

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

DATE: THURSDAY, MARCH 24, 2011  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.  
David Goode  
Jerry Edlao  
Rob Pacheco

Ron Agor  
John Morgan  
Dr. Sam Gon

STAFF

Russell Tsuji/LAND  
Ed Underwood/DOBOR

Sam Lemmo/OCCL  
Paul Conry/DOFAW

OTHERS

Linda Chow, Deputy Attorney General  
Harry Yada, K-1  
Dave Cooper, J-1  
Janet Mandrell, J-1, J-2  
Joel Laber, J-2

Ken Fujiyama, D-1  
Henry Eng, K-2  
Bruce Lenkitt, J-1  
Representative Evans, J-1

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

A number of written testimonies was received and distributed.

Member Pacheco arrived about 9:55am. Member Goode departed at 11:30am. Chair Aila departed 11:53pm.

**Item A-1 February 25, 2011 Minutes**

**Item A-2 March 10, 2011 Minutes**

Chair Aila said both Items A-1 and A-2 was not ready.

**Item D-1 Request to Reduce Performance Bond Requirement, General Lease No. S-5844, Hawaii Outdoor Tours, Inc., Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-1:12, 2-1-5:13, 16, 17, 27, 32 & 46.**

Russell Tsuji representing Land Division reported that this item is regarding the Naniloa Hotel to reduce their performance bond which is equal to two times the annual rent and a base rent of \$500,000 a year and if you go above that, it's 2% and currently the applicant has been paying base only. The Lessee is asking to be able to reduce that down to having a performance bond for only one year instead of two or instead of a million, a half million which is the annual base rent for the year. It's explained in Exhibit B for the reasoning of the Lessee's request. A couple meetings ago we did reduce our shopping center performance bond down for a good tenant. There have been several notices of default for rent which all cured in the past in a timely manner. In this instance there is rent due currently and the Lessee is asking if this Board were to grant the request the half a million dollars that would be released would pay for the rent this year.

Ken Fujiyama representing Hawaii Outdoor Tours, Inc. testified that the economy is terrible that they looked at bond issue the previous year and they put up a million dollars cash instead of a letter of credit or a bond from an insurance company and primarily because it costs money on an annual basis. This bond is for non-performance by the lessee, but is tied up for 60 plus years and they have a 65 year lease and to him it was a benefit to the State and to us if the monies could be utilized faster. They prefer using the whole thing issuing it as prepaid rent. They are requesting that half the bond come up which would be used for this year's first and second payments for the whole year which would help us in our cash flow also. The company anticipates it to be a good year. He related increases in occupancy this year and he asked to grant their request.

Mr. Tsuji said from staff's perspective he wanted you to have some form of deposit by performance bond and we feel a half millions dollars as performance bond is equivalent to one year is more than adequate in the event of a default through that process. He had recommended changes he wanted to place on the record. Staff is requesting amendments to page 3, paragraph 3 – replacing six months with one year and on page 4 under the Recommendation, first paragraph where it says six months it should say one year.

**The Board:**

**Made amendments to page 3, paragraph 3 by replacing six months with one year and on page 4, Recommendation: That the Board reduce the performance bond required for General Lease No. S-5844 to an equivalent of six months with one year.**

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

**Item K-1 Conservation District Use Application (CDUA) HA-3581 for the Installation of a Water Transmission Line and Access Road by the University of Hawaii-Hilo, Located at Puako, Lalamilo, South Kohala, Island of Hawaii, TMK: (3) 6-6-002:045**

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed that this is related to the Kalakaua Marine Education Center developed by University of Hawaii at Hilo and currently has a 65 year lease for the site. They came in previously and received a sub-division for the purpose of developing the education center. They are going through the planning and entitlement process to develop this facility which is in the urban land use district. They would like to use the area as a temporary summer camp to support quantitative underwater ecological survey techniques sort of work camp during the summer. In order to get to the site they need to clear a road over the conservation area and put in a temporary water line which is what they are here today seeking our approval to do. Staff looked at the case and we have no problems with what they are proposing and we recommend approving it subject to a number of standard conditions. One amendment he made if the Board should bring it forward is to delete the condition on "the hold harmless" condition. Generally, we don't indemnify other State agencies, but sometimes we have standard conditions that they slip into which is condition #2. Deputy Attorney General Linda Chow acknowledged that.

Member Gon asked whether this area was affected by the tsunami. Harry Yada representing University of Hawaii – Hilo answered they weren't aware that it has and it was vacant lands. Member Gon said he was looking at the flood zones and wondered whether there was any flood damage since the property is in a flood zone. A lady verified that the property was set back and was not affected.

**The Board:**

**Made a motion to amend staff's recommendation condition #2 by deleting "the hold harmless." Otherwise, the rest of the submittal was approved as submitted.**

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

**Item K-2 Conservation District Use Application (CDUA) OA-3575 for the Proposed Subdivision of One Lot into Two Lots of Record by the Gill-Olsen Joint Venture, Located at Honouliuli, Ewa District, Island of Oahu, TMK: (1) 9-2-005:024**

Member Gon disclosed that the Honouliuli Preserve adjacent to this particular parcel was once part of the Nature Conservancy Hawaii preserve system and that the Gill-Olsen family were both involved in that transfer from the Trust for Public Lands and other entities. Because it is adjacent lands he doesn't believe he has to recuse from this. Ms. Chow said she agreed with that.

Mr. Lemmo said he received a letter from the Gill-Olson consultant pointing out some typographical errors and he also had some questions of some language in the report.

Member Morgan disclosed he is a volunteer advisor to the Trust for Public Lands and Ms. Chow acknowledged it was okay for him to testify on this item.

Mr. Lemmo related the history where the Trust for Public Lands lacked the funds to purchase the whole thing and brought in others as a hui. As part of that agreement a portion of that land will be given to Division of Forestry and Wildlife which was done to a previous CDUP via a sub-division. We can do sub-divisions in conservation if it involves public purchases, but not for speculative purposes. But a portion of the land needed to be partitioned and that is what this CDUP is about. Involving some conservation lands from the adjacent ag lands and they want to do a consolidation of the conservation and ag lands and sub-divide them between Gill Venture and Ed Olsen. That would result in a partition of the conservation area. Staff asked them to do a conservation district use application to achieve that he referred to a map in the last exhibit. Pointing out the conservation land, ag district, and what they want to do is consolidate these parcels – a total of three and sub-divide them right down the middle so you would have some parcels with some conservation land and some ag land. There is a new partition line right through the conservation area and is why we have to do a CDUP for this. One of the concerns was some language on page 5 of the staff report. There is a comment on page 5, item #4 that says the proposed consolidation sub-division of the parcel will not result in any physical changes or improvements to the property. The separation of one lot into two lots will benefit the natural resources of the area because the intent is to maintain the lots in their natural state. The concern is any future land uses require a CDUP and/or environmental assessment or impact assessment where the proposed land use would be addressed. The concern might mean is anything they might want to do out there is they got to do an EA and CDUP which he doesn't think that means that necessarily. He doesn't have any problem if they want to see some modified language.

Member Goode asked would it be something simple like changing “will” to “may.” Mr. Lemmo agreed that you could do that. Or you could say something like any future land uses will be required to comply with Chapter 13-5 of the Hawaii Administrative Rules. Either way is fine. Member Goode said that way the rules pertain to whether or not these land uses are required and those change from time to time. Mr. Lemmo agreed.

Henry Eng testified on behalf of the Gill-Olson Joint Venture in addition to the typos that we identified he would like to speak to the point Mr. Lemmo mentioned. Our preference is to make it subject to Chapter 13-5 as amended from time to time. To us that is clearer than saying “may” because it leaves it a little vague and we are fully committed to complying with the provisions of the chapter as they apply to the various sub-districts. While he was reviewing he found one additional typo on page 6, recommendation Olsen which is spelt Olson and Gil is Gill. He had copies of his written testimony and thanked staff.

Member Gon thanked Mr. Eng and said the particular criteria item is not actually repeated in the recommendation and as a matter of record to clarify that 13-5 is what we're dealing with and that we don't require any other than the typo correction for the recommendation. He asked if he was fine with the rest of the recommendation conditions and Mr. Eng replied yes, they are.

A motion was made by Member Morgan to approve as amended. Member Gon seconded it. All voted in favor.

**The Board:**

**Moved to amend the submittal by changing Gil-Olsen to read as Gill-Olson throughout the submittal; page 2, paragraph 4 change Ed Olsen to Ed Olson; page 3, paragraph 1 change Kapaolei to Kapolei; and page 3, paragraph 8 change Antidegradtion to Antidegradation.**

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

**Item J-1 Request Approval to Adopt Amendments to Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, Parts I and III, Hawaii Administrative Rules as follows: Proposed amendments to Chapter 13-230-21, which adds personal partner definition; 231-5, which adds grace period provision; 231-26, which adds personal partner definition; 231-28, which increases length of stay and includes personal partner; 231-29, which adds personal partner; 233-29, which adds personal partner and new parking permit category; 256-18, which incorporates water sledding activity; 256-33, 256-36, and 256-39, which pertain to vessel operations in Hanalei Bay and river; 256-71, 256-72, 256-73 and 256-77, which implement the Kaneohe Bay Master Plan according to HRS §200-39; and adoption of Chapter 13-256-72.1, 256-73.1, 256-73.2, 256-73.3, 256-73.4, 256-73.5, 256-73.6, 256-73.7, 256-73.8, 256-73.9, 256-73.10, 256-73.11 and 256-73.12, which implement the Kaneohe Bay Master Plan according to HRS §200-39.**

A number of written testimonies was received and distributed.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) said before they start he wanted to ask the Board to defer decision making on one Hanalei Bay rule which is 13-256-39 and the Kaneohe Bay rules at this time. Staff wants to go back and clean up some of their exhibits that go along with these rules and they have received substantial testimonies on the Hanalei Bay rule. There appears to be some misinformation out there that they want to clarify then bring back the Kaneohe Bay rule package and the Hanalei Bay rule back at a later date. Member Agor said he received a lot of e-mail regarding Hanalei Bay and would like to attend that meeting. Mr. Underwood said staff received a lot as well and there appears to be some miscommunication going on in that particular rule. The County is moving forward with

their rules and staff wants to stay on track with them to get the rules out at the same time. The first part of the rules is listed in the summary all the way from 13-230.1 up to 13-256-36. Staff came before the Board in September 2010 with a request for a very large rule package where they received testimonies that the package was too big that they should break it down. Staff came back before the Board in December 1, 2010 with a smaller version that included these rules. We've gone out to public hearing. We've gone back before the Small Business Regulatory Review Board (SBRRB) and gone through that process. The public hearings held on Oahu had seven attendees, five testified. Maui had 15 attendees, no testifying. Kona had 49 attendees, 15 testifying. Kauai had 39 attendees, 16 testifying. Hilo had 11 attendees with three testifying. The primary input to these rules was related to the Hanalei Bay rules and that is why staff is asking to go back. The remaining rules staff feels are sufficient and would like to move forward with those and recommend the Board approve and adopt the amendments and approve staff to send these to the Governor for final approval.

Member Agor made a motion to withdraw Section 13-256-39 of the Hanalei Bay rules as well as Section 13-256-71 through 13-256-73.12 concerning Kaneohe Bay and was seconded by Member Morgan.

Member Gon asked for clarification whether you are leaving in 13-256-36 commercial vessels at Hanalei and Mr. Underwood acknowledged that. And said that staff is asking the Board to approve the remaining rules.

Member Goode asked whether this motion is to withdraw or defer or request to go back out to public hearing. Deputy Attorney General Linda Chow said withdrawing or deferring is essentially the same because it will come back once it goes back out. A deferral is appropriate or as Member Agor indicated it can also be withdrawn from consideration at this time.

Member Agor said he could amend his statement.

Member Edlao asked if we withdraw or defer whichever word we use, do they need to direct the Department to go back out or is that automatic? Ms. Chow said you should direct the Department to go back out. At this point you would be discussing the rules and the method of rule making.

**Member Agor amended his motion to defer Section 13-256-39, Hanalei Bay rule and Section 13-256-71 through 13-256-73.12, Kaneohe Bay rule package to go back out to public hearing again. Member Morgan seconded it. All voted in favor.**

The Chair asked whether there were any questions for staff on the remaining rules and there were none.

Dave Cooper testified that on the changes in the rules dealing with commercial issues he had no comments assuming there will be public hearings and will come back to the Board. The eight pages that deal with recreational boating and how it affects them he

does have some issues. Within those eight pages are two changes that DLNR and DOBOR seem to believe are too trivial to be given the attention in the executive summaries that have accompanied all of these rule change submissions to the various boards and public hearings. I have talked about the poor executive summaries that accompanied these things before and it just doesn't get any better. Unless you have a fine tooth comb to read the rule changes, word by word and letter by letter, the general public will not show up to a public hearing because there is nothing in there that indicates there is an agenda item that they should be concerned about and that is the biggest concern I have. The changing of the word "shall" to "may" in 13-231-26(f) and the change of the notification requirement from "on or before the day of the stay aboard" to "the day before," basically increases that window to 24 hours, that's on 13-231-28.1. I have been in opposition of these changes since the June addition and the December addition and all of the additions that have occurred in-between at all of the meetings I've been to. As for changing the word "shall" to "may," the question I have is why is the DLNR and DOBOR so opposed to live aboards and the approximately \$400,000 in additional revenues that they get with no increase in there overhead or anything. It's free money. With DLNR and DOBOR looking for all the money it can, the provision of the rule changes just seems ludicrous. It's allowing them to not issue live aboard permits. Those live aboard permits brings in \$5.20 per foot of boat for someone who is already in the marina, who already has a slip and is already paying. It's just incremental revenue. All you got to do is sign up and you get the money. It just doesn't seem logical from a business standpoint. With the word "shall" there has been an average of 20 live aboard permits issued with as high as 30 and may have been as low as 5 or 10. That is roughly \$50,000 a year that has been lost for some undetermined number of years and that is with the word "shall." Change that word to "may" and I suspect that revenue loss is going to increase directly. Reading the summary that accompanied the submission, it seems to indicate the SBRRB reviewed this in January and said no problem. In fact they had a problem with "shall" to "may." They made an amendment and it's in the record of the minutes for that provision to be dropped. There is no mention of that in any executive summary or anything I have read from DLNR or DOBOR in the submission I have today. I also sent written testimony for the public hearing, I was unable to attend. And that testimony appears to not have been cataloged in the review that Ed just gave of the various testimonies. I only see one reference in there for "shall" to "may" and that's from Bruce Lenkitt's testimony. Not mine. There appears to be a communication gap between what is contained within this package, what people think is contained within this package and why a lot of people haven't testified on these two items. You just don't find them. And, because of that I believe that both of these items should be left the way they are. To quote from the SBRRB minutes, these are the minutes of January 18<sup>th</sup> regarding the proposed amendments to Chapter 13-231-26(e)(f). David Cooper, a recreational boater expressed his concerns that by changing the "shall" to "may" in the rules DOBOR would not have to issue all the permits allotted to the Ala Wai and Ke'ehi small boat harbors. The resulting loss of revenue would impact the boating special funds. If you don't get money in you'll have to get it from somewhere else. Other rates would go up. Mr. Underwood commented that the proposed amendments only pertain to live aboards and would have no impact on small business. Individuals interested in living aboard their vessels must obtain a permit. Currently, there are 129 live aboards at the Ala Wai and 35

at the Ke'ehi small boat harbor and they make up 15% of the harbor population. The amendments in question are part of a move by the Department to have the harbors become more self sufficient. I don't understand how losing this incremental revenue makes the harbors more self sufficient. Live aboards tend not to use revenue generating services in the harbor. He would like the Chair or Ed to explain what the live aboards don't use that they would normally do use. Basic mooring fees do not cover harbor operating expenses. That has nothing to do with live aboards. Proposed amendments would have fee increases spread over five years. Ideally, DLNR would like to have zero live aboards at the Ala Wai and the Ke'ehi small boat harbors. He asked if that's true.

Chair Aila said he doesn't know if that's true because that's a statement...Mr. Cooper said DLNR says right here and Ed said personally he would like that to be the case at that meeting. The Chair said speaking as a person who now represents DLNR he would answer I don't know because it's under review. This rule change would give the Department more flexibility in terms of whether or not to issue them, that is what "shall" does to "may" and would give the Department more flexibility in it's overall use. You say that this is true and that this is what we are trying to do, but for example no one else pays as much as live aboards in terms of revenue. There are commercial vessels that pay a lot more than live aboards as revenue. Mr. Cooper said there are no commercial vessels allowed in either of these harbors at this moment. A rule change shouldn't be presupposing that a Legislative action will change that. Chair Aila said this proposal change simply gives staff more flexibility. I'm not agreeing to your statement that we are trying to do something. The "shall" to the "may" simply gives the Department more flexibility. Mr. Cooper said that Mr. Underwood stated that if he had his way... The Chair said he is entitled to his opinion. The Department and the Board makes the decision. He is entitled to make recommendations and the Board makes decisions.

Mr. Cooper said that rule changes would create more commercial activities and has the interim director's support. The process to develop these proposed amendments has been going on for over 1-1/2 years. Chair Aila offered a motion to send a memo recommending the Governor approve the Department's request to send the proposed amendments to public hearing while noting the Board's opposition to that part of 13-231(f) which substitutes "shall" to "may" when addressing the issue of live aboards in the harbor that the Board voted in favor of the motion. Chair Aila said to go to public hearing. Mr. Cooper said with the exception of the "shall" to "may." Chair Aila said the Division is asking for that to be reconsidered. Mr. Cooper said he just wanted to make a point that the Board's recommendation is not in any executive summary as the SBRRB passed as its written. That's the implication that you get and in fact I just want to bring up the point they did not do that.

Mr. Cooper said the second item was the extension of the stay aboard permits. In the past, if you went to your boat and decided you wanted to stay aboard you could put in a request for a stay aboard. Slide it under the harbor door or whatever. Now you have to put it in the day before that happens that you may want to stay aboard. If you put it in and change your mind you've been nicked for stay aboard. If you go down to your boat and is having a good time and don't want to drive home you put it in and it's no longer legal. The Chair said that is not part of the rules. Mr. Cooper said it is and that is the



problem of these executive summaries, not bringing it up to even your attention the rules that are contained within. If you don't know that how am I suppose to know that? Chair Aila agreed that the executive summary is not as complete as it should be. Mr. Cooper said you don't get the testimony from the people who are concerned and impacted because it is not out for public information. Chair Aila said the decision the Board has to make is...should we approve these items given the points you just raised or should we do something else with those items and that is the purpose of your testimony. Mr. Cooper acknowledged that's correct.

Member Morgan asked where is the reference in the rules to the process of over nighting. Mr. Cooper said in 13-231-28.1. Member Morgan said that is not a change. Mr. Cooper said it is. It says the owner is holding a valid regular mooring permit to the spouse, personal partners and legal dependants, and non-paying guests when in company of the owner they stay aboard the vessel without a use permit upon written notification on or before. They got rid of the "on" and "before." That means to notice 24 hours or the day before if you are going to have a friend over. Boating tends to do things at the spur of the moment which is part of the boating experience than to plan our lives down to...I forgot to do that. Sorry, got to go.

Member Morgan asked also to the change from 90 to 120. Mr. Cooper said it's not here. He had no objection to that. Member Morgan said he asked because Mr. Cooper brought it out at the beginning of his testimony.

Bruce Lenkitt testified in support most of the changes in the rules. The ones in Hanalei and Kaneohe at the last meeting had a lot of people testifying, but he is sure they (the changes) should have been incorporated in the new rules. He was curious if they (the people testifying) even knew it would be withdrawn because not one of them are here. Maybe if they knew this was going to happen they would object to it. Or maybe they want it. He didn't know. That is how DOBOR works. Mr. Lenkitt related a Ke'ehi public meeting or hearing where the room was dark and people attending found staff at another location. Staff asked how did you find us. He also supports the significant other changes. I think that is getting with the times. The ACLU suit started in September of '08 and we are now in 2011. It's still pending. It's time to move on with that one. He is in support of the late renewal one relating Bernard Moory's situation. Bernard has since sold his boat and is gone. Mr. Lenkitt opposes the "shall" to "may" and the notice. Both of those don't make sense. We have had a vacancy rate for slips that out of 750 slips we've had a high of 218 vacant slips which got down once to 120. It's back up to 140. There is between \$300 to \$600,000 in direct revenue that DLNR is losing and it doesn't make sense. Chair Aila says it will give more flexibility, but the SBRRB recommended that should be taken out and these are business people recommending what's good for business and making money. The direct lost of revenue a year when there is a five to eight year wait list, people are begging for live aboard slips and slips in general. One person waited eight years for a slip which was available the entire eight years. When he got here he had to spend \$1500 a month for an apartment because he couldn't get a live aboard permit. Mr. Lenkitt suggested the Chair should look at what is going on, what's good for business, what's good for the harbor, what's good for the people, what's good

for boating. It falls on deaf ears. We have meetings and there are a lot of horror stories. We have a harbor association that would like to meet with Chair Aila or any Board members here and would love a sit down talk story to say what is really going on in the harbor. Mr. Lenkitt related a neighborhood watch between HPD and the harbor association riding crime in the area. They would like to meet with any of the Board members if they are willing to talk to us because you are not getting the full story.

Chair Aila clarified that while the slips are being offered out to people on the wait list there are temporaries there. He has seen a lot of temporary permits issued. Mr. Lenkitt objected that is not true and agreed there are a lot of temporary permits issued. Chair Aila said he didn't want the Board members to think Mr. Lenkitt's assessment is the only assessment in terms of vacancies. Mr. Lenkitt said most of the temporaries are on the 700 row or 800 row. There are very few are in the bulk of the harbor where there is a slip to walk out to board your boat. The Chair disagreed with him. One slip, 408, stood vacant for almost four years. The indirect loss to the State was calculated once was a million. Every quarter Mr. Lenkitt does it and lists each number of each slip and you could go back for each quarter provided you believe my numbers. I have no reason not to do it. I go around and record every slip. Chair Aila said that he will come to meet with the boaters. Mr. Lenkitt said that they would love that. They've been asking for him (the Chair) at the harbor meetings and he knows the Chair has been very busy. Right now someone is running out of control and a lot of this is leftover from the prior administration. It's unfortunate that it's going out with your name on it now. I think you really should be aware and we would love to sit down and talk story which he extended to any of the Board members here. Chair Aila asked with the exception of these two Mr. Lenkitt supports the rest of the package and Mr. Lenkitt acknowledged that. For the summary, you can't make heads or tails out of that.

Janet Mandrell testified that she has a boat at the Ala Wai Harbor. She goes to all these meetings and is familiar with...I did not make the SBRRB meeting. With regards to the rule package before you I believe that some of the remaining slips – you're holding off on Kaneohe and Hanalei Bay. The 231-29 requires every individual vacationer to get a vacation permit. That shouldn't be. If the owner is on the boat or if there is any people on the boat the owner must be present. For people to have to tell the harbor master who is sitting in my cockpit having drinks with me is an unnecessary intrusion in someone's privacy. If someone is on my boat who is not an owner, I'm supposed to be there also. Unless somebody can provide a good reason why that's true then this shouldn't change. The 231-26 is the "shall" to "may" and she won't repeat what others have said. It's the same rationale. Although, I have asked, I was one of the seven who showed up at the public hearing at Kaneohe. I asked at that time what is it with live aboards given the fact that they are bread and butter money and they pay. And, the same claim of not having enough money over the last six or eight years is the reason for mooring fee increases. We don't have enough money. There is a disconnect folks and the agency is suppose to inform us of why they want to make changes and we're not getting that. This is how it is. We're not going to answer any questions. There is no rationale for what they want to do. There seems to be a personal attitude that is being put upon live aboards and I can understand why. I'm a live aboard. I live near enough people that I would rather they

not live there. You have heard them here, but that aside. Live aboards are present often enough and speak up and that is not appreciated. Asking questions isn't appreciated. Life gets hard when you have to answer questions. I understand that, but that's all part of how our culture is. The agencies are supposed to be responsible and able to justify what they want to do. I believe 231-26 should not change. The 231-5, this is the rule that you said you asked for Bernard Moory's case. Well, as it turns out, I know you all get these e-mails from Mr. Shiroma; it was within the Board's power to suspend that rule for Bernard Moory. That's in your rules. It's on Mr. Shiroma's first page. We all know Glenn e-mails everyone in the State of Hawaii it seems. He picked up on that, you have the power to suspend the rule. I do not know why this renewal process, this policy when all it is a courtesy call necessary and somebody can retain their mooring permit. That rule is already in place. They didn't need to write up all the rest of this stuff, 231-5. Its 234-16 that all you had to do was raise it because what it says is for any use permit if you're late just give us a \$1.00 a month penalty. Now I don't understand and I have asked and never gotten an answer, who is that rule designed for? Because it doesn't say so in the rules as who gets to use that. If that rule wasn't available to all these other people to just pay the \$1.00 thing then DOBOR changed the rule and changed that penalty payment up to a pay attention penalty payment then you wouldn't have needed all this extra verbage. Now you've got a conflict. If you pass that rule, 231-5, you now got a conflict with 234-16 because in one place it says you pay a \$1 and another place you pay something else and that's a problem.

Ms. Mandrell distributed a handout and said that these are the web pages people look at when they want to go find the rules electronically. The top block is the rules passed in 1994. The amendment to the rules is the 10 or 11 different amendment packages that needed to be compiled. Someone could go to a single PDF file and find what they need. Right now people are breaking rules because they can't keep up. No one can keep up. DOBOR promised in the September meeting to compile all of this. We are now six months down the road and still not done. I implore you make the motion to make them do it in a particular time frame and get it done. The other thing I suggest, to make life easier for you, she distributed a handout. You have to go with a Ramseyer format you have no choices on that. The other thing that you can do is ask all the division offices and branches to do are to use tools that they have in the word processing program. Looking at the last paragraph in the strike through where you have the bracketed material to delete, Ramseyer says you have to have it because I read the Ramseyer manual, you have to have the brackets. Tell everybody who wants to bring a change to you to turn on the tracked changes and make it strike through and in blue. And, the added text to be bolded in red and it jumps right off the page for you and you guys can track through a lot faster. That would be the other and on these immense rule packages and indexes. This is what I have tried to create to make life easy to get through these meetings.

Ms. Mandrell said this all harks back to the live aboard issue. It was referenced earlier where we went to a meeting and it was dark. That was me. I went there and called a whole bunch of people at Keehi to get out there. They get to the harbor office and not only is it dark there is nothing that says meeting is this way. Reg never had a boat at Keehi and he didn't know where to go. I knew about the fishing club and maybe it was

over there and sure enough when we got there staff were stunned that so many of them turned out. We made a whole bunch of suggestions and Reg usually has some pretty good suggestions and the thing that bothered me and this is now in the rules before you as a done deal was the paragraph that had been added about live aboards. You'd think the discretion to the harbor office to not issue a live aboard permit and they based on something vague. March 24<sup>th</sup>, you got your submittal and in the submittal it says all we are doing is changing personal partner. What it also did and when you turn to the last page you didn't realize there was some additional altered text. The Department reserves the right to deny a live aboard permit and there was some criteria, but it was generally not that a harbor agent could use it and say this is what I feel and you aren't getting your live aboard permit. This is a problem. The submittals are not detailed enough for you to make a considered judgment because you are not being told.

Member Edlao asked with regards to a permit for someone vacationing with you he can understand them being with you at all times, however, if I'm the harbor master and I lived out at your boat on C, but I see somebody else out there and I don't know who that is in a sense wouldn't that be protecting your interests. Ms. Mandrell said you would think so, but that is not how it works out. Everybody is carrying cell phones now and she'll get calls from the harbor agent saying it appears someone is on your boat. He can call me anytime and he does and calls her if the electricity was out. They have the ability to nowadays to call. If my boat was sinking or had broken lose, +I would hope they would call me. But, the vacation thing that is an unnecessary intrusion and privacy that really is. You have to pay for them. If people are going to be staying on the boat and if you are there from Keehi not only do you pay for the mooring you pay on a per person basis.

Member Morgan asked whether she was talking about 29 and it sounds like she confirmed that. Member Morgan asked what change is she objecting to. Ms. Mandrell said yes, now they want each vacationer to get a permit. Member Morgan said he didn't understand what the change is. They added the word individual, but before that it was each vacationer, basically clarifying what was already there. He didn't understand the actual change Ms. Mandrell was objecting to because this is not a hearing about objecting to the rules. Ms. Mandrell agreed saying okay. Member Morgan said this is about objecting to the changes in the rules. Ms. Mandrell said to be honest with you, these rule packages are an immense package and the rules themselves and sometimes you don't realize they are actually asking for all these names. She didn't realize each vacationer she had to go tell (the harbor master). Member Morgan said he was unclear what change she was objecting to. Ms. Mandrell explained each individual has to get a permit. Now right off the top of her head every time you have to get a permit you have to pay a \$5.00 transaction fee. Now everybody has to get an individual permit. Member Morgan said again, my point is we are looking at a submittal here talking about the changes to the rules and what she is talking about he doesn't think constitutes as a change. That what Ms. Mandrell is talking about is she doesn't like the rules in general and that she doesn't like to have to pay and he realized that is a valid point but unfortunately, that is not what's before the Board. Ms. Mandrell said she agreed.

Ms. Mandrell said one last thing about the notification business. I brought my statement along because one of the things that I always harp on is when you mail statements out to please tell people that they are going to have a public hearing and all that other stuff. Here is what a statement looks like when you get billed and she showed it to the Board. Written on there it actually is. It looks like its part of the fine print of the paragraph below it. It's written in say seven point font, maybe eight. It doesn't seem like a genuine effort given my past experience of meetings and going over here having people be surprised they showed up. It seems like they are being disingenuous.

Member Pacheco asked going back to vacation permit does it mean they can get a permit to stay overnight. Mr. Underwood said correct. Member Pacheco wondered if someone visits during the day...Mr. Underwood said primarily it's for enforcement because when they go out to enforce they need to make sure whoever is on the boat has the permit to be on the boat. We don't go there as much now as night. People will say I have a permit and they will ask where is your permit. It's more to clarify who needs a permit when you are on a boat in the harbor. Ms. Mandrell said to keep in mind the owner already has to be there. If anybody is on that boat, the owner already is there. Member Pacheco said but the owner also has to get a permit to stay overnight if they don't have a permit.

Member Morgan asked on the "shall" to "may," in your testimony you said that you're living next to people you'd rather not be living next to. There are some people in your opinion as a person who lives down there you'd rather they didn't live there. Ms. Mandrell said they're a pain. Member Morgan said if I had an apartment building and somebody has a bad track record and I wouldn't want to rent to them I would ask is that part of the rationale with "shall" to "may." Mr. Underwood acknowledged that and said in contrary of what's been said here I have been extremely up front and clear on what I mean by "shall" to "may." What we are said is we don't have a problem with people living on their boats in the harbor as long as you're regularly navigating that boat beyond the confines of the harbor and that is clearly stated in the statute. What's happened is these two harbors, Keehi and the Ala Wai, have turned into subsidized housing harbors. These boats aren't moved. They are set up to be floating condos. There's potted plants all around them. What we want to do is say look if that is your intent and it's clear in our rules for houseboats that you just want to live in this harbor and you are not recreationally boating then we are no longer going to issue you a live aboard permit. It gives us the management tools to do it. Right now the statute says that we can issue up to no more than 15% of the harbors. It doesn't say we shall issue. It says we may issue or we could issue. All we are saying we got boats in the harbor that are not moving and their primary purpose is just to be live aboard. It's my opinion, as Chair Aila said it would be a Board decision, I recommend we don't issue those permits. You need to be actively using that boat if you want to be living on it, too.

Ms. Mandrell said he brought in another issue that is leaving the harbor or utilizing their boat. I believe a boat should be able to navigate. However, as someone testified at another meeting, what are you trying to prove? Whether a boat is operational? Mr. Underwood said this is not on the agenda. Ms. Mandrell said no, but it's about live aboards and he brought it up. The reason that these people are not paying is not because

they are not using it - it is just how they are. And you as a private individual in a private establishment have the right to refuse service. This being a public place means the State doesn't have the right to refuse service to its citizens. The individuals for whatever reason I just avoid them. They go in, I know they make problems and demand saying I am going to sue you and they are going to do this. They are not desirable people however, there are rules already. The potted plant rules, there are rules in place that if they would simply enforce they could get rid of all that stuff simply by generating a letter and saying you are not allowed to have this around your boat. You are not allowed to change State property. If you don't change it back or you don't get rid of the plants you are at risk of losing your permit. It only takes a letter. Two warnings they lose their permit. In all these 300 pages they have enough rules that if they enforce them appropriately. I'll give you a for instance. There is some fellow who has expanded out to the sidewalk. We have complained about him. It is embarrassing. We are at the end of Waikiki. We should not look like this. Nothing has been done to our knowledge and that encourages more people to behave like this.

Chair Aila said to address the 234-16 rule that allows a waiver to waive the rules. Mr. Underwood said we went through this with Chair Thielen when she was here and met with the Attorney General's office and several supervising attorney general and a few others. That particular provision does not apply. It's to 231-6, I believe. With 231-5, it's specific to a mooring agreement, very specific which says you get it for one year. If that terminates and you don't renew it and do all the things you are suppose to do then you lose all rights to that permit. That was the rule that we came before with Mr. Moory and there were several others and our second agenda item is the same thing. We do not have the legal authority to renew that permit once it expires.

Member Morgan asked to comment on the deletion of "the on or before the on or" part of 231-28. There was some testimony here that it's 10:30 at night and someone wants to spend the night. Mr. Underwood said again, that goes down to the enforcement issue. If you are going to know and we allow this, all you go to do is slip a paper under the door. We need to know if you are going to decide at the last minute, we'll how are we suppose to enforce that. You got to give us some lead time on that and that is what we asked for. Chair Aila asked whether that is a notification and not a permit. Mr. Underwood said normally they would get the permit. We just want notification that you are there. The enforcement officer shows up and you say I slipped it under the door. Fine, we'll open the door and see. Whenever we do these patrols we always bring a harbor agent with us.

Member Goode said the current rule allows, he understands, is on or before and allows the day of. Before, meaning the day before or right before. Mr. Underwood said it doesn't say the day before. It's before. You decide how you are going to do it and slide something under the door. Member Morgan said it could be 10:30 at night and my friend had too much to drink and for safety reasons I don't want to drive him home. I just slip it under the door. Mr. Underwood confirmed that to walk up to the harbor master's office and slide it under the door. Member Goode said the language as written currently allows that - provides that. Mr. Underwood said he had no problem if he wants to change that back. Member Morgan said the intent is in that situation and is a situation we can

imagine that happens in the harbor or some place else to spend the night. We don't want to make that illegal.

Member Gon said he can see how one would interpret the removal of "on or" and especially with the state of stay and would suggest the day before the date of the stay. If you have no objection for retaining "the on or" portion. It doesn't seem to apply in the face of the intent you just stated as long as reasonable notification is present. Am I understanding that correctly? Mr. Underwood acknowledged that and he believes the intent of the harbor master was if you are going to do it at night you are not going to have an issue with permit you will have a note under the door. They wanted to clarify, you made prior arrangements and these people are on your boat. I can see if you've had a few cocktails and you want your buddy to stay with you then slide something under the door to let us know. I'm fine with that.

Member Goode said going back to "shall" to "may" and on item F it talks about the Ala Wai and used the word "shall" which is a 139, but Keehi there are 35 vessels and it's "may." He asked why is Ala Wai "shall" and Keehi is "may." Mr. Underwood replied it should be "may" for both referring to 231-26. Member Goode asked after hearing the testimonies and looking at the language and its talks a little bit about the intent, I was reading it as from a Departmental view of - well, if you aren't in compliance I don't want a rule that says we have to issue the permit if you aren't in compliance. I could see that in an administrative point of view, if that was the intent then I could see the word "may," but the word "may" is in there maybe because we don't want to issue 139 permits or 35 permits that this gives us the ability to do that. Mr. Underwood said correct. Member Goode asked to clarify to him what the exact intent was. Both? Mr. Underwood explained that he has been asked by numerous boaters as well as boaters in this room that have said I have not told them this. I made it very clear the intent. I am following the statute that we manage - these are public resources for all 1.4 million people in Hawaii not just the select group that happened to get issued this permit, this exclusive use permit. We are looking at the broad picture. We said if you are in the harbor and the statute is clear that it's for regularly navigated boats and you are living on your boat, no problem. But, if you are in this harbor and all you're doing is living on your boat as a means of cheap housing then that is not the intent of these harbors. Yes, they pay additional money, but since 1992 the fee has never increased and should have increased every January. Why that never happened I don't know, but we need to be more in line than where we are today. The Ala Wai small boat harbor, including the mooring fees and the live aboard fees still operates at a loss. We are trying to get this harbor up to at least at a break even point. The only reason that harbor was looked at or thought it was operating at a positive was because of all the land lease rents from the hotels were throwing in as a mooring program and that has nothing to do with the mooring program. It is suppose to be self sufficient. What we are saying is if you are mooring your boat and using it regularly as identified by staff. There is a bill at the Legislature that is now going through and still moving through the process, once a quarter or once every three months then fine, have a live aboard permit. Member Goode asked then you will issue up to 139 in the Ala Wai and 35 in Keehi. The State statute you mentioned earlier says the Department "may" issue up to 15% of the total number of slips. Mr. Underwood

confirmed that. Member Goode said that is what it says in the statute I can see where you can insert the word "shall" in your rules. Chair Aila said because it would be in violation of the statute. Member Pacheco said the statute tells us the maximum number of live aboards at these two places. If you don't have the number of people who qualify under all the different rules that make it possible for you to have a live aboard you aren't going to give someone a live aboard permit just because the word "shall" is in here. If we have a rule that says your boat has to be navigable to be live aboard and it's not navigable, but you have an empty space so you're forced to give them a permit. Is that what you're saying here you're trying to avoid here? Mr. Underwood acknowledged that they are forced to give them a permit. All those rules pertain to getting the actual mooring permit. The live aboard permit is an additional permit you are issued. You have to have a navigable boat. It has to pass a safety inspection. It has to go through that process just to get the mooring permit. Once you have a mooring permit then you can apply for a live aboard permit. As long as you have a mooring permit we have to give them the live aboard permit.

Member Pacheco asked if they don't have a navigable boat then they don't have a mooring permit they can't get a live aboard permit. If you are enforcing that phrase of the rules this other part is moot because everybody that is there in the harbor with a mooring permit should be qualified to be a live aboard. I don't understand why you need to have some flexibility to say no we don't want to give you a live aboard because of why? Are they not meeting some need for a mooring permit? Then why do they have a mooring permit? Chair Aila said the current definition of navigable means you have to navigate your boat beyond the confines of the harbor once a year. Member Pacheco said whatever the definition is a definition is a definition. He is confused here about there is a need for a discretionary use by the Department to deny live aboard mooring permits if there is space allotted for reasons that have to do with.... I don't get it. There are conditions for having a mooring permit, correct? Mr. Underwood acknowledged that. Member Pacheco asked if there are separate conditions for having a live aboard other than the mooring permit. Mr. Underwood said no, but there are rules for houseboats. If you've turned your boat, a sailboat, and your primary purpose is living on it as a houseboat then you can't be in the harbor, but then you go back to this we have to give them a live aboard permit to be in the harbor. We want to make it clear. If you are not regularly navigating that boat and you are not using it for recreational purposes then you shouldn't have a live aboard permit to be in the harbor. It's not subsidized housing and that's what it's turned into. Member Morgan asked correct me if I'm wrong. This is a ounce of prevention and a pound of cure for management. The ounce of prevention is getting it at the live aboard stage rather than, you've heard testimony that says all you have to do is enforce it. Well, enforcing is the pound of cure. It takes a lot of effort and I hear what you're saying it's easier and better for DOBOR to hit it at this level rather than chase these guys to change in the harbor. Mr. Underwood said it is much easier to do at that level. Member Morgan said I totally understand and I support that because I support the notion that the harbors should be for recreational boaters rather than run down, subsidized housing.



Member Pacheco said if we have rules that require allowing somebody to have a mooring permit and if so somebody has a mooring permit and you would hope they are following the rules and the need for a mooring permit. Therefore, why would we have another need to prevent somebody from getting a live aboard if there is a live aboard slot available under what is allowed by statutes. The Chair asked can the Administrative rules say something that the statute does not. Ms. Chow read the statute. The "shall" in the statute only puts a cap on how much live aboards moored are available. It doesn't say that a principle habitation permit has to be. It doesn't say it shall be issued. It doesn't say immediately issued. It says it may not exceed a certain amount. Member Morgan said basically silent on the issue of "shall" versus "may." Ms. Chow acknowledged and said for the issuance of the permit. Mr. Underwood said what happens is the process we have to go through in order to not issue a permit or could take action is extensive. We go to these people that Ms. Mandrell mentioned that have all this crap around their boats when they go to issue the permit. You have to clean all that up or you don't get your permit. They haul all that stuff away, clean it up and make it nice. Then they get the permit. The next morning all that stuff is right back to where it is. Now we have to go through this whole administrative process to try to do it and its so time consuming to get this done. We've told you if you're not following these rules, you're not navigating your boat like the statute calls for we are not going to issue you a live aboard. Member Pacheco asked why don't you have the authority now. I don't understand what's the difference. It doesn't say you have to. It just says this is how many to allow here. If you got somebody you don't want to give a mooring permit because they are not good tenants, but they are not following the rules and I don't understand why you can't say no. Mr. Underwood said we can't. We can tell them, but we tell them they need to rectify it and they rectify it for that day and they are right back in the harbor doing the same thing. We can go around and chase people once we get staffed up, but this is a continuous recurring thing that's been going on. When we went to Representative Evans because when we came before the Board when we were talking about how often a boat should move... Member Pacheco asked I just don't know what the difference is with why you can't do what you want to do right now with this language. Mr. Underwood said it also gives the Department, gives us more management tools. It maybe we might go from having live aboards to maybe put the commercial boats in. That may happen. We don't know the Legislature if they change it. Personally, live aboards don't use all the ancillary services because the boats don't move. The commercial boats do. They buy the fuel, ice and everything else around the harbor. I made it clear at the SBRRB that if it was up to me I would have the commercial boats running instead of the live aboards.

Member Goode asked would it make more sense that to have statute say "shall issue no more than 129 live aboards or 35 in the other provided that the permittee is in compliance with all other applicable permits. Is that your concern? Mr. Underwood said he didn't know if that would change it because they are still forced to issue it. Member Morgan said that is one of the changes that you have, 13-231-26(1). In accordance to these rules provided that the owner and the vessel meet the requirements set forth. Mr. Underwood said this rule was basically, as we said to carve this package down. We are going to have to amend several other rules from "shall" to "may." This rule primarily came forward because they have to clean up the section where we allow the live aboards. We have

some in 800 row and the rules says we can't have them there, but we want to leave them there. We are cleaning that up and that is why we're here and that is why we are here. There are several others that are going to have to be amended if we go this route and will be in the next package for public hearings.

Member Morgan asked if you had your druthers would you have "may" in the Ala Wai section, too. Mr. Underwood acknowledged that. Member Morgan asked is it possible to amend since it was not submitted as a change, can we not do it? Member Goode asked we're the final arguer on the rules, right? Ms. Chow said no, because if there is a substantial change it has to go back out for public hearing. The question is whether or not it's substantial which is a hard question to answer right now. Based on all the testimonies it appears it is. Mr. Underwood said with all the testimonies that came in on this Ala Wai rule with all the changes and what the intent is to add or maybe, like you said. We're on the spot. We are coming back with the rest of that rule package and we can address it then. Chair Aila said we have a set of rules that are deferred that we will come back to. Member Morgan said for today try not to add. Member Goode said to pull out the "shall" to "may" paragraph. We agreed to put the "on or" back in. He asked if we can act on the balance of the rules and take this section F out. The Chair asked if they can act on individual rules, right. Ms. Chow said she believes so. Mr. Underwood said they would have to come back with four others or more that all tie together. If you want to come back on this one the Chair and I can have further discussions on it and see which way you want to go. Then that will tell us what you want to do with the other rules. Chair Aila said it maybe substantial and may have to go back out for public hearing again like the rules we just deferred. Member Pacheco asked for "may" to "shall" if it's substantial it will require going to public hearing again. Mr. Underwood said it may. Member Pacheco apologized because he is trying to understand this and asked what you want instead is to change that "shall" to "may" because by having "shall" if somebody asks for a live aboard permit and if there is a space you have to give it to him. Mr. Underwood confirmed that. Member Pacheco said by putting "may" in there you don't have to give it to them. So you can arbitrarily for whatever reason you don't want to give these guys a live aboard permit even if they are following the rules and have a mooring permit. If they are messy and clean it up and the next day its back or if the harbor master doesn't like him and doesn't want him to be living there is that what...Ms. Chow said I don't think the Department would act arbitrarily in enforcing its rules. Member Pacheco asked what criteria you would use with this "may" that's different now. Mr. Underwood said we may decide or could in the future that we don't want a 139 live aboards in the harbor. To just through numbers out, if they decide to do that and say they may put some commercial boats in too and we don't want all that activities to allow 50 live aboards and 50 commercial boats. Now we can do that as a management, but as the rules are written now we can't do that. We are forced by rule, by law to issue. Member Pacheco said the gist of the statute is the Legislature intended for 15% of the harbor slips to be available for live aboards and no more than 15%. Member Morgan agreed. Mr. Underwood said they have representatives at their office looked it up and back in the 70s when the Legislature found out that DOT was issuing live aboards in Ala Wai and Keehi they were reprimanded pretty heavily. They asked why are you issuing these live aboard permits. It does not promote the recreational use of the boats. It's in the committee reports. He

asked her why is it now that we have it up to 15%. We believe what's going on is because they had allowed it they didn't want to go and completely cut it off. They said at this state point and time whoever is in the harbor now that's the cap and no more and that is where we're at now. Chair Aila said that maybe the House side, but the Senate side there was discussion between then Governor Cayetano and others it was zero and it ended up with this. That number is completely arbitrary, but it doesn't matter because we need further work on this rule. I think everyone would agree on this side of the table and he would recommend that. On these particular rules that we include them in the deferral and have a separate motion for that. Member Pacheco asked if this was for 26 and 28. Ms. Chow acknowledged 26, but not for 28. Member Edlao asked for just F or the whole thing. The Board said the whole thing. Member Gon asked on that item F because of the inconsistency between "shall" in Ala Wai and "may" in Keehi is the intent to make it "may" for both harbors. Mr. Underwood acknowledged that and said there are at least four other rules that mention it that will have to be changed. Before we go to public hearing we should resolve it now.

**Member Goode made a motion to defer 13-231-26 any rule changes in it's entirety to a future date after public hearing. Member Edlao seconded it. All voted in favor.**

Mr. Cooper suggested if this is being deferred for staff, the Board and some stakeholders from those harbors get together to discuss it before it goes out to public hearing so they have a better understanding. This is his eighth meeting and it's the same discussion every time. Chair Aila acknowledged that.

Representative Evans of West Hawaii testified that she saw the Board looking at administrative rules and felt compelled to walk over here because Honokohau Harbor is in her district and there was a public hearing on the admin rules where there were quite a few people who attended. One of the disadvantages as a neighbor island Legislator is having our constituency fly over here. One of the issues at the Legislature is its getting so costly for airfare we're seeing less and less people from the neighbor islands. She wanted to focus on 13-231-5 on mooring permits. She appreciated the insert that if someone was given the opportunity to pay a penalty and make things right to give that 30 day grace period. But, like others today she got confused between the words "may" and "shall" and she had to read the submittal several times to understand it. If you look under A as is currently written which she read. She assumed if they are late even once over that 12 year period they will not be given a grace period once it comes up for renewal because you've already got a "shall" in paragraph A which implies when you get to B basically they should be given notice when they turn in a late payment that they are not going to get a renewal, that they don't even qualify to be at the table to get a renewal and she thought that was confusing. The other thing that came up in the testimonies is some people get heart attacks and are flown to Honolulu. Some people inadvertently just miss that date and there was some language suggested and maybe the Deputy Attorney General could address this. If your leases and your conditions are already set currently in a mooring permit, Rep. Evans wondered if there was an act of god or the weather or tsunami or family issue where you are on the mainland, as the language is written does it account for it or is that imbedded in your lease term conditions when people sign the

permit? Because, that came up in the testimonies with some concern that some things are out of your control. Ms. Chow said I think there are any provisions in the terms of permit that allows for additional grace period or an act of god or emergencies. Just to clarify are you asking that the act of god or the emergency extend this 30 day period? Rep. Evans acknowledged that saying yes. It came up in the public testimonies and she was the one to put it on record that sometimes things are out of your control and if there is a way to give the Department some flexibility because the way they are written now there is no flexibility for that. Ms. Chow said she has two answers to that. One is that under the rules a permittee is allowed to renew their permit up to 90 days prior to expiration. Its one thing to encourage permittees to renew early rather than wait for the last day and we do recognize that when the office is closed or when the expiration date falls on a weekend or a day when the office is not open that they have until the next business day to renew and that is in part based on our interpretation of the Sunday closing law that are operated in HRS. Also, there have been discussion before the Board at one point during the amendment of this rule to consider having another discretionary extension available, but I think it was not included because I believe the Board did not approve that version of it. From what I've heard it makes unwieldy for the boating staff to be able to keep a slip open indefinitely because they need to know when they need to start offering out slips and when they need to move a boat that's in a slip out of the slip. This rule although would give boating staff some guidance as to now they can start following the rules to make this available for the next person on the wait list and that is always the balance to consider the people who come who have permits and people who are on wait lists and who have been waiting there and want a slip as well. We have to balance their interests as well. Rep. Evans said but what happens is you might have someone there who has been there for 14 years and something bad happens. You have this wait list and they've been very good tenants and it isn't even in here, the balance of someone who has that working relationship with you and has been working with you for all those years to all of a sudden pull the plug because of this one thing happening which Rep. Evans finds disconcerting and revealed that she used to work for the Department of Land and Natural Resources and Aquatic Resources in Washington State and she saw admin rules as standard operating procedures where it's used a lot by staff and she knows the public is suppose to know the rules of the road also, but staff really sees this as guidance. The way I read it if I were to stand back and say within that period of one year if they have one late payment that says in A – no use permit shall be renewed that automatically tells you it's not going to be renewed. If they are late within that period of one year, I guess you give them notice and when your year is up you're out. That is the way I would read it. The other thing is philosophically, either you write rules that are completely black and white and try to come up with all the different scenarios or you try to give your staff some discretion and I think that is what we are talking about today is how much discretion in the flexibility. All I know if someone temporarily has a family crisis or whatever, I'd like to believe we have enough compassion in the ability within the rules to give them some flexibility and I don't see that. Member Morgan asked is that the recommendation on B then and said because I hear what you are saying on A which is perhaps removing the word "prompt" and "in advance" and that would take care of that issue. I think if it said including the monthly payment charges because if you have a

delinquency and you remove “prompt” and “in advance” and you pay the delinquency you are still entitled to renew the permit.

Mr. Underwood said there are additional rules for late payment. They are charged a late fee and they make whole and are good to go. If they come to renew and still owe money staff will tell them to pay this money before they can renew it. They never not issued because of failure to pay. Rep. Evans asked where in the rule, there is no reference to it. Is there another rule? Mr. Underwood confirmed that there is a whole voluminous, there are tons of rules. Rep. Evans said because there is no cross referencing and it says here in A – no use permit shall be renewed and goes on and on including the requirement of monthly payment and that says you can’t. Mr. Underwood said in our fees section it says you can get a penalty for paying which is \$25 a month and you got to make whole. When they come up to renew we pull their account and say, you still owe so much money that you got to pay this before you can renew. That is how it’s always been. Rep. Evans said that I don’t see that. If I was a new staff person and I was reading that I would not get that. Member Morgan said that is why I suggested the removal of the word “prompt” and “in advance” and set it up so there is no inconsistency. Mr. Underwood said I’d have to go back and look at fee rules and see how those would go. Member Gon said in addition it looks like this section is a portion that was not being changed and would not be affected in the packet and Mr. Underwood confirmed that.

Member Pacheco said if we have a set of rules that cover the requirement the monthly payment charges and if there is any rules if you don’t pay in time this is what happens and this is what you have to pay to get out and I agreed to common sense. He appreciated Rep. Evans coming here today and bringing these points up. The one thing that is frustrating to me as a Land Board member, especially in this rule making process is you mentioned in Washington State as standard operating procedures. The way our laws are here which your body is responsible for the way our rules are set up that isn’t the case in Hawaii. We have a set of rules that are really difficult and the rule making process is very difficult for the public. It’s difficult for me as a person charged with a body in making this rule making changes and I would really strongly hope and encourage that perhaps the Legislature along with this Department or other Departments take a hard look at how our laws govern our rules and rule making policies because they are a mess. It makes things very difficult and we have non-seneschal things happening like people being on the waiting list for a mooring permit for years and years and getting it and then forgetting to renew and within a week having that mooring permit taken away and having no rights under the rules to rectify that or to have any kind of administrative hearing. I don’t know if we can create some kind of working body that. For example, when these rules go out for public comment and changes a lot of the problems with the management we have at Honokohau are not just problems with the rules and not just a problem of the way the Department is managing the rules there are also problems with the underlying statutes that administer all this stuff and say what’s what. And, for us to make meaningful changes and make things better we need to have this comprehensive changes that occur with the Legislature package and rules that all make sense together and to bring some common sense and some business aspect with customer service perspective to what the government agencies are charged with doing.

Rep. Evans said thanked him for mentioning customer service because I do think that is really what it's about. We want to do it in the right way. Basically the Legislature passes the law, but you have to do admin. rules because that gives you the standard operating procedures that everybody can pull it out and say this is how it's going to apply what the Legislature intent was. What happens a lot of times there is confusion about a legislative intent and legislators sometimes will look at an admin rule and said they are writing law. They've gone beyond legislative intent and sometimes that really makes us nervous. We've actually gone back and written laws to undo admin rules because we said when they went out and did them they went too far and beyond what the Legislature intended. I think it's good to have the rules and procedures for how you are going to issue permits, renew them and whatever. I'm just suggesting that they are pretty tight right now and I think it would be good to give Mr. Underwood and his staff the ability to have a little bit more flexibility and that is why I thought if something happened like someone's health is bad or person's parent dies or something that is tragic that gives them a delay, you have to realize the harbor masters probably knows these people pretty well and have a working relationship. Maybe just a phone call or some common courtesy might help to go a long ways. Because right now I don't know what is going on and why people are upset. We got to start with we are in it together being a neighborly type of feeling. That's why I'm just making some minor changes here to maybe give the Department a little more discretion is where I'm coming from. Chair Aila commented that the statute doesn't give us the ability to give discretion, but the Legislature has the ability to change that statute.

Rep. Evans asked on the issuing of mooring permits. Chair Aila said the ability to give discretion. Member Pacheco said that's the problem here the way the laws are the rules have to be a certain way and we have to follow the rules. If they don't state it, the Department is basically liable for all the rules and the way they are written - there are certain processes and the language has to be in. We can't do what you're saying by the way the laws are written that govern our rule making process. Rep. Evans said I'm just talking about the mooring permits in general. Member Morgan said on the mooring permit I see your concern about B and so right now from no grace period and now there is a 30 day grace period and a \$250 fee that I don't imagine you want to extend that to a year and asked whether there was something specific she had in mind. Rep. Evans said there is money that she used to write contracts all the time for state government. Where it used to be in those days there was always a paragraph called "forced the juror" and that was in a lot of contracts and she thought that might be applicable here.

Member Pacheco said right now if someone could renew a permit 90 days prior to expiration and given a 30 day grace period that is 4 months window to renew a permit. I don't see any language myself that we could put in here that makes...Rep. Evans said I don't see the 90 days and as it is now the Department no longer gives notice of when a permit is up. I don't know where the 90 day...Member Pacheco said I just saw Ms. Mandrell's billing permit that she gets every month and there is a very clear statement that says your mooring permit expires on this date. We no longer give out renewals and don't forget to. That is a monthly reminder to make. Rep. Evans said force the juror is force the juror. If something happens, something happens. It's out of your control. Mr. Underwood said that Boating has gone completely on-line and they keep getting pushed

out by the amount of input that's got to go in. But, once they are on that new system it will automatically send out a 90, a 60 and a 30 day renewal notice. Everybody will get notices and we will be able to contact everybody via the e-mail which is a really good system. If you don't have e-mail it won't reach you, but a vast majority will because right now we do not mail it. When we were sending out the notices it was costing so much money to mail it out which is why. Member Pacheco said one of the things that irks me about this is, a person on a Board here, a government beauracracy, this is in here because of all these issues of these people loosing their mooring permit because they failed to renew them. What really gets to me is that like you said the harbor masters are there and they know people who are there and I understand the Department's need to save money and not have these renewals. I think it's very fair and easy for people to see where their permit expires and it's their responsibility to get their permit renewed, but it seems like the Department knows when these things are ready to expire. They know the people who have applied because these people get their termination letters very quickly. It seems to me that if it's on their radar, why not a call, a note or whatever? They are going to see these people. I'm sure they have their contact information. You are about to expire and do you want it to expire? This is just good customer service and good management instead of putting us in these positions because that is not happening. We are just following the letter of the rule and boom you're out and now we have to have all these little stuff in here. If there was just good common sense, good management and good customer service we wouldn't even be having this discussion. Ms. Chow said that's because when we get sued and we've notified one person and we've forgotten to notify somebody else then it counts against us. We just have that situation raised to us in a lawsuit Tuesday by a judge so that would be the reason why. It's difficult for us to say they would be able to catch every single one and make a phone call to every single one. If you miss one you end up in a law suit and it works against us.

Rep. Evans said Rob when stuff like this comes up I always ask why now? It's been around for many years. What was it that instigated this change? Right now a couple things going on, one is the economy. The economy changed how the Department saves money so that they have created a routine with the boaters and they needed to find ways to cut. I'm not sending paper notices, stamping to pay for that. I think it was a great idea to save money. Things did change. The commercial boaters got hit really hard. We're in this flux right now and that is why were here today because things changed up for us this last year. Otherwise, why wouldn't this have happened way before now and that is probably what is really driving this. If someone did a law suit I can see why you would want more clarity also. There are some drivers out there. I'm not saying not to do it. I'm just offering a suggestion. Sometimes people really get themselves in a bind and not of their fault. Member Pacheco said both those issues bring up the point that we need to find some way for us to have some real practical rules that allow us to have good flexible management and having all these legalize and trying to keep up with it. It opens us up to a law suits. Again, if we could have some kind of legislative and Departmental regulatory overview – a blue ribbon panel or something to really look hard at the reality of these processes I think would be very helpful. I think the public would appreciate it and the employees within the State DLNR would appreciate it. Member Morgan said I agree with all of that. But, we got a rule package before us and to address Rep. Evan's

point because somebody was on the other side getting kicked out which is one of the main reasons for this. I think the Department has moved considerably on this. I do believe 4 months of renewal is adequate time and I'm just one of those guys that say personal responsibility is personal responsibility. They are living on a boat and don't understand what the rules are and he supports this. It does the right thing and gives some time for compliance 30 days, but you also have to pay for it. There is an accountability aspect that says if you forget the first 90 days you've got to pay \$250 for the last 30 days. I support this. This is going to be a one in a million where something serious happens, but I don't think we can create rules for that and that we create rules for the vast majority.

Member Goode noted that the Department did have a case last year where a gentleman based on medical incident renewed with a doctor's note, but our hands are tied. I know I want this rule then and we didn't have it and is one of the reasons we are looking at it today. I like what the Department has done between the 90 days and the 30 days and there are all kinds of checks and balances a permit holder can employ to make sure it gets done if they are incapacitated in anyway or if there is an economic reason. Also, remember there is a whole bunch of potential slip holders out there that are ready to come in. Maybe it's purely an economic issue or maybe that is uneconomic for those folks, they need to go out to bring those other folks in which would be better in the long run for the State. Maybe not for that particular person in hardship. I wanted to commend the Department on trying their best in working with the AG to try to cut some. We had this long discussion twice now, but we needed it. I appreciate your comments about it. Rep. Evans said she liked the extensions and penalty.

Mr. Lenkitt reiterated previous testimonies on issue of miscommunication; there are plenty of vacant slips. The Board said the "may" and "shall" is off the table. Mr. Lenkitt asked on the 90 days how do you allow for emergencies when the day before you do your renewal it happens and that is why they are asking for flexibility there. The Board members said they are adding 30 days. Member Goode said you can give a limited power of attorney to somebody and you can have the whole thing taken care of. Mr. Lenkitt said when your car license expires you get a ticket and they don't take your car away.

Member Pacheco said he came mid-way through this and to be clear the Hanalei and Kaneohe Bay sections are deferred along with the one we just deferred. Ms. Chow clarified only one Hanalei rules is deferred. Mr. Underwood said 256-39. Member Gon said 256-36 is still in. Ms. Chow acknowledged that.

**Member Morgan made a motion to approve the remaining rules with the amendment that 13-231-28 (the on or) to stay in. Member Gon seconded that.**

Member Goode said he is in support of the motion and we had a good healthy discussion and addressed the specific testimonies received today and I'm in support of the motion.  
**All voted in favor.**

**The Board:**



**Deferred Section 13-256-39, Hanalei Bay rule and Section 13-256-71 through 13-256-73.12, Kaneohe Bay rule package and for staff to go out to public hearing.**

**Deferred Section 13-231-26 and for staff to go out to public hearing.**

**Moved to approve the remaining rules with the amendment that Section 13-231-28 stays in.**

**Deferred 13-256-39 and 13-256-71 through 13-256-73.12 (Agor, Morgan)**

**Deferred 13-231-26 (Goode, Edlao)**

**Unanimously approved as submitted all remaining rules with 13-231-28 amendment to stay in (Morgan, Gon)**

**Item J-2 Denial of Request for Contested Case Hearing by Joel Laber**

Mr. Underwood said this pertains to what we've been talking about. Staff received a petition from a Mr. Joel Laber. His mooring permit expired prior to him renewing it. This is for the Honokohau Small Boat Harbor. Unfortunately, the way the current rules are written staff does not have the authority to renew that permit. Mr. Laber did cite some the rules that he could use in his petition, but after consultations at the Attorney General's office that they do not apply and once the permit expires it's immediately offered to the next qualified applicant on the wait list. He requested for a contested case hearing on this and staff came before you before with Mr. Moory as well. There is no property interest in this and because of that no contested case will apply in this matter.

Member Pacheco said I know we went through this with the previous one during executive session and asked whether there is no other statutory authority. If anybody with an administrative permit of any sort from DLNR loses that permit for whatever reason is there no mechanism for them to appeal that decision and go before the Board. Ms. Chow said this is specific to this particular type of permit 13-231-5 that says if it's not renewed it automatically terminates and is only specific to this one permit. Member Pacheco asked whether there were no other statutes that would allow for some kind of process. Ms. Chow said there is none.

Member Goode asked if Mr. Laber could seek relief in Circuit Court. Ms. Chow acknowledged that he could seek relief in Circuit Court for denial of the request for contested case if that is how the Board votes.

Joel Laber distributed his written testimony and related what happened with his mooring permit. He sought the Board's approval with his request for a contested case hearing. Mr. Laber read the dictionary meaning of standing and gave more background on his situation which he said he had standing in this matter. Also, HAR 13-1-11(d) allows the Board to suspend or waive any rule to rent undo hardship in any particular case. The admin rule allows the Board to make variations. Mr. Laber is now aware of DOBOR's policy was to mail out notices prior to expiration, but terminated that practice via

September 18, 2009 letter that was sent to all permittees. That significant policy shift should have required a dedicated notification rather than be buried in the body of a six page newsletter. This is contrary to HAR 13-234-16. We just heard on this from Mr. Underwood and the Deputy AG that it doesn't apply. It's ambiguous with 13-231-5. There is the letter of the law and the intent of the law and the policies up to a year and a half ago. They reminded people with reminder notices and encouraged people to keep their mooring permits by that action and that has ceased. Aside from the poorly administered change of policy communication, I was not a permittee at that time and was not purvey to that policy – change in policy notification. For seven years I renewed my position on the wait list always with a rubber stamp notation, “renewals will not be accepted after the expiration date.” And, he got that because he was so afraid to lose his place on the waiting list he would go down and do it (the renewal) a month early. There was nothing on policy changes or changes to mooring permits. I know now there is a notification on the monthly bill, but he expected something more for notification. Mr. Laber had 14 years at the Ala Wai with no problems while he was there. He never received the September 18<sup>th</sup> letter because he wasn't on the list.

11:30 AM Member Goode departed.

Mr. Laber said that government should be doing things for the people. It takes years to plan to have a boat in Hawaii. The economy and business has been bad. Getting help from the harbor would help. It seems totally wrong and I think it should change. The fact that he didn't receive that letter seems to me a bit of a game changer to enforce such a policy by not telling him or sharing that information. His boat is his property interest and there is no place to put it in Hawaii. I have a secure mortgage and I have property that is entitled to due process protection which is his vessel property interest in secured mooring at Honokohau Harbor is jeopardized and entitles due process protection. Based as a petitioner I am entitled to a contested case hearing and I recommend the Board approve the petition for a contested case hearing filed by myself based on standing and the non-receipt of the September 18, 2009 letter.

Member Pacheco asked he didn't get the letter because at that time he didn't have a mooring is that correct. Mr. Laber said that is his understanding. He was in between where he left his mooring at the Ala Wai in 1992 to 2004 that he didn't have a boat. Then he got the plan and put in for a mooring in 2004 to get on the wait list. The mooring agreement itself doesn't have a stamp, but says it's only good for a year. It wasn't proper communication.

Member Morgan said having been in the Ala Wai for 12 years you were completely conversant with the one year mooring permit. Mr. Laber acknowledged that and said back then the harbor master would call you on the phone and he was sure there was letter notification before September 18, 2009.

Member Morgan said its unfortunate the position you are in that you had this before and we just went through testimonies on why we created...Laber said the only thing different is he didn't get a notice. Member Edlao said he stayed on top of the wait list every year and you finally get it and he let it fall through. Mr. Laber said I never ever did read the

HARs. Member Edlao asked you have been a boater for how long. Mr. Laber asked how many boaters read the HARs. Member Morgan said you knew because you did it for 12 years. Mr. Laber agreed and said of course, but that was with notification. Nobody ever got a certified letter from the harbor master saying you're gone and that never happened in the 14 years at the Ala Wai and that's because he was given a notice. They told me it was going to expire.

Member Pacheco said I think I know what you are saying and it's a real shame. I understand you were at the Ala Wai every year for a mooring permit and you got a letter saying you have to renew, right because they used to do that. And, you no longer have your mooring permit. You were on a wait list to get a mooring again and on that wait list was a big stamp that said don't forget to renew or it will terminate. You finally get your mooring permit and the regime had changed and no longer sends you notifications. I understand that completely, but the issue before us here whether you have standing in a contested case hearing and we've tried very hard in a previous case to find any kind of legal wedge that we can to rectify this situation. From the best counsel that we have here there is nothing that allows you to have standing.

Member Morgan said it would be a nightmare for the Department, I think it is the right decision from a legal perspective, but from an operational perspective it is the right thing too because everybody who missed a payment will have a contested case hearings. I agree it is an unfortunate situation, but it seems our hands are tied. Mr. Laber asked why is it a contested case hearing nightmare. Member Morgan said for everybody who forgets to make a payment. Mr. Laber said what he heard was 10-20 people which he didn't think was a huge problem. That could easily go away by changing the application of the rules and re-instating how they were with the policy to allow notification. If you put it to the boaters they are the ones to support the infrastructure and he and others would be happy to kick in \$10.00 to make up that \$10,000 shortfall you want to save from mailing. Mr. Laber reiterated previous testifier to sit down and talk about this to resolve this reasonably.

Member Edlao said before the Board we are talking about the denial of a contested case and not the issue of trying to resolve the situation of the permits. Member Morgan said you just sat through the whole thing and you know that now we passed the one month contingency and the \$250.00 fine decision and you know that is the situation. It's an unfortunate thing you're in and as Board member Pacheco said basically according to counsel you have no standing.

Mr. Labor said he realized that. It would seem to be a better venue to deal with this at a contested case hearing then here at the Board. This just stops and dies. This issue should go on to a contested case hearing and do this properly. Chair Aila said you have been advised that this particular process does not allow for that. Mr. Laber said because of the standing issue. And, you don't recognize my interest in the boat reiterating his dictionary definition. Chair Aila said you've been advised it doesn't.

Member Pacheco said the property of concern is the permit and it is not your personal property. Chair Aila said there is no property value to the permit. Member Pacheco said there isn't a way for us as the Board to remedy these situations for people who had no intention of forgetting their permit. The way that the rules are now is to somehow to find a way to reinstate your permit, but we don't have the ability to do that. This is a very difficult case for all of us. We have laws and we have rules and we have policies. Whenever there is a policy change where the Department says we aren't going to give you notices anymore and that is something this Board can make a decision about. We don't want that and we can make changes to policy. Rules, we can't change rules. We have to follow rules to the best of our intention and to the best of our legal advice that we have. We can't change laws. The Legislature is the only one who can change laws. You are in a hardship and we are in a very bad position here because we can't help you. Member Edlao said we have to abide by the rules governed by the laws and that is a difficult thing. Chair Aila said and we have to abide by advice.

Mr. Laber asked can you tell me why 234-16 doesn't apply to me. What position would I have to be in to have it apply? Member Edlao said this is not a question and answer because it's for a contested case. Chair Aila said that is a separate issue that is in front of us.

Member Pacheco said as Board member and our responsibilities to this Department that rule you cited is probably a rule that shouldn't be there. For us to act on that and lets say we wanted to use that rule there has been decisions in all the past would open all those up and it's a legal nightmare for us to do that. I couldn't use that rule as a Board member as a representative operating the Department. Mr. Laber said I know. From my point of view it's unfortunate that your interpretation of the HARs facilitates the Board not creating a bunch of liability for yourselves or the State. Chair Aila said we appreciate your point of view. The Board has been advised on what we can or cannot do. We sympathize with your situation, but we cannot grant what you are seeking in terms of standing.

Chair Aila said we do have written testimony sent in from Glenn Shiroma in opposition of the denial of a contested case hearing.

Ms. Mandrell said the notification talked about in the past was certified mail at \$3.40 every year for my renewal notices. It was actually the boaters that said you don't need to do \$3.40 for certified mail. Just send a courtesy postcard and that is sufficient. When they talk about a savings of \$10,000 it didn't make sense to anybody. Other wait lists are still getting notification for renewals.

Mr. Underwood said the reason why we went to certified mail is because of the lawsuits and people claiming they didn't receive the letter and so we went to certified mail to get the green cards back saying yes, we did receive it and went into the file. When we decided not to do we said we are no longer doing that. In the rules it is a requirement to send out a renewal notice for the wait list. It is not a requirement for the mooring permit.

**Member Pacheco made a motion to approve as submitted. Member Edlao seconded that. All voted in favor.**

Member Pacheco said he hopes there are no more of these. Member Edlao said it's to give the harbor masters flexibility in addition to the 30 days and this is unfortunate. Member Pacheco said he doesn't think it's fair that we give permits and no administrative mechanism for those who lose a permit. We need some ability because of unfair termination(s). Mr. Underwood said it was originally in there. Member Pacheco said in general. Member Morgan agreed and said there is a certain amount of responsibility and there is oversight. He cautioned the State being the culprit here. Member Pacheco agreed this is responsibility and this is the perfect example of why we need that because our rules aren't perfect. You can't overnight change rules and have to go through a process. He has been on the Board for several years and we have had conflicts within the rules, we've had confusion within the rules. There are bad rules that need to be changed and we should be able to at that point use a common sense way to fix it and go back and change those rules. Chair Aila said he will carry that discussion to the Attorney General's office to see if there is such a way. I clearly hear from the Board that this is the direction we want to do.

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

11:53 AM Chair Aila excused himself since he had to leave for the Legislature.

**Item C-1 Acceptance of Hearing Officer's Report on a Public Hearing for Two Proposed Additions to the Forest Reserve System on the Island of Kauai.**

**Confirm and Adopt Prior Board Action and Recommend to the Governor Issuance of an Executive Order for Addition of Approximately 52 acres to Lihue-Koloa Forest Reserve at Wailua, Lihue, Kauai, Tax Map Key (4) 3-9-001: portions of 002.**

**Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 11.66 Acres to Puu ka Pele Forest Reserve at Waimea Valley, Waimea, Kauai, Tax Map Key (4) -1-5-003:001.**

Paul Conry representing Division of Forestry and Wildlife (DOFAW) said there were no changes to Item C-1.

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

**Item C-2 Request Approval to Conduct the Competitive Sealed Proposal Process, Authorize the Chairperson to Issue Requests for Proposals and Award and Execute Contracts Under the U.S. Forest Service State and Private Forestry Program for (1) Forest Restoration in**

**Kamakou and Kupualei, Molokai, (2) Containment of Rauvolfia Vomitoria, Poison Devil's Pepper Plant on Private Lands through Control, Monitoring, Partnership and Public Outreach, and (3) Puu Waa Waa Ahupuaa Water System Repairs**

Mr. Conry distributed a copy of amendments and said to add #3 which he read.

Member Gon asked that this is only an amendment to the recommendation section and not a change to the title or any other. Mr. Conry said it is not and only the addition of #3.

Member Gon disclosed that Kamakou is a preserve under The Nature Conservancy of Hawaii, but this is procedural item in regard to a field proposal process and that the process is a fair and equitable unbiased one he doesn't think he has to recuse from this item. Ms. Chow said she concurs with that.

**The Board:**

**Amended staff's recommendation by adding a condition #3 to read as Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the following projects will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment.**

- a. Ungulate Fencing at Kamakou and Kupualei, Molokai**
- b. Repairs of the Pu'u Wa'a Wa'a ahupua'a water system**

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

**Item D-4 Issuance of Revocable Permit to MC&A, Inc. for a Teambuilding Event for In and Out Burger at Wailea Beach, Maui, Further Identified by Tax Map Key:(2) 2-1-008: seaward of 109.**

Mr. Tsuji conveyed is adding to the recommendation in paragraph two to declare that after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS and Chapter 11-200, HAR this project will probable have minimum or no significant affect on the environment and is therefore exempt from the preparation of an environmental assessment. It's a declaration of the Board.

**The Board:**

**Made an amendment to the Recommendation Section. Adding a number 2, as follows:**

**2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.**

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

**Item D-6** Cancellation of Governor's Executive Order Nos. 1495, 2166, and 2605 and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, for Maalaea Small Boat Harbor Purposes, Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-6-01: 02, 34, 41, 43, 47, 49, 50 and 51.

Cancellation of Governor's Executive Order No. 3178 and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, for Waianae Small Boat Harbor Purposes, Waianae-Kai, Waianae, Oahu, Tax Map Key: (1) 8-5-02:44 and 51.

Mr. Tsuji said in D-6 it's the same language as D-4 except it's in the recommendation section paragraph 3 - the same declaration.

**The Board:**

Made an amendment to the Recommendation Section. Adding a number 3, as follows:

3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Unanimously approved as amended (Edlao, Gon)

**Item D-2** Amend Prior Board Action of February 25, 2011, Agenda Item D-2, Sale of Remnant to Ronald Reilly, Trustee of the Ronald Reilly Revocable Living Trust, Kaumana House Lots, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-5-05:82.

**Item D-3** Issuance of Direct Lease to Mauna Kea Moo, LLC for Dairy Purposes, Niupea-Kaala, Hamakua, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 4-1-04:33 and Manowaikohau-Kekualele, Hamakua, Hawaii Tax Map Key: 3<sup>rd</sup>/4-2-07:02.

**Item D-5** Grant of Perpetual, Non-Exclusive Access Easement to Robert J. Vasconcellos and Pennylee L. Vasconcellos; Waimanalo, Koolaupoko, Oahu; Tax Map Key: (1) 4-1-010: 008 portion.

Mr. Tsuji had no changes.

Unanimously approved as submitted (Pacheco, Morgan)

**Item M-1** Issuance of a Hangar and Facilities Lease Hawaii Pacific Aviation, Inc., Kona International Airport at Keahole

**Item M-2      Amendment No. 1 to State Lease No. DOT-A-09-0003 Helicopter Consultants of Maui, Inc. dba Blue Hawaiian Helicopters Lihue Airport**

**Item M-3      Issuance of a Personal Hangar Facilities Lease Audrey and Rudolph Decker-Boznak Kalaeloa Airport, Island of Oahu, State of Hawaii**

Ms. Chow commented that all of these are direct issuances of direct leases under 171-59(b) where she read the language that the disposition encourages competition. There is no mention in any of these submittals that these dispositions will encourage competition within the aeronautical, agricultural, aquaculture or maritime industries and though, they do not meet their requirements of 171-59(b) which would allow them to issue these leases by direct negotiations.

Member Morgan asked couldn't they be encouraging, but not be included in the submittal. Ms. Chow noted but there is nothing on the record to say that it's been determined that if they encourage it and it was pointed out to DOT prior to this meeting that these items are deficient for those reasons and they chose not to attend this meeting. Mr. Tsuji said you are going to have to make the finding and Ms. Chow acknowledged that and said without that being part of the record I don't think this Board can say they've met the requirements of the issue of the lease under that statutory provision. Mr. Tsuji wondered why DOT staff wasn't here.

Member Pacheco made a motion to defer Items M-1, M-2 and M-3 and was seconded by Member Morgan. All voted in favor.

**Deferred (Pacheco, Morgan)**

**Adjourned (Morgan, Edlao)**



There being no further business, Chairperson Aila adjourned the meeting at 12 noon. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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