned and Mr. Underwood said it's when a boat lands right on the beach itself like Kaanapali. Member Pacheco asked what if you have a business and people run right out. Mr. Underwood said that is their fear right now because what about Waikiki Beach. If you pull up and you have a prop guard like they require and say 3 feet off the beach start loading passengers what's the issue? And, that is staff's concern which they know about because of the court case in Hanalei Bay and they can't prevent that.

Member Pacheco said that he received his BLNR binder on Saturday and the package is real hard to get through and he understands some of the testimonies that the rules are difficult. There is a disconnect between the public and staff. He suggested going out to workshops. Mr. Underwood explained Mr. Cooper's testimony where he sent in 70 revisions and staff went through point by point each item he brought up as well as the last time. Staff corrected what they thought needed corrected. This latest one the only thing that wasn't correct was there was a capital missing. They will go out and reach the same impasse and Mr. Underwood is not willing to budge on them. He is willing to change the



definition to meet our statutory mandate. They broke it down to 1% a year. He doesn't know what more Mr. Monet says it's customary and traditional. It's evident when you read the statute to running your boat once every 2 years is not what the intention is. Mr. Underwood has offered to go back to the Legislature and change it. Or go as a group and change the whole program. It's going to go through the same thing and this has been years these rules have been discussed. He referred to what they did on the mooring rules which is still not efficient because of cost. Mr. Underwood recommended moving these rules forward. If there are rules like the Hanalei Bay rules that people can't agree on then pull it from the package. We can't kill the whole thing because the Kaneohe Bay rules have to get out because the Legislature is asking staff why aren't they out? There is a lot of other stuff that needs to go.

Member Gon asked whether Mr. Underwood had a strategy for dealing with regional unveilings of these like some have Legislative pressures to initiate the process. Other places, other issues, are there portions of the rules that might not have such strident push on them. Others have long standing issues, as in Hanalei, but there are key identified problems with those with the rules versus the process that led up to today. If Mr. Underwood feels there is a strategy to deal with those that need to go forward immediately versus those that have the luxury of workshops with the users versus those that need focused meetings with particular users and issues. If that is at least compartmentalized so that it's not a huge thing all going out at once that might be an approach to it he might initiate this rule making process. It's been a long time and these rules need to be made and in some cases desperately so and in some cases not so needy. Mr. Underwood said that a large percentage of this package is Kaneohe Bay, Hanalei Bay, a lot of rules for personal partner that the ACLU requested staff amend to allow same personal partners to live on their boats and give them parking which is a lot of the rules there. There are a lot of rules either increasing or limiting the number of commercial activity permits that were issued to launch ramps as well as some of the harbors like Haleiwa Harbor. A comment came up like why did you change the time frame and make it to where you can't be on your boat from 10:00pm to 6:00am. That came from community input saying you are not addressing all these illegal live aboards in the harbor which is why staff is knocking on boats. They get a list of people living illegally on boats where they are given a warning otherwise the next time they are out. It will be difficult at this point to go through these rules and pick ones that aren't going to be as contentious. Member Gon clarified he isn't suggesting to pull out one he is suggesting Mr. Underwood have a strategy to deal with the timely ones versus the less timely ones, the ones the community are immediately ready to engage with staff to adjust and others you have the luxury to spend the next four months to working on to get right then he is willing to initiate this.

Chair Thielen said for instance this strategy on how to address Hanalei is a good strategy to address the comments today. The Kauai Board member feels he can work that strategy through Boating while moving forward then that is good. She is interested to hear from Member Pacheco whether on the Big Island people are focused on particular sections of the rules as they contact him or just general I didn't know stop everything. What she heard today for the Oahu concerns are the buoy runs. As the Board they can give some

direction while people are raising valid questions about whether the buoy run is the best way to do it. Understand that they are getting a lot of complaints from people who aren't here that are saying you have to do something about these boats that aren't regularly used because people are waiting to get into the harbor and its unfair there are people in the harbor that aren't boaters per se. What Boating is struggling for is how do they address that? There may be a direction the Board can give to staff and people who came today come up with an alternative – if its not the buoy run what is it? What Ed was saying on the statute it has to be outside of the harbors. She doesn't think those earlier suggestions of backing the boat out and coming back in would meet it. Take a look at that there will be some working group at the Ala Wai that could say if people are that unhappy with the buoy runs what is the alternative that is not going to put the staff in a situation where they are beefing with everyone who say you're picking on me its not fair and its not applying to everybody in the harbor. That could be one strategy because they are getting a lot of testimony on. Not sure if there are particular ones on the Big Island that are raising an issue because she knows Boating did take one off regarding the catwalk and staff said they would go back and look at it. And, are there other ones?

Member Pacheco said the general comments he had about a couple dozen were complaints about the informational meeting that was held at Waimea on the Big Island. Those were poorly attended meetings had only one person there and there wasn't another opportunity especially for the users, the people in the harbor to have a dialogue. Chair Thielen asked whether there were any on specific rules. Member Pacheco said the big one was the lost of permits from people not renewing and the automatic cancellations. The Chair said that is an example of what is in the rule package will help address that.

Member Pacheco explained he is not a boater. At Honokohau and even at the Ala Wai there are staffs with a working knowledge of the people and boats that are there. A boat that hasn't moved for years there's got to be obvious signs about that. Chair Thielen said the challenge Boating faces at the Ala Wai and Keehi are they are the only two small boat harbors in the State with live aboards are allowed and that makes a big distinction between those harbors and all the others. That is the challenge on how do you show that there is this regular use because unlike other places the complaint is people are using the harbor as a residence and are not really boaters. How do you find a fair way to make sure the boats are taken outside the confines of the harbor? If you want to move the rule package forward do it with the direction where these guys sit down and come up with suggested alternatives that should be fairly applied across all the people in the harbor and come back with that. If that is a substantive change – maybe drop the buoy run and do something like that separate, but that could be a strategy for dealing with an issue that the people have raised here that they recognized. There is an impasse between Boating and the people who came to testify and as the Board she thinks some of the testimony they raised is valid. What could be alternatives? We don't have to figure out today. Throw it back at them. She thinks the people who testified today it's a valid concern of Boating. There are some people in that harbor that are not going out. How does Boating do it when they say to a person who comes in and says I'm going to sue you because you are coming at me arbitrarily and its discrimination? We can say we have a rule that applies

to everybody and we make everybody go through this. That is the challenge that goes back to the group.

Mr. Underwood said what they are changing is the definition of a dormant vessel. Right now as the rules are written it shows if you show activity on the boat. Someone can say I was on the boat last night and had some activity, but staff wasn't around. They will change the definition to make it clear the boat needs to move. Staff does a daily harbor check and they know exactly what boats are moving, but they need to clean up the definition so when they come forward with the shore clause order. Mr. Underwood made it clear that staff doesn't have to see the boat move. Staff is not going to go look at it because they can tell. It's up to the permittee to show according to the rule which is the first rule in the Boating Rules, the dormant vessel rules; they will have to show how they are using their boat. Chair Thielen said the testimonies that came in today about buoy runs had some valid points and what she would say if they just do nothing – nothing is going to happen. If we say lets hold back nothing is going to happen. If we say go forward with public hearings and direct the staff and the people who came in to testify to come up with some alternatives and if the AG's Office says the alternative is not a substantive change it can go in and if the alternative are a substantive change when it comes back to the Board we will ask what were the alternatives and if they like those better to take those back out for a public hearing and don't pass the buoy run. What they are being asked to do is do nothing and if they do nothing people aren't happy with the status quo either. They have had complaints from people asking staff to do things in these rules and including some people who came forward today who talked about the personal partner and that talked about the ability to give people a grace period.

Member Pacheco asked this will go out to public hearing and come back to be presented to the Board then the Board is able to piecemeal out specific sections. And approve them or not approve them as opposed to the whole rule package? Chair Thielen said maybe they should have their Deputy AG speak. The question is if they approved some of what went out to public hearing and not others that's not a substantive change, is it? Colin Lau, Deputy Attorney General said it's basically based on whether it's allowed at the public hearing. The public was given notice to comment on the proposed rules and based on public comment you could remove a rule. But, putting in a new one can get back to problems. What were sent out for rule making? A substantive change to the language of the proposed rule change might have to go through the whole process again. On the other hand, there might be a small typographical problem which could be amended.

Chair Thielen said an example. They are going out with a package rules 1, 2, 3 and 4 where they go out to public hearing. Rules 1 and 2 have changes, but they want to pass them. Rule 3 people say we understand what you want to do, but they think that is a dumb way to do it here is an alternative and the alternative is a substantive change. They cannot pass that substantive change and send that back out for a separate public hearing to come back again. Rule 4 people don't like it and not to pass it and the Board doesn't pass it, but the Board could still pass rules 1 and 2. Mr. Lau acknowledged that.

Member Pacheco said that staff makes daily visits around the harbor and they know which boats don't move. He knows at Honokohau when people come up for their renewal and before they do the renewal they have to do a buoy run which is an annual thing. Mr. Underwood said the reason that came about was it came to staff's attention that the marine surveyors that were hired to do the vessel inspections were collecting the cash and filling the papers and that was evident on all the islands. They said you'll have to move your boat once a year to renew your permit. But, what they are proposing for the dormant vessel is they have to clean up that definition. With staff you don't have to make an appointment because staff can tell which boats are moving or not. There are boats in Lahaina Harbor that have barnacle growth all over the prop and you know they aren't moving. Now they have the ability to follow the first rule in the book. Member Pacheco asked if you know there are boats not moving why are they still there. Mr. Underwood said because the rule says all you have to show is activity and staff gets I was out there last night working on my boat, but you weren't working or it was a furlough or weekend. The Statute is clear – you have to be using your boat and have to move your boat. There are people who come once a year for the buoy run and tie up their boat and leave for the rest of the year. That is in violation of the law. If the Board wants to change it he is willing to go to the Legislature and just change it.

Member Pacheco said if he has a boat and a slip and only runs his boat once a year, but my boat is kept in good condition and I can take it out when I want. Are you telling me I would be violating the law in that case? Mr. Underwood said and our rules. The occupancy of births in any small boat harbor or off-shore mooring shall be limited to vessels actively used as a means for transportation on the water. If you want it to interpret actively for once a year you could, but he doesn't believe that was the intent and that rule came specifically from the statutes. If you want to amend the statute they can. Mr. Underwood read the Statute: "State small boat harbors are constructed and maintained and operated for the purposes of recreational boating activities, landing of fish and commercial vessel activities. For the purpose of this section recreational boating activities means the utilizing of water craft for sports, hobby or pleasure and commercial vessel activities means the utilization of vessels for activities or services provided on a fee basis. Only vessels on good material and operating condition that are regularly navigated beyond the confines of the small boat harbor and which are used for recreational activities, the landing of fish or commercial vessel activities shall be permitted to moor and anchor in such harbor and use such activities regularly." Some people interpret regularly as once every two years, some once a year. The intent is for people to be using their boats. If you are not using your boat there is wait list for other people to get in there and use it. Member Pacheco said using your boat is not necessarily going out spending an afternoon on your boat, cleaning it and using it. Mr. Underwood said not according to the Statute or the Rule and that is why they are cleaning up the definition. But, if you want to change it the first place it needs to be changed is at the Legislature.

It was asked by Member Goode whether DOBOR has submitted for changes in the last 10 years for regularly navigating. Mr. Underwood said not on this one and this is to amend this particular rule. Chair Thielen said that it would be a policy call that would

come up for the Department and she wouldn't support it. There are a lot of people at the harbors that want to be active boaters. Or why would you have a harbor? State boat harbors are not charging the same as private harbors. They are trying to make ocean recreation available for everyone. Why would someone fly in once a year for their third vacation home? Why would you do it where you're operating a harbor where in some cases it becomes low income housing because it is very inexpensive to live there? What you are looking for are active boaters. People may or may not agree with the Rule, but you'll get a bunch of comments on it. You want to direct it in a manner to go forward to have specific discussion either on particular rules or particular regions. And, if you got questions coming from the Big Island, like Member Agor will lead discussions on Kauai to have on the Board level somebody there to give the input, to hear the conversation and come back to make informed recommendations to the other Board members on what to do on the rules that's an option to.

Member Pacheco asked whether there was a way to break these rules down into pieces and put them out in multiple periods is not practical. Chair Thielen said what they can do you may get the same people coming to five hearings and that is frustrating for them. You can get the comments to come in and then the Board would decide on the Rule based on the comments whether to send it back for further discussion, do we not pass them or do we want to pass them? She thinks the other thing we'll ask for is for all the comments to be sent to the Board members as they come in so they can read them after each hearing.

Member Gon said he would only be comfortable approving this particular item if we have the option of accepting sections of what goes out after public comment comes back. Chair Thielen said counsel confirmed that. Member Pacheco said he wasn't aware they could do that.

Member Pacheco asked what the public hearing schedule was on the Big Island. Mr. Underwood said first they have to go to the Small Business Regulatory Review Board and then the first public hearing, if it's approved, in mid October the week of the 11<sup>th</sup>. Member Pacheco asked whether two meetings one in Kona and one in Hilo were scheduled. Mr. Underwood said they didn't schedule one in Hilo, but they can. They scheduled it mid-way to accommodate both sides. Then they go back to the Small Business Regulatory Review Board and then come back to the Board again with those comments. Staff would come with all the comments with what people are suggesting. Like the Deputy AG said if there are too substantive they would have to pull that Rule and go through the process again. If it's a minor change they can leave it in the rule package.

Member Edlao suggested if this does come back to the Board to have a meeting specific to this alone. There was some discussion on how to do that. Chair Thielen said Department of Home Lands has two day meetings. Member Goode said he can deal with the rules in a one day meeting and he can serve the public and all their interests better all at once. Chair Thielen suggested staff to give the Board members the comments as they come in at the meeting. Don't wait until after staff has reviewed them. The Board will

get all the comments at the time of the public hearing and then get staff's submittal which means the Board will have extra time and you can feed your comments back to staff on what your concerns are.

Board Member Pacheco said he didn't feel having the public meeting in Waimea is sufficient because of the distance from Hilo and South Point that he had heard from the public they weren't happy with that. He understands times are tough, but he encouraged having 2 meetings – one in Kona and one in Hilo which Mr. Underwood agreed with.

Member Edlao said that is why they need the public comments on certain areas like the Ala Wai, Hanalei which would be more focused.

Member Goode said he was in favor of amending the rules and to defer the Hanalei ones. We have 60 days to figure it out. If staff can meet the time schedule he is ok with it. The Chair suggested staff work with Member Agor on pushing the hearing date back on the Hanalei ones to give more breathing room. Let Pam (Deputy AG Matsukawa) know that they are willing to fund the cost for her going there (Kauai) if she would and she could give the AG's interpretation on why those changes were made and see what other options come up that she could give her initial feed back on.

Chair Thielen said that some of the comments on the buoy run were valid comments, but going back to the people who made the comments she asked that staff work with the Ala Wai folks. What we need is an alternative to get outside the harbor and can be applied across the board. One of the challenges staff faces is going to 1 boat versus all the boats is arbitrary and capricious which is a hard one to defend and in any of these cases where we take action against somebody we will have to defend it. If you don't like the buoy run what is an alternative that could be applied to all the boats across the board.

Member Goode made a motion to move this forward adding the caveat if this does come back to the Board the meeting will be just on the rules. Member Agor seconded it. All voted in favor and the motion passes.

Chair Thielen summarized that they will start the process subject to the recommendations that the Board members gave.

**Unanimously approved as amended (Edlao, Goode)**

**To hold additional meetings at Ala Wai, Hanalei and to hold meetings at Hilo and Kona. And, when this item comes back to the Board the meeting will be only on these rules.**

Member Morgan departed.

**Item J-1      Approval for the Award of Contract IFB 10-010-05 Refuse Collection Service for the Oahu Small Boat Harbors**

Mr. Underwood said it is at the AG's Office waiting for approval.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item C-3      Conservation District Use Permit Approval for the Laupahoehoe Nui Watershed Conservation Project by Kohala Watershed Partnership for Laupahoehoe Nui LLC at Hamakua District, Island of Hawai'i, TMK: (3)-4-9-015:001.**

**Item C-4      Subject: Request Approval to Issue a Request for Proposals and Authorize the Chairperson to Award and Execute Contracts for the Management of FY2011 Statewide Youth Conservation Corps Program (RFP YCC11)**

Mr. Conry reported no changes to Items C-3 and C-4.

Member Gon disclosed the same situation with Item C-1 applies to Item C-3.

**Unanimously approved as submitted (Pacheco, Gon)**

**Item C-5      Request for Approval to Solicit a Request for Proposals for Revocable Permit or Lease of a Portion of Kuaokala Game Management Area, Oahu, for Cattle Grazing for the Purposes of Game Bird Habitat Improvement; Renew the Revocable Permit Issued to Diamond K, LLC on Month-to-Month Basis for One Additional Year; Kuaokala, Waialua, Oahu; TMK (1) 6-9-003: Portion 002**

Mr. Conry communicated that the Diamond K Ranch is reorganizing changing their title to Diamond K Ranch, LLC and he related some background. They will enter into an RFP and ask for an RP later.

Member Gon asked whether this area includes the bird nesting area and Mr. Conry said it did not.

Chair Thielen asked this request is for an RFP process and because it is close to Kaena Point and suggested what she would like to see in that RFP is some way of putting in requirements for responsibilities or greater credit to applications to things that the Department is trying to do in surrounding areas. When you develop the RFP make it clear to applicants that they must provide those types of activities that will help the Department in the surrounding areas. Mr. Conry said that the reason they are doing a RFP is because this is not for cattle grazing RP. They will have requirements including the bird hunting going on which is why the RFP is appropriate. This is way above the State Parks. Chair suggested DOFAW give a higher ranking for proposed activities. Member Gon summarized for staff to include proposed activities compatible for the surrounding area including the State Park and NAR. That would be great.

**Unanimously approved as amended (Edlao, Goode)**

- Item D-12**      **Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key:(1) 2-3-037:portion of 021.**

Mr. Atta asked to correct term from October 2011 to September 2011 on page 3, 1<sup>st</sup> paragraph.

**The Board:**

**Amended the submittal by correcting the effective period for the permit by changing the termination date from October 2011 to September 2011 on page 3, paragraph 1 of the submittal. Otherwise, the Land Board approved staff's recommendations as submitted.**

**Unanimously approved as amended (Edlao, Goode)**

- Item D-1**      **Approval in Concept of the Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Approximately 11.66 Acres for Addition to the Puu Ka Pele Forest Reserve at Waimea Valley, Waimea, Kauai, Tax Map Key (4) 1-5-003: 001.**

**Request to Conduct a Public Hearing Regarding the Additions of Approximately 11.66 Acres to the Puu Ka Pele Forest Reserve at Waimea Valley, Waimea, Kauai, Tax Map Key (4) 1-5-003: 001; and, Approximately 52 Acres to the Lihue-Koloa Forest Reserve at Wailua, Lihue, Kauai, Tax Map Key (4) 3-9-001: portion of 002.**

- Item D-2**      **Sale of Lease at Public Auction and Issuance of Revocable Permit to Jeannett V. Martins for Agriculture and Pasture Purposes, portion of Kapaa Homesteads, First Series, Kapaa, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-6-03:22, 23. (KDLO) Marvin**

- Item D-5**      **Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc., Mauna Kea Beach Hotel, Ouli, Waimea, South Kohala, Hawaii Tax Map Key: (3) 6-2-02: portion seaward of 04.**

- Item D-6**      **Amend Prior Land Board Actions of February 11, 2010, Item D-5, Cancellation of Revocable Permit No. S-7315; Issuance of New Revocable Permit to Gary L. Davis for Pasture Purposes at Lalamilo, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-6-01: 5, 9 & 11.**

- Item D-7**      **Rescind Prior Board Action of May 11, 2007, (Item D-7), Quitclaim of State's Interests, if Any, in Former Road Right-of-way to the County of Hawaii, Kailua-Kona, North Kona, Hawaii, TMK: 3<sup>rd</sup>/7-5-22:175.**

- Item D-8**      **Amend Prior Board Action of October 8, 2004, Item D-14, Grant of Perpetual, Non-Exclusive Easement to Honomalino-Okoe Community**



**Association for Access and Utility Purposes at Honomalino & Okoe, South Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 8-9-03: portions of 1 and 83, and 8-9-05: portion of 2.**

- Item D-9**      **Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Milolii Landing Purposes, Milolii, South Kona, Hawaii, TMK: (3) 8-9-04: 19.**
- Item D-11**    **Set Aside 0.612 acres, more or less and Issuance of Immediate Right-of-Entry to State Department of Transportation, Highways Division for Highway Purposes, Honoapiilani Highway Realignment, Phase 1B-1, Federal Aid Project No. NH-030-1(38), Kauaula, Lahaina, Maui, Tax Map Key: (2) 4-6-014:001 por.**
- Item D-13**    **Cancellation of Revocable Permit No. S-5545; Issuance of Revocable Permit to Joseph J. Hines and Elaine Nickie Hines, Waimanalo, Koolaupoko, Oahu, Tax Map Key:(1) 4-1-018:050.**
- Item D-14**    **Issuance of Revocable Permit to Fireworks by Grucci, Inc. for Aerial Fireworks Display at Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-057:seaward of 017.**
- Item D-16**    **After –The –Fact Extension of Lease Term for General Lease S-4259, (Contract No. DACA84-5-70-16) to the United State of America, Department of the Air Force, Waimea, Kauai, Hawaii, TMK: (4) 1-2-001: 009**
- Item D-19**    **Issuance of Revocable Permit to Maui's Original Hawaiian Corporate Games, Inc. for the UNIVERA Sand Sculpting Event, Wailea, Maui, Tax Map Key: (2) 2-1-008:seaward of 059, 089 and 109**
- Item D-20**    **Issuance of Revocable Permit to Valley Isle Masters Swimmers for the 25th Annual Maui Roughwater Swim, Polo Beach, Wailea, Maui, Tax Map Key: (2) 2-1-011:seaward of 001**
- Item D-21**    **Issuance of Revocable Permit to MC&A, Inc. for a Beach Activity Event at Fleming Beach, Kapalua, Maui, at Tax Map Key:(2) 4-2-004: seaward of 015.**

**Unanimously approved as submitted (Gon, Goode)**

- Item L-2**      **Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 45 - Helemano 11 Reservoir (UOA-2010) Wahiawa, Oahu**

**Unanimously approved as submitted (Edlao, Goode)**

- Item L-1      Certification of Election and Appointment of Soil and Water Conservation District Directors**
- Item L-3      Approval to Execute Supplemental Contract No. 1 to the Agreement for Professional Services, Contract No. 58307, for Job No. D00AO67A, Kawai Nui Marsh Levee Project, Oahu, Hawaii**
- Item L-4      Authorization to Enter Into a Inter-Governmental Agreement Between the State of Hawaii and the County of Hawaii, Department of Water Supply, Regarding the State of Hawaii's Participation in the Development of the Waimea Well, Waimea, Hawaii**

There were no changes.

**Unanimously approved as submitted (Agor, Gon)**

- Item E-2      Request Approval to Enter into a Memorandum of Agreement between Department of Land and Natural Resources and Hawai'i Maoli to Undertake Driveway Improvements at the Royal Mausoleum at Mauna'ala, Nu'uanu, O'ahu (TMK: 2-2-021:012).**
- Item E-3      Consent to Assign General Lease No. SP-0174, Thomas J. and Annette C. Cassidy, Assignor, to Kapua O Ka Maile Janai, Assignee**
- Item E-5      Requesting Approval for the Issuance of Revocable Permits that will be Negotiated and Executed by the Chairperson for the Collection of Parking and Entrance Fees at State Parks Until Such Time that Contracts Awarded through a Public Procurement Process are Executed for the Same Purpose.**

Curt Cottrell representing State Parks had no changes.

**Unanimously approved as submitted (Gon, Agor)**

- Item M-1      Authorizing the Department of Transportation to Dispose of Portion of Parcel B (AMB-1) and Dewey Lane Remnant (PR-1), Honolulu-Pearl Harbor Road, Federal Aid Project No. U-44(9), Kalia Section, at Kalia, Waikiki, Honolulu, Oahu, Hawaii, Abutting Tax Map Keys (1) 2-6-09:002 & (1) 2-6-09:003.**
- Item M-2      Authorizing the Department of Transportation to Dispose of Remnant H, Federal Aid Project No. 8-G, Tax Map Key No. (3) 8-2-10:ROAD.**

**Unanimously approved as submitted (Agor, Goode)**

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 (Pacheco, Edlao)**

There being no further business, Chairperson Thielen adjourned the meeting at 5:22pm. 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:

  
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Laura Thielen  
Chairperson

Department of Land and Natural Resources