

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

DATE: FRIDAY, MAY 27, 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 9:08 a.m. The following were in attendance:

**MEMBERS**

William Aila, Jr.  
Jerry Edlao  
John Morgan

David Goode  
Ron Agor  
Dr. Sam Gon

**STAFF**

Dan Quinn/PARKS  
Keith Chun/LAND  
Mollie Schmidt/DOFAW  
Russell Tsuji/LAND  
Francis Oishi/DAR  
Dickie Lee/ENG  
Denise Manuel/ENG

Ed Underwood/DOBOR  
Paul Conry/DOFAW  
Bill Andrews/DOBOR  
Scott Fretz/DOFAW  
Dan Quinn/PARKS  
Allison Yim/ENG  
Morris Atta/LAND

**OTHERS**

Linda Chow, Deputy Attorney General  
Kaleo Polihe'e, E-2  
Peter Young, E-2  
Ross Smith, M-1, M-2  
Bruce Lenkeit, J-1  
Darren Akiona, J-1  
Janet Mandrell, J-1  
Greg Perent, J-1  
Dr. Charlie Fein, C-2  
Liko Martin, C-2, C-4, L-1  
Keola Lindsey, C-4, D-1, D-3

Ku'umealoha Barnes, E-2  
Francine Park, E-2  
Glenn Okimoto, M-1  
Keith Kiuchi, J-1  
Nancy Muetting, J-1  
Shelly Wilding, J-1  
Charlie Bellman, J-1  
Abel Simeona, J-1, C-2, C-4,  
C-5, L-1  
Kittrena Morgan, C-4  
Robert Joe Green, J-4

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

**Item A-1      March 24, 2011 Minutes**

**Approved as submitted (Agor, Gon)**

**Item A-2      April 8, 2011 Minutes**

**Approved as submitted (Gon, Edlao)**

**Item A-3      April 21, 2011 Minutes**

**Item A-4      May 13, 2011 Minutes**

Were not ready for this Board meeting.

**Item E-2      Contested Case Request Regarding a Curatorship Agreement  
between State Parks and the Betty C. Kanuha Foundation for a  
Portion of Keolonahihi State Historical Park, North Kona, Island of  
Hawaii**

Written testimonies were received from Ka 'Ohana o Kaluaokalani/Mikahala Roy, Ku Kahakalau for Iwalani Arakaki and William a. Hoohuli.

Dan Quinn representing State Parks Division pointed out a typographical error in staff's submittal that the petitioner should be L. Mikahala Roy and not Mikihala, but it is spelt correctly in the rest of the submittal and also, Ka 'Ohana Kalauokalani. Mr. Quinn reminded the Board that staff came before them about two years ago about this curatorship for the Betty C. Kanuha Foundation for areas of Keolonahihi. A contested case request was made and based on staff's recommendation should the contested case be denied the Board has the analysis which he could go over and the petitioner and others have requested the decision be deferred.

Ku'umealoha Barnes testified that she is a lineal descendent of Keolonahihi through Betty Kanuha and she is also a Board member of the Betty C. Kanuha Foundation and they want the curatorship assignment signed to continue with the work there. She related how some of the sacred sites were covered up by debris from the tsunami and they would like to clean them up since school children are requesting to come to the site. The Foundation hopes, once the agreement is signed, to hold regular community meetings and to get input from the community on the development of a project management plan and include Mikahala Roy. They sincerely want this to happen in a collaborative way.

Kaleo Polihe'e testified he was involved from the beginning thanking the former chairperson and Board for the agreement that the Foundation's stance is to malama the aina that their kupuna had left for them. They've always been inclusive and will continue that. It is unfortunate and he understands that due process has to be done, but the Foundation encourages the Board to please give them the agreement that they've been waiting for a very long time. Nothing has changed and they are still there and they have lost some kupuna.

Francine Mika'ala Park Kalama testified that her lineage is from Kawaihae and Waipio Valley. She is a doctoral student at the School of Architecture and has worked at Keolonahihi. She and other students in the community petitioned to clean up the sites which she related and thanked the Board.

Mr. Quinn said Jr. Kanuha who was instrumental in getting this all started had passed away. It is staff's recommendation that the Board deny the request for a contested case by Mikahala Roy and Ka 'Ohana Kalauokalani in regards to the execution in the curator agreement between State Parks and the Betty C. Kanuha Foundation for the Foundation to serve as curators or kahu for the 12 acre portion of Keolonahihi State Historical Park. It is also recommended that the Board delegate authority to the Chairperson of the Department to finalize the curator agreement with the Betty C. Kanuha Foundation and previously identified families and interested parties subject to approval of the agreement as performed by the Department of the Attorney General.

Member Gon said he wanted to make it clear for the record that the members of Betty C. Kanuha Foundation and interested parties here want this particular recommendation to be moved forward.

Chair Aila said he wanted to make it clear that it is his intent should the Board give him the ability to move forward on this that he will talk to all of the family members who currently have concerns before signing the agreement.

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

Deputy Attorney General Linda Chow said there may be an issue between the title and the second part of the recommendation that would be the authority to sign a curatorship agreement to the Chairperson because the title of the agenda item only mentions the contested case request. She recommended you defer the issue of the delegation to sign the curatorship agreement and just take up the recommendation upon the contested case hearing request.

Member Agor amended his motion to omit the second paragraph of the recommendation and Member Gon seconded that.

Mr. Quinn said that it could be that the Board had already approved that at a previous...Ms. Chow said which is fine. If they approved at a previous meeting then that

stands, but they cannot take it up at this meeting. Mr. Quinn acknowledged that and said back in November 19, 2009 the Board had already delegated that authority. Member Goode said and if it wasn't staff could always come back. Ms. Chow acknowledged that.

All voted in favor.

Peter Young asked the Chair whether he will negotiate the curatorship agreement based on the denial of the contested case...Chair Aila acknowledged that and procedurally if something went wrong this will come back to the Board.

The Foundation members extended their invitation to the Board members to visit Keolonahihi. The Chair said to get him the information and he will forward it to the Board members.

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

**The Board amended staff's recommendation by omitting the second paragraph. Otherwise, staff's recommendation was approved.**

**Item M-1      Recision of Prior Land Board Action Under Item H, August 14, 2009, Land Revenue Enhancement 2., Summary of Recommendations, Exhibits D-1 and D-2, Kona International Airport at Keahole, South Kona, Island of Hawaii, and Honolulu International Airport, Island of Oahu**

Chair Aila introduced the Department of Transportation Director Glenn Okimoto who thanked the Board for moving up this agenda item.

Ross Smith, Property Manager of Land Acquisition Supervisor for the Airports Division of the Department of Transportation (DOT) said that this item is to rescind a prior action in which the DOT has submitted letters to the FAA declaring certain lands surplus. The action taken by the Board was subject to prior approval by the FAA to withdraw the land from the EOs which was granted to Airports. The FAA has not approved nor will approve the action of removing the land from DOT inventories. Staff asked to rescind that particular recommendation or actions since the prior action will not take place.

Chair Aila noted that the DOT has been in discussions with DLNR about some other potential lands.

Member Morgan moved to approve as submitted. Member Gon seconded it. All voted in favor.

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

**Item M-2      Issuance of a General Aviation Hangar Facilities Lease Audrey and Rudolph Decker-Boznak, Kalaeloa Airport, Island of Oahu, State of Hawaii**

Mr. Ross said the DOT Airports Division is seeking approval to directly negotiate a lease for general aviation activity at the Kalaeloa Airport. Staff asks the Board approve as submitted.

Member Morgan moved to approve Item M-2. Member Goode seconded it. All voted in favor.

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

**Item J-1      Status Report on Proposed Waikiki Landing Project at Ala Wai Small Boat Harbor (AWSBH); Approval of Revised Plans; Grant of Term Easement of Adjacent Fast Land at AWSBH; Lease of Submerged Lands at AWSBH; Amend Development Agreement with Honey Bee USA, Inc. dated December 17, 2009; Kalia, Honolulu, Oahu, Hawaii, Tax Map Key Nos: (1) 2-6-010:003 (por), 005 & 016; 2-3-37:020**

**Amendment of Harbor Lease No. H-87-25 at AWSBH to Hawaii Prince Hotel Waikiki, LLC as affecting Proposed Waikiki Landing Project; Kalia, Honolulu, Oahu, Hawaii. Tax Map Key No. (1) 2-6-010:003 (por); 2-3-037:012.**

Written testimonies from Dave Cooper, Gordon Wood, and Sunny Crowley were received and distributed to the Board.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) said that Item J-1 pertains to the development agreement at the Ala Wai Small Boat Harbor (AWSBH) and staff asked to defer decision making on the majority of the recommendations all except for recommendation 6.d., e. and f. that those are the three that staff would like the Board to take action on today. The development agreement is going to expire and staff would like to extend the development agreement as well as some of the permits that the developers been seeking and need additional time for those permits. Staff also wanted to clarify some of the issues that have come up subsequent to the submittal and they will come back at a later date. He noted that the developer has been current in paying their dues. They have paid \$150,000 in development fee and beginning January of 2011 they've been paying \$15,000 a month as they proceed through this process. Staff has been in constant contact with the developer and they have been up front with staff telling them what the challenges are and are trying their hardest to get this done.

Mr. Underwood said there was some misinformation out there regarding the work docks (transient docks) which are not going to be included as part of this agreement. Staff is using Federal money to rebuild those docks, but it doesn't mean they couldn't come back at a later date before the Board but not at this time as part of this development agreement.

Member Agor asked what were the recommendation numbers again. Mr. Underwood said what staff would like the Board to act on is 6.d., e. and f. and defer the rest of the recommendation.

Keith Kiuchi, counsel for Honey Bee USA, Inc. distributed an editorial from the Honolulu Star Advertiser which published an article in April and he pointed out the poll that was taken asking whether you would favor a public/private partnership to develop portions of the Ala Wai Harbor. Of the 578 recorded votes, 69% were in favor and 30% against. The editorial endorses the project or the idea of having a public/private partnership to develop State lands. Mr. Kiuchi displayed photos of the boat yard repair site now and the condition is poor. The docking area along the Ala Wai Canal is falling apart and needs to be renovated and the building needs to be torn down. When Honey Bee met with DPP in December of 2009, the one thing David Tanoue said he did not want a concrete canyon like the Prince Hotel, Ilikai and the Waikikian project. Mr. Kiuchi presented a timeline from 2009 when the development agreement was signed. The environmental assessment was done prior to this and was submitted to the City, but the City didn't want to accept it because they didn't want to be the receiving agency and suggested a State agency by that agency. Honey Bee met with the Office of Environmental Quality Control (OEQC) in January to determine who that agency was. In April, DOT agreed to be the receiving agency. In March 2010, Honey Bee met with the Ala Wai boating community and in May of 2010 they met with the Waikiki Neighborhood Board. Because of the comments they received they went to Honokohau Harbor that they did a tremendous amount of research to determine how this project should be built. After Honey Bee went to Honokohau they made changes to the final EA. The finding of no significant impact wasn't issued until September 21, 2010 and then schedule a meeting with DPP, but at that time there was a new mayor and there were questions of who would be head of DPP and that meeting didn't happen until December 2010. During that period Honey Bee did a site visit to Portland and finalized a pollution filtration system to be used on this project. While in Portland they saw that the facility they want to build was possible. When they met with DPP they said because they had issues with other permits they were going to process the permit applications consecutively and Honey Bee had to submit a zoning variance first which was submitted on December 6<sup>th</sup>. It was deemed complete in February and although the City ordinance says they had to schedule a hearing on the zoning variance within 45 days but since the City is backlogged it hasn't happened. In fairness to DOT the City tried to get it out on time, but due to furloughs and short staff we just need to be patient and that is what Honey Bee is asking the Board for additional time.

Mr. Kiuchi said there were comments that Honey Bee wasn't a developer in Hawaii, but on the project team is a long time, respected developer named Tom Enomoto who developed a lot of shopping centers in the State. Tom was the one who suggested that if they have an issue with parking then they have an issue with making the boatyard bigger and they should consider building a concrete deck to put the boats on to build and repair and putting the parking underneath. Honokohau Harbor is about an 18 foot drop from the water to land and it was possible to lift the boats up that amount of feet. There was a comment that it was too expensive to do a travel lift and Mr. Kiuchi said no its not.

Honokohau has a travel lift that works there and it just needs additional cable that same travel is being sold for \$40,000, but that is not the one they want to buy because it's not state of the art which led to the visit to Portland. Mr. Kiuchi showed pictures of Schooner Boatworks of a 24 foot drop from where the deck is. There are huge tide fluctuations in the Columbia River and Schooner Boatworks uses a 50 ton travel lift and from that Honey Bee developed the idea of a concrete deck. They were looking for alternatives for fueling and they met with Cal Nolan of Storm Water RX who was concerned with the way they were fueling the boats over the fuel dock because the boats are on water, but the fuel dock was raised that Mr. Nolan suggested that the fueling be on a finger pier. One of the consultants went up to Alaska to take pictures of Skagway Harbor and Mr. Kiuchi showed a picture of Jack London Pier in Oakland. Both are finger piers with fueling pumps and built pumps on them.

Mr. Kiuchi displayed the artist rendering of the project which was on the front page of the Honolulu Star Advertiser in April. There is a four story building that includes shops and restaurants. It shows a boat yard repair deck which is a one foot thick concrete repair deck which needs to be one foot because they had a structural engineer look at it. That deck has to be 16 feet above the ground because as part of their negotiations with DOT they wanted to use DOT as a right-of-way in the front so DOT could access the bridge, not the debris trap and order to do that DOT needed a 15 foot clearance for their equipment and because of that the deck will sit 16 feet above the ground, one foot of concrete which is enough clearance for DOT to bring their equipment in. The boats would be raised up onto the present haul out with steel beams going out. Ken Hayashida, the structural engineer has looked at it and validated that works. In addition to a travel lift they plan to put in a crane to remove the mast. They will reinforce that corner for the crane that removes the mast. Along the water they added a two story building, the wharf building, that will primarily going to be shops, fast food and some restaurants. The wedding chapel is very hidden because they didn't want it to become the focus of the project. Mr. Kiuchi said to look at what we have now and what this produces. The boat repair facility is going to be state of the art. In Portland, they noticed they used vacuum-less sanders which takes up 90% of the dust from sanding the boats which is state of the art for most boat yards across the country and that is one of the things Honey Bee will implement along with electrical stations where each of the boats are. There were concerns by the boating community of how big the boat yard was, it went from accommodating six or seven boats to now 10 to 11 boats and that comes to a huge expense to Honey Bee. This concrete deck alone is about a \$2.6 million dollar investment, but is necessary to have that type of reinforced structure to have the boats upon. This is what the project looks like by the artist rendering. Mr. Kiuchi displayed a birds eye view of the project which shows how big the boat yard is compared to the other buildings. The chapel has been shrunk in size quite a bit. The wharf building is along the Ala Wai channel and the boatyard is here. What they've done to the area along Ala Moana Blvd. is nicely landscape it by adding a water feature on the first floor. The entry way will be a pedestrian bridge on the second floor that will have an iconic statute. The mayor suggested using a mythical figure. Mr. Kiuchi went over the fuel dock and the finger piers from a birds eye view. Honey Bee will have to completely renovate the present concrete apron at a cost estimate of a 1/4 million dollars. In doing soil tests there

is some contamination which will cost about a \$100,000 to remediate and they will add finger piers on the end. They will rehab the boat ramp because they think it will give the kayak team better access to the water and they will use one of the finger piers for the kayak team to launch. The kayak team is going to lease the facility from Honey Bee for a dollar a year plus cam and will not be charged any rent where they will get to use a 1400 foot facility. Honey Bee agreed to build out their locker rooms, bathrooms, and build out their storage. The only thing they will have to build out is a weight training room. The kayak team captain wasn't here, but Honey Bee is serious about making this facility an ocean recreation center. We have already signed the letter of intent with the U.S. National Kayak Team to go out in this area.

Mr. Kiuchi noted Honey Bee wants to make the boat repair facilities affordable that there were comments of how expensive it's going to be and they know this. A travel lift is a \$25,000 investment, but Honey Bee will be subsidizing the boat repair facility. Honey Bee is a developer. They are not an operator of wedding chapels or boat repair facilities. They have identified someone who is interested in operating the boat repair facility and we are going to charge them less rent than what Ala Wai Marine paid which was \$9500 a month, plus \$4000 in real property taxes. Honey Bee plans to charge the boat yard repair operator \$7,000 a month for a much improved facility plus cam. One of the reasons is they need to make the boat repair affordable. Yes, the former facility was not well run, but this one will be and state of the art which is at Honey Bee's expense because they know this is an important component of the harbor and they understand that is what they need to do.

Chair Aila asked Mr. Kiuchi to explain what cam is. Mr. Kiuchi said cam is common area maintenance fees which in this case will include real property tax and common area electricity. They plan to have 24 hour security and the reason that is necessary is the National Kayak Team has had thefts in the past at their present facility, but Honey Bee thinks it is important to the harbor in general.

Member Goode said in the submittal it talks about items in the original part within the draft EA and the current plan. The project has grown a bit in positive areas in making it economically viable. He asked how is the final EA compared to the current plan. Mr. Kiuchi said the final EA and the current plan are almost identical. The major change that was made was between the draft EA and the final EA that it would be difficult for us to deviate from the final EA, but the final EA and the current plan are identical – four floors on the boatyard building, two floors on the wharf, and a 17,533 square foot deck on all of these are identical. There was a comment on Army Corp of Engineer's permits and one of the reasons they hired the architect, Paul Osumi, Jr. was because he has worked with the Corp. The key Corp permits they would have to obtain are not difficult because they are renovation of existing areas. One of the reasons they went with finger piers is so they don't have to drive piles into the water which would take 8 months to a year to obtain those permits. We went through each step of the permitting process to make sure we know what's there.

Bruce Lenkeit testified that he has worked for the Department of Justice for 28 years and many of those were supervising a political corruption unit. He and his parents have had boats in this harbor since 1965 and their family has a long history to the area. Based on Mr. Lenkeit's experience, what is shown in photos and diagrams sometimes isn't exactly true. Mr. Lenkeit thinks a lot of these proposals are smoking mirrors and disagreed with what was presented here which was his personal opinion. He referenced a 550 page document on the zoning variance which he had a copies and the status report that was primarily written by Honey Bee with a few modifications. Mr. Lenkeit said only the Keehi boat yard is available and there is a several month waiting list. The increase to 11 boats is not sufficient. A boat yard on a second floor is not a wise move. Plus these are small boats that are stacked and the only way to get to the ones in the back is to move all of them. It is not a good faith effort. You are going to have to raise those boats 27 feet to get it up there. My boat stands 78 feet from the top of the mast to the bottom, the top of the cabin to the keel is 12 feet and it's just not practical on the second floor. Also, there are deficiencies in that design and in the design of the fuel dock which is not practical. The draft environmental study that came back with no significant impact is a flawed document that Honey Bee relied on an environmental company called Chaptertech and they did the environmental studies for the Makua project where the military lost everything on that project. They've gone down to DOT to discuss it with them and each and every time it was not assigned that the former DOT director signed it on the last day on the job. You guys approved this project and you have to look at the details that you can't go behind the processors that have been on this project before because this is a very flawed document and proposal. They want to put in floating docks and not pilings and you have to have something to anchor those floating docks. And how for them to come back with no environmental impact it's going to intrude on the ocean floor and that was never addressed. It was glossed over.

Mr. Lenkeit said for the third item – wood frame construction in a flood tsunami zone and it's not prohibited, but he referred to photos from Japan on what the tsunami did to wood structures. Doing wood structures would need extra beams and supports none of which was addressed in the construction proposals. The spread footings, they talked about all the concrete and did that because they know the land is contaminated and they don't want to drill and put pilings. The footprint for the fuel dock is so eroded it's a piece of swiss cheese and how they are going to support a building there you just can't lay a piece of concrete over the top. What's under there is going to collapse. Every now and then big holes open up and the temporary tenant fills it with sand and rocks and covers it with concrete. The whole footing is collapsing. The footing around the boat yard is collapsing is being undercut. The performance bond that Keith mentioned – Honey Bee has no history here and they talk about consulting with other people and its all foreign money coming in here. There is no provision for a performance bond and they have never completed a project here even though they may have hired some people on the side that may have. There should be some performance bond if they pull out in the middle of this project because of some items he mentioned and there are many more. That would be an environmental disaster trying to clean up a half completed project. Mr. Lenkeit said he is not against the project. We do need a boat yard and a fuel dock, but we need one that is done correctly both legally, civilly and architecturally with more than just 11

boats. Keith also mentioned the Waikiki Neighborhood Board and they are adamantly opposed to this project and studied it very carefully. At their last meeting they reiterated their disapproval of this project. They gave you some transmittals that they held how adamantly they opposed this project. Mr. Lenkeit named some other folks who were opposed to this project. Dave Cooper, has been before the Board a number of times is off island that Mr. Lenkeit had copies of his written testimony addressing many items. And, Mr. Lenkeit asked the Board to look at the details and not be overwhelmed by pictures and glossy photos.

Nancy Muetting testified that she was here on behalf of the Ilikai Association as a newly appointed chairman of the Neighborhood Project Committee stimulated by development around the Ilikai. The Association in their testimony was looking at HRS 200-2.5 in that the development within the harbor should support maritime activities including the words "ocean recreation." The question is does Honey Bee support ocean recreation maritime activities. The harbor is small and our community continues to grow and if we allow things like wedding chapels and other kinds of activity what is it going to do for the maritime environment? If we allow wedding chapels then we should allow toastmasters and other organizations to experience and appreciate the ocean. The Association asked the Board to look at the long term picture that we're using up our harbors for other types of activities. Maybe they have a permit. This area is in a special management area and she questioned using this valuable space for office space which could be a problem developing the area for water activities. She wondered if any business excludes the public because the harbor has been declared for public purposes since 1928 and to focus on the public to use these areas. If there is a fuel dock on a floating pier what would happen with a tsunami coming through? This fuel dock will block the beautiful views and having a tall building is unsightly to our visitors.

Darren Akiona testified that he has worked with Mr. Kiuchi on this project from day one when the RFP first came up from the Department for development proposals for these sites. Mr. Akiona related being at the channel since Healani (Canoe Club) was there. This project does not displace one existing boulder in that harbor. Nobody gets removed by this project. In his opinion, this project enhances the entrance to Waikiki because now even when the old boat yard was there that he knew the operators, you couldn't put 11 boats in that boat yard before and this project improves that boat yard significantly. When they first looked at this project one of the overriding factors regarding that boat yard was the Department of Health's (DOH) citations against the previous boat yard because of run off into the Ala Wai. If you were to put that boat yard back in to it's present form on the existing concrete structure you are going to still have that run off problem because you can't catch the run off from that site. The idea of elevating the boat yard is brilliant is because you will catch all the run off into a direct filter and you are not going to have that if the boat yard is on the existing platform. It was Mr. Akiona's personal opinion that the Ala Wai has been an exclusive club for certain people for too many years. There are two private clubs that neither you nor I can go into unless we join. They run instructions on sailing in that channel and unless you are part of that yacht club you are not going to be in that boat practicing sailing technique in that channel. This project will open up the Ala Wai to more people.

Mr. Akiona said that when they first looked at this area for the fuel dock site and he told Keith (Kiuchi) there is an existing boat ramp out there that is blocked off that nobody gets to use this boat ramp and he asked them why, they shut them off. Whether it was neglect or repairs that is the perfect place for kayakers and stand up paddlers to launch. The parking lot on the Ilikai side is always full either with surfers or people who work in Waikiki, but the parking lot over by the fuel dock is empty during the day. For guys who are going to launch kayak or stand up it is the perfect place to park because there are restrooms and they can launch. Mr. Akiona advised Mr. Kiuchi if you are going to open the fuel dock, open the boat ramp so more people can come in and out for ocean recreation. You don't have it now at the Ala Wai. Nobody launches stand ups and kayaks out of the Ala Wai. It's either off the beach or somewhere else.

Mr. Akiona said when he saw this RFP he got to applaud the Department staff because the revenue that they wanted to generate off of this site is almost 300% more than what was coming into the Department. Whether we like it or not the economics of this site is the reality. They are proposing a four story building, retail, restaurants, and everything that coincides with that area of Waikiki. They are proposing two wedding chapels and those two will fund everything – the fuel dock, the boat yard and the National Kayaking Team because they are going to generate the bulk of the revenue into this project. The wedding industry is growing and is not declining that we haven't even tapped into the Korean and Chinese market, only the Japanese market. The potential growth is huge and the State benefits. You are looking at revenue from this project that goes to the boating community. It's not going to the general fund. The revenues from this project is the area now with this development almost \$600,000 a year coming to the Department that was previously getting \$145,000 for the same site. Mr. Akiona emphasized that nobody in the Ala Wai is getting displaced by this project. No boaters, no slips are getting taken by this project. For staff to come up with this project and for Honey Bee to spend around \$400,000 to develop this and being patient with the Department because we understand. When furlough Fridays kicked in a year and a half ago we knew our project is going to get delayed. It happened with DOT and it cost them with a delay. It's costing them \$15,000 a month to keep delaying and they are in front of DPP and working diligently with them on the project. This project will do several things for Hawaii – it opens up the Ala Wai instead of a private club for particular people. It will enhance the entrance to Waikiki. It will put in a state of the art boat yard that will handle as much or more boats than was previously done in that harbor. It's going to address all the pollution issues. The major reason why that boat yard got shut down at the Ala Wai was the DOH that they (the former boat yard) had delayed to get this thing resolved and they couldn't get it resolved. The EPA came to the Ala Wai Marina and said you better do something or we are going to shut you off. The boat yard they are going to put in there is state of the art and we didn't look at this and said we wish we could do this. They went out to different harbors and different consultants and they asked them is this possible because we are asking Honey Bee to pump in maybe \$18 to \$20 million into this site. We are not going to walk away half way through not knowing what we are doing and the consultants they did bring in both local and national. If you go to a marina association on the mainland and you mention the Ala Wai people just gleam because people know the potential of what the Ala Wai can be, but they also know what the Ala Wai is today and they will tell

you that is a great facility but it is not first class and should be world class. Mr. Akiona related a story from an Oakland/Alameda woman that when they do a race that finishes at the Ala Wai they try to find a slip and there is nothing. The first step for harbors to look at private partnerships. Put up something that works for everybody. If they were displacing boaters telling them they cannot use an area that is one thing but the direct opposite will happen will more people coming in. Honey Bee has already talked to other kayak teams from Japan and other national teams that have to practice in Mexico because there is no place for them to practice in their countries and they are talking about practicing at the Ala Wai facilities. This is an opportunity for local kids to practice with the best in the world. This is a win-win situation that not one penny came from the State to put this project together. The developer has paid close to a \$1/2 million to get this started. Mr. Akiona urged the Board's support. The developer was honest and up front from day one on how this project was going to go and to meet DLNR staff's requirements of \$500,000 a year from an area that was giving the Department \$135,000 - you got to be creative and good which this developer has done.

Shelly Wilding testified that she is the Head Canoe Coach of Hawaii Canoe and Kayak Team and one of the directors of a new non-profit called the Hawaii Center of Excellence which would be the organization that would want to be a lease holder of this development. She related coming to Hawaii for 25 years, competed in the Olympics and all around the world for the past 18 years in paddle sports. Her and her husband wants to come to Hawaii to live because they see Hawaii as the center of paddle sports in the world. Ms. Wilding related the potential of the lifestyle, the people and the concept of paddling as a tradition that all the local paddlers wanted something that was world class but nothing happened. She was able to hook up with Honey Bee through a local businessman and Honey Bee thought her organization's concept was perfect for this project. That opening into the Ala Wai is perfect for them because the Hawaii Center for Excellence will have the Kayaks that the main purpose is to fund kids from Hawaii with the full pathway from development right through to the Olympic Games. Right now they don't have enough room for their boats and they don't have a facility for people to meet. Teams from Canada, Japan, Australia, Britain and Italy have come to train with them, but they go to the toilet with the homeless and they shower outside, but they would like to offer a world class facility that will expose Hawaii to the world and bring the world to Hawaii. They hope to have kayak, surf ski, OC1, stand-up and the paddleboards and their goal is to bring them all together under one paddling family. They would offer services from coaching to organization, to weight training, mental training - all those things on a world class level through this facility. They have support from everywhere and the developers are sponsoring them for free to help her organization make this a reality.

Janet Mandrell testified she has been with the Makai Society since 2000 and was here with the previous Board who wanted to create a world class harbor. One of the things that make up a world class harbor is the amenities including a boatyard something more than a boutique that have machine shops. We are not against privatization. The expectation is the State will not run a boatyard. We want a private entity in that will do so. It's embarrassing when you come across that bridge and to correct some information

she could show you photos of how much business that thing did (Ala Wai Marina) by doing a Google search of how many boats are in there having been in there herself. Some the stuff in here (the submittal) is terrific. It shows innovation but it also shows they are learning by going to other places. Although that is all well and good it would essentially be a boutique boat yard and she didn't know whether it would serve an 800-900 boat harbor. Plus, others coming from the neighbor islands. This is a great idea and it looks pretty and everything, however Ms. Mandrell made a recommendation that the Board deny this. When this was bid there were other Hawaiian businesses that wanted to get in on this, but because of the structure of the bid they had to walk away. There are people here that we should support who didn't get into the competitive bid because it was just structured too much. If it had been two parcels you would have had more people be able to play. When the Board approved the RFP, she believed Member Edlao turned to one of the Board members and said I'm going to recommend we pass it and he predicted correctly that they wouldn't get through the process in the time allotted.

Ms. Mandrell said that they (Honey Bee) are giving one sub-group of ocean users a \$1 a year rent. When you subsidize one group it's usually at the expense of another and in this case it will be the boaters. We had asked for a bigger boatyard and they gave us one that can haul out 50, 60 footers and they come across from the neighbor islands, but she thinks it's 45 feet that they can haul and she doesn't know the weight limit. Ms. Mandrell doesn't mind it being on the second floor as long as they have an elevator to carry the paint cans up there.

Member Morgan asked isn't the \$1 a year for the fuel dock. Ms. Mandrell said it's the entire project being considered as one thing. Member Morgan said you are saying the dollar a year for the fuel dock is displacing something else at the boat yard. Ms. Mandrell said subsidizing. If you are going to make your money over here and you are giving this guy something or nothing for a \$1 then you got to make it fair. So why not putting a cap on making the boat yard affordable that there is no guarantee that boat yard will be affordable. The goal is to make it affordable and he (Mr. Kiuchi) said he is going to subsidize it. To give one group special privileges...she wanted to let you know that when the Makai Society did their master plan the other smaller vessels they looked toward the heliport towards the beginning of the 800 row for vessels to take off there and they provided for that. Right now they are all up on the canal, but are sorely lacking in facilities. The whole problem with this project started day one when they first tried to sell you (the Board) on the idea instead of coming to the potential customer base and sell us on the idea. When it finally got to us they asked what about the fiberglass grinding and Honey Bee wondered what they meant by grinding of fiberglass. Ms. Mandrell said that is what we do. Since then he (Mr. Kiuchi) has gone through a great deal of trouble by traversing the globe looking at other facilities and a learning process. There are other people out there that have already had this experience and should be allowed to play in the bidding process.

Charlie Bellman testified that he was the former General Manager of the Ala Wai boat yard itself. There were a lot of questions about the size and all that. If you look at the old boat yard the way it originally was at the most it held 12 boats. Now concerning the

way the travel lift works and the way some of the projects were going on there, yes, you would see much more boats in there because we learned to work with the area they had. Once this gets built there is a possibility they can take a look at that. There was a mention that the boats are going to get stacked up and we have to get the first one out, no. The way they did the determination on how many boats will be able to go in there they actually made a little model with the size of the travel lift and the links of the boats and with our turn around area where they can take and turn then park the boats. There was a plan which is why we said we are limiting it to 10 to 11 boats. Once the area is built up then things can get changed. As far as their design goes and he helped them (Honey Bee) doing the designs, also they were initially getting hit a lot of times with the EPA stuff. That's when Mr. Bellman brought up that yes, being on the second level facilitates us being able to meet the EPA by dust collection, water drainage going into it and everything is basically getting recycled. Mr. Bellman is more in support of this as far as the boat yard goes. This design has been thought out. People are complaining that we are only able to hold so many boats at one time and that is where they schedule boats out. There were a couple emergencies where they hauled them out. If you look at his whole year's worth, yes at one time they did have a lot of boats in there, but the majority of the time they didn't have more than eight boats out at a time. A lot just sat there. They had a couple long term projects which made them look semi busy, but they didn't have any real boats.

Chair Aila said it's obvious that Mr. Bellman has been in the business for a long time and asked what other haul out facilities are available on Oahu. Mr. Bellman said right now, Keehi and the Phoenician. The Chair asked what kind of capacity they have. Mr. Bellman said Keehi has a 150 ton travel lift and he thinks it's a 150 ton or bigger at the Phoenician, but there is a 35 ton that they acquired from us (Ala Wai Marine). What they do is for the smaller boats is they haul them out, set it on stands, and grab it with the smaller ones so they can fit more of the smaller boats in there. As for the capacity at Keehi, Mr. Bellman said he didn't know, but it is more than 10 or 11. They are designed to handle bigger boats. For us we've (Ala Wai Marine) always been the smaller boats. Maybe at the max 50 foot and they have hauled out bigger boats because they are sailboats which are lighter. A lot has to do with the tonnage of the boat because his travel lift was limited to 30 tons.

Member Goode asked if there were 10 or 11 boats in the facility at one time how many boats you could expect to handle per year. Mr. Bellman said about 800. Member Goode asked you must have done some calculation on what the turn over would be per year. Mr. Bellman said he has not done that, but Keith has and Mr. Bellman has been talking to him about it but couldn't remember what the numbers were. Member Goode asked a boat takes two days. Mr. Bellman said the average time frame per boat is typically 3 to 5 days and that's what their turn around rate would be. For the weekend it would extend. When doing a simple job on a bottom it is typically 3 to 5 days. Member Goode said for 800 boats at the Ala Wai you could handle every one of those boats once a year. Mr. Bellman said no, no. It's the smaller ones, not the bigger ones.

Chair Aila asked where do larger vessels go to haul out. Mr. Bellman said they go to Keehi or the Phoenician. Member Morgan asked where the Phoenician was and Mr. Bellman replied that it is Marisco out at Campbell Industrial area. The much bigger boats go the ship yard.

Greg Perent, Vice President of Hawaii Canoe and Kayak testified he is also part of the Hawaii Center of Excellence reiterating previous testimony that they are building a world class facility for the youth of Hawaii. To compete on a national level and strive for the Olympic dream. They don't have the proper training facilities and the Honey Bee development will provide that component to give back to the community to train coaches. They feel it is a necessary step in developing the Ala Wai Harbor into a world class level facility. Some paddling is done out of the Convention Center temporarily.

Abel Simeona testified that he is from Ka'u, Big Island and he opposed this because no one talks about protecting our ocean and resources. He referred to the problem of sewage off shore; the State of Hawaii is broke and asked whose land is all of this. This has nothing to do about recreational, but has to do with saving our future for all of us here. Not all people can come here and who will represent his people. There is nothing wrong with all these people coming here and using all of this. Mr. Simeona's family is fishermen, too. We are here for the people. All this for recreation is fine, but we should malama (care) the ocean because everybody is coming. We should protect the waters because that is where everybody comes to hanau. We need the fish for food and should take care of them. Where are all these people going to stay? Everybody is looking for aloha, but this is Hawaiian culture and we should respect everyone and boils down to malama.

Member Agor asked whether it was unusual that an RFP goes out and there is only one responder. Keith Chun (with Land Division) said it is not unusual and it is not unusual for us to have no bids. In our experience regardless of the conditions we put in for applicants that are really interested they will submit financially what works for them whether or not it meets the requirement bid minimum or not. Or, they will contact us and let us know if they are interested or the terms change or something that they would want to participate. We didn't get any of that. Member Gon asked whether the bid issue fulfill his requirements? Mr. Chun confirmed it did. What we are asking now is all the substantive items are to be heard and they are asking an extension of time and going through this process Honey Bee has been more than diligent in pursuing it. I don't think the delays are a result of their lack of effort or expense. As a developer he was sure they wanted to move faster than it was as well. As Mr. Kikuchi explained some of the hurdles they faced, but they continued to pay the fee which is more than the rent they've been receiving for the actual two properties before and to give them additional time to continue working on it I think makes sense. They've been working in good faith on it and I don't think it would make sense to pull it and start all over again.

Member Agor said the reason he asked was he wanted to put to rest the notion that the process was flawed because we only had one bidder. Mr. Underwood said they actually

had others qualified to bid, but when it went to the RFP process they elected not to bid at that time and that was when Honey Bee was the only one who actually submitted a bid.

Member Goode asked do you think the time extension open to May 31 on condition #9 to the end of 2012. For the type of permit is it enough time in my experience to develop anything on the shoreline? Mr. Chun said that is a good question, but we do want to hold their feet the fire. In this case I think we lumped them into one May deadline and extending the agreement for that to next year and that is why we are asking the Board to delegate authority to the Chair that is additional time if necessary the Chair can grant it up to only an additional 12 months. It's not open ended. And, concerns with completing the project, performance bonds, etc those are normally part of our actual lease. If and when they satisfy all the conditions and a lease is issued we do have performance bond requirements to ensure that all the improvements are done.

Member Goode made a motion to approve as amended only items 6.d., e. and f. and deferring the rest. Member Morgan seconded that. All voted in favor.

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

**The Board approved recommendation items 6.d., e. and f and deferred the rest of the recommendation items.**

**Item C-2      Request for Approval of Incidental Take License and Habitat Conservation Plan for the Construction of the Advanced Technology Solar Telescope at the Haleakala High Altitude Observatory Site, Maui, Hawai'i**

Paul Conry representing Division of Forestry and Wildlife (DOFAW) conveyed Item C-2 and that the HCP that the Board is providing for final approval today. As for the Statute it will require 2/3 vote of the Board, five members voting in favor of this plan and issuance of the incidental take permit. The project has gone through both the public review process and the endangered species recovery committee and they've made recommendations to approve as submitted. They will develop facilities on the summit of Haleakala and one of the issues is impacts to the petrel, the endangered species nesting near the site. The construction facilities, rebar, cranes will cause a collision hazard for the birds. The incidental take is for 35 individuals and as part of the mitigation required was for them to one go ahead and install and maintain fencing and predator control measures on a 328 adjacent acre piece of property that is unencumbered State land. This is the cleanest and effective conservation actions that will mitigate that take up there. Staff and applicant are here to answer any questions. Staff approved that the Board go ahead and approve the incidental take license and have that conservation plan and authorize the Chairperson to go ahead and issue the license. The issue in compliance with Chapter 343, an environmental assessment was done and published a final environmental assessment in the OIQC in March 8<sup>th</sup>.

Dr. Charlie Fein, environmental consultant with KC Environmental for National Science Foundation (NSF) testified that he prepared the habitat conservation plan and in

consultation with DOFAW and the Endangered Species Recovery Committee thanking that Board and this Board for the comments received over the past 18 months which have been incorporated into the document. We feel the mitigation and minimization measures are extensive, complete, and the commitment of the applicant and the NSF through funding the various measures is solid – something that will continue for the life of this HCP. The mitigation measures are 2.7 miles of conservation fencing around the 328 acre area which completes fencing around the summit areas so they close off the entire summit area to ungulate predators that are still coming up the south side of the Haleakala summit area. In coordination with the National Park, the fencing will lock out predators from the entire summit area. That is the major mitigation measure. There are other predator controls like rat baiting, cat trapping that the National Park finds favorable. The goal of this HCP is a net recovery benefit. The project is attempting to achieve a net recovery benefit within the six year period of construction. There will be more fledglings and birds to the site toward the end of construction whether or not there is any incidental take or not. Up to 35 birds could be lost, but the net recovery benefit will be more than that.

Member Gon asked whether the fencing installed includes existing facilities and the proposed mitigation area. Dr. Fein confirmed that the 328 acres encompasses all the science facilities – State, Federal and facilities in the saddle area and is rather comprehensive. All those folks will benefit from any potential take. Member Gon asked whether the only fence they had was the one bordering around Haleakala National Park and Mr. Fein replied that was correct. It ends just to the east where this fencing will begin. Member Gon said he was heartened to see that although this focus is on petrel that once this inundation area is attention being paid to non-natives compared to other summit areas. Mr. Fein said that was true. The project in its efforts to establish a baseline before various alien species as well as native species has been conducting surveys for some time. There is an invertebrate survey going on this week which is part of the semi-annual programmatic monitoring that is mentioned in the HCP. Member Gon asked who was conducting that survey where Mr. Fein said Dr. Greg Brenner of Pacific Analytics.

Liko Martin testified that he is from the Big Island and wondered whether there was consideration for the archaeological and Hawaiian cultural places that there are problems up on Mauna Kea because of the lack of enforcement of the ahus (temples), sites and traditional practices. He asked if there was a public process and hoped that someone has stepped in. Member Gon said indeed, the last time this proposal came before the Land Board there were folks who came from Maui who presented heartfelt and well researched testimonies with regard to the archaeological as well as non-tangible cultural values of the summit of the mountain. The testimony was quite long and he found it informative and moving. Personally, it troubled him where Member Gon needed to ask how those kinds of impacts to the natural resources will be mitigated in this case. The situation they are dealing with today is on the biological side of things, but he appreciates Mr. Martin bringing up that fact that there are significant cultural values up at this site as well.

Mr. Martin's question was besides acknowledging concerns there are specific things that could be written in to protect because la'au lapa'au which is dealing with biology of

plants is crucial to our culture to maintain our health. It has been touted before for a viable Hawaiian culture and he asked how real is it going to be that this Board look at the mitigation processes in the protection of those inherent birth rights. Mr. Martin said he has lineal descendents from Maui, too and suggested that the Board incorporate some of the advanced protections.

Member Edlao made a motion to approve. Member Morgan seconded it. All voted in favor.

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

**Item C-4      Request for Approval to Enter into an Agreement to Subgrant between the County of Hawai'i and the Board of Land and Natural Resources for the Purchase of Approximately 550.871 Acres in Ka'u, Island of Hawai'i, Tax Map Keys (3) 9-5-16:025, (3) 9-5-16:006, and (3) 9-5-17:005**

Written testimonies was received and distributed on this item from a Shelley Mahi.

Mr. Conry said that this item is under the U.S. Fish and Wildlife Service Endangered Species Recovery Land Acquisition Grant Program and this is an approval for the agreement that would be then executed with the County of Hawaii for this purchase and the County will be the holder of the property. This project will be geared toward protecting a significant undeveloped coastline in Ka'u and will go to the County for protection of endangered species and that coastline in perpetuity. The conditions that go into these grants are backed up by both the State of the Hawaii through the Department as it is our responsibilities should the County fail in its responsibilities and there are conditions to ensure the Federal Government that this property is being managed for the purpose for which these funds have been allocated. A portion of these funds have gone through our State Legacy Land Conservation Program where you have a multitude of programs that are contributing for the acquisition of this property and its protection. The County will be the final holder of the fee title. It's under Chapter 343 in accordance with our exemption list dated June 12<sup>th</sup> exemption class #1. Staff's recommendation is that the Board authorizes the Chairperson to negotiate and execute the agreement the sub-grant with the County of Hawaii for the Federal funds, to also declare the exemption, and authorize the Department to proceed with all due diligence to negotiate that is maybe necessary to carry out what was mentioned above. There are parties who have interest in the property that are here to testify. Legacy Land and Land Division staffs are here to answer any questions on the actual purchase in the title.

Member Goode said the discussion section says that the County will be partnering with the State and Federal agencies and community organizations to manage most of the property and some of the assets within the property. He asked is the County going to be held to this commitment to the grant or sub-grant to or the agreement. It says various agencies and community organizations in general. It says they will partner. How is that commitment being...Mr. Conry referred to staff.

Molly Schmidt for Legacy Lands for Grants testified that she doesn't think they have a strict enforceable legal requirement that they could force the County to partner with community organizations, but they could strongly encourage that.

Member Gon commented that it heartens him whenever he sees places with significant resources entering into multi-agency agreements to attempt to protect them that he did visit the area years ago and he is glad it remains in the condition that it's in.

Mr. Conry said that the documents obligate the County to carry out the performance and our obligation to do that. That is a strong capacity to ensure that there is a partnership that will continue for the future when the management is done because if its not they have the obligation to step in and take it over. It's a binding obligation for the County to the community is one thing that is not tied up with restrictions.

Abel Simeona Lui presented some pictures of the area and his family and he testified that he has lived on this land for 23 years growing taro, sweet potato, etc. that feeds the people. He gave a timeline of how the area looked before to now using the photos. Mr. Simeona related how the County is destroying by spraying and killing birds that animals are getting sick. They took care of a dead horse that people weren't aware of and they are the stewards of this land. It is their kuleana to malama and save it for the future. The County has been spraying from the highway all the way in. He showed the old water flume and asked now they want to make this into a park. Mr. Simeona said he called the Governor and everyone to take the dairy cattle off the land destroying things. All the opala (rubbish) end up in the pond. There are shark attacks and when there was an injured monk seal no one came for 3 days to do anything. The 'io (Hawaiian hawk) mate for life and live only in one tree, but they bulldozed the trees and they died. He talked about other photos at a surf contest and the children. Mr. Simeona paid for the toilet for the people. Not the County, the State or the Federal people. He related that he is a direct descendent that his father built all the roads and who his grandfather's dad was. Mr. Simeona asked why spend money when the area is already open to the people that they never denied anyone. People want to make subdivisions. His children's na'au is on the land and all were born on the land, but now live in Canada. He stayed home to protect this land for his children, but there are people who want remove him off the land. Mr. Simeona sacrificed to keep what they have today native tenants' rights that Hawaiians are the evidence and we are not the crime. He works and eats off of the land for the people to maintain which is not easy. They want to make this into a County/State park and charge people and make a parking lot. The animals all live with them and they all get along. The evidence will speak for itself.

Liko Martin testified pointing out where everything is on a map relating some history of the area that some areas were grants which were conveyance of fee simple title in the grants to the chiefs. As for the use of the resources and the permit use of water that was the relationship with the kingdom, a promise between the chiefs (Kamehameha III) and the people exclusively in this area of all grants. On the 1885 map he pointed out a village describing it and possible archaeological treasures. A two story house was built on top of a heiau with no permits. Mr. Martin said he was shocked when he learned from a

National Park Service report of SHPD's high risk status and reasons were the failures of SHPD to conform to the rules and regulations of the processing of Federal monies and Mr. Marti related details of that report. He hoped that the Board was familiar with this report. Other examples were given. Chair Aila said that everybody on this Board is well aware of this and they are taking steps.

Mr. Martin referred to a letter dated January 20, 2010 from the United States Department of State memorandum to state governors regarding Human Rights Treaty Report which he read. The reason why he referred to this was it was okay to protect human rights. It was okay to say no to certain procedures. The intent of this letter was to ensure that all levels of government take these publications very seriously. He is not in favor. Chair Aila asked you are not in favor of the purchase by the...and you are in favor it staying in private land holdings. Mr. Martin said he is opposed to it going to the County and is in favor to settling the issues of the land title with respect to those vested rights and that is why he is opposed to this. The Chair thanked him for the clarification.

Mr. Simeona said whether it is the County or State show us you own this land. Ka'u was never conquered. The land belongs to its people and the bay they are living in. He is opposed to the County.

Kittrena Morgan thanked the Board because it was real important to save this land from destruction with these agencies because she knows for sure they are coming in to get the money. Matching grants, Nature Conservancy, everybody piling up on each other and she has heard from a good source that what they are dealing with is over \$600 million dollars in this situation to pay back other land holders for the road and other families that already cut deals and let this land go illegally to Mr. Okuna. Ms. Morgan is a registered nurse living on the Big Island for about 26 years and she has been frequenting this area for over 2 years and she sees it as an extreme wilderness in pristine condition with not one dime put in. The toilets are in place and all the people are allowed in. A lot of people come for spiritual reasons. Abel has boxes of letters from people who wanted to stay in contact with him wanting to come back and be blessed in these pure waters again. She is here to object, oppose the request for the sub-grant purchase Kawa. The DLNR is requesting an exemption under class 1, item 16 and you cannot allow that to happen either. It states that the acquisition or the interest of the land does not cause any material changes of use of the land or resources beyond that previously existing. That is a total falsehood. All of you are welcome to come down and see what happens at Kawa. The cited 343, HRS, Chapter 11-200 HAR doesn't apply. The sub-grant will probably will have no or minimal significant affect on the environment and is therefore is exempt from an environmental assessment. This she firmly disagrees that the public needs to be made aware of what happens when all this money comes in, where the money goes and what it's for because this money is not needed for this land. We have hundreds of people offering to help. Abel, being Hawaiian he declines help and does what he can relying on himself and his family. When you have to do community service through the courts, Abel has been accepted as a place to go do community service by the courts on the Big Island. Ms. Morgan insists if you consider this go any farther you have to do an environmental assessment or EIS with a community meeting letting them know what is

involved because the County is saying they plan on changing nothing. The West Hawaii Today (WHT) is saying Abel is deterring access from the property because he has been out on the street for over a year now in protest of this purchase buyout which is a total lie. The WHT writer wrote over and over that the neighbors are complaining and as you can see by that map where the one neighbor is that there is nobody there. The one complaining is Mr. Kyle Soares who wants to put his cows back on the property and use the water from the pond.

Ms. Morgan said that Kawa, its resources, its uses and native tenants will be adversely affected by this situation. There is no need for restoration and the people who come here respect the land and everyone behaves with Abel's presence there. This is an extremely sacred site. They will have a bulldozer come in there and make their parking lot to control vehicular access. The cars are parking on the lava flow. Abel has signs "do not drive through pond." He stops them and they leave peacefully. There is no decrease in population of the Hawksbill turtles. They are calling this replenishment money, but there is nothing to replenish. If left alone it will take care of itself with these folks. Ms. Morgan reiterated the poisoning situation and she has seen birds come up to Abel dying that the vet says it takes months for birds to die, but it's the young birds dying and the worffrine was found in those birds system. She is working with the Department of Agriculture and they filed complaints on this poison with hopes they will stop poisoning. Also, she hasn't been able to find it, but she knows there is rat poison which is mentioned in this report for Kawa to get rid of the rodents. They are catching the mongoose and cats that come in and getting them out of there.

Ms. Morgan said that being on this land is part of these guys culture and religious practices that you could call it native tenant rights that they are saving the land for the future to have a place to go to grow food and all people are welcome. The land and the water is the Hawaiian culture. Their ancestors speak to them and she has witnessed this. I can hear chanting coming from a bush when the wind is whipping. It's not a place for tourists to come there and jump in and think they are going to get a surf lesson where the river mouth has sharks. The only people surfing are the good surfers. You go there and you'll see there is no trash while all the other parks the County is taking care of is trashed. It talks about endangered species, but there is nothing more endangered than the Hawaiians themselves.

Keola Lindsey representing Office of Hawaiian Affairs (OHA) testified when you talk about lands in Hawaii in this particular case and the Federal Government, State and County, but most importantly the community and the families of this land all recognize the importance of protecting the resources. And we all know the challenges we run into are implementing the process is to get to that goal that is where the conflicts sometimes start. There are two important issues mentioned today that can't be decided by the Board today, but should be recognized, one is the title issue that should be adjudicated appropriately somewhere else and the issue of Native Hawaiian rights and how the State balances their mandate to protect those rights while managing their lands. I'm sure were familiar with the highest court of these islands hearing oral arguments recently about another case on Kauai and we are all waiting the results of that. Kupuna Abel and his

family has shown us the good things that has happened here, the sad things happening here and I think the concerns these folks have to some degree are shared by the agencies trying to do what they do to support the resources here. We want to encourage that communication between folks continues as this process moves forward. OHA wants to support the families from Ka'u, the agencies involved with this in providing solutions here and we support the agenda item that is before the Board because we see it as a first step in a long process to get to a positive result. It's securing these monies to acquire these lands from private parties and if there are title issues they will be worked out. But it's a first step. We are always very concerned when there is a Chapter 343 exemption proposed, but in this particular case again because we see it very early in the process we don't object to that. We seek assurances that any future actions on this land will be coordinated with community groups like the families that are here and subject to future Chapter 343 compliance. Board member Goode brought up a good point on what responsibilities the County will have as this moves forward. Action 1) 5. that is before the Board gives the Chairman the ability to impose terms and conditions that best serve the interest of the State and the communities and families from this land. We're confident the Chairman and the Board will fulfill those and it gives the Department the authority to precede with due diligence and negotiations that maybe necessary to carry out the grant conditions. They are confident as the Department does that they will be working with all community groups, family members, the lineal descendents to ensure that is going to happen. Mr. Lindsey summarized that the key here is that the agencies involved including to a certain degree but we are only playing a support role here the community groups and families of this land will remain engaged throughout this process.

Member Gon asked to clarify the presumption is that the disagreement is designed as a preservation tool and not as a recreational enhancement tool. Is that correct? Mr. Conry confirmed that is correct. If you look at the source of funding many of these issues that are paramount concern to the testifiers and many of the inhabitants of the land are exactly the reasons that the grant was submitted and purchase will actually provide long term perpetual protection for the endangered species and the resources that are in that area. The components of this are the time and place of a private landowner has title of the land and this is a step to acquire that and put it into long term conservation protection. Right now it's the County that has stepped forward and said they are willing to hold the title for that. Under the agreement, attachment 1 – the scope of performance, under item #4 it says the owner of the property is the sub-grantee shall and it outlines the actual issues of concern brought over here. They are going to go over with a management plan. They are going to paramount make sure under the Endangered Species Recovery Plan Acquisition Program provide money to make sure the endangered species are managed and protected there. That is not happening and that is a violation of that where both the State and the Fish and Wildlife Service step in and exert their responsibility to see that happens.

Member Gon asked to clarify to him whether or not the issue of cows is an adjacent issue or on this parcel. Mr. Conry said he didn't know what the current land use is with cattle grazing, but he would say under the conditions of the grant that is something that should be eliminated. Member Gon asked that would be the cows should be removed from the area, right? Mr. Conry confirmed that as indicated if they are down in the wetland and

things like that it's not compatible with protecting and restoring endangered species habitat.

Member Gon asked after this acquisition is there any plan or increased likelihood that there would be evictions of community members that are down in these areas. Mr. Conry said again, they are not going to be the title holder and are not urging anybody to do that. No, we have not required that. Member Gon said the points that OHA made are really important if there is involvement by the community there it needs to be taken into account people who are in communities that are most concerned with and are living in proximity with and have made traditional use of this property in the past and moving forward. Mr. Conry clarified we have made no such demands. Going on to item #4 under d., e., f. you are beginning to see there is a requirement for the County to work with the local community and cultural groups to create an archaeological conservation plan. Member Gon asked wasn't there a community group mentioned. Ms. Morgan said Ka 'Ohana o Honu'apo, community efforts is the one spraying and digging up trees are the people they want to take care of Kawa. There was no one from that organization here.

Member Agor asked how many people are on the land. Mr. Conry wasn't sure. Ms. Schmidt said that specific group mentioned in the project group proposal is part of the grant agreement is Ka 'Ohana o Honu'apo and in addition to that are local community groups. Member Gon wondered whether she had met any of the community groups and Ms. Schmidt has not. Member Agor asked whether these are groups that use the land or are they groups that actually live there. Ms. Schmidt said groups that actually live there, aside from Abel she doesn't know and couldn't speak to that.

Member Edlao asked whether a County representative was here at all and Ms. Schmidt said he is not where Member Edlao asked why not. Did you request he be here? Ms. Schmidt said she did not but she did tell him this submittal was coming before the Board.

Member Goode said he noticed that the County's contract is \$4-1/2 million dollars and asked whether she knew that is County funds or grant funds that they received. Ms. Schmidt said they have County open space funds, Legacy Land Funds and ROA Funds for the total make-up of the project. Member Goode said so that is their own funds. That is a significant amount of money for any County. I am very surprised for no one from the County to show up kind of tells me how really interested they are. You can't spend that kind of money and not show up and tell us what they plan on doing with the land and how they intend to work with lineal descendants and what community groups are besides this one mentioned. I am a lost for words.

Member Gon said it maybe that this particular sub-grant if issued here is an issue of the State's involvement in the transaction. It was just wasn't on the County's screen. It's not the County coming before Land Board it is the Division of Forestry and Wildlife coming before the Land Board regarding the sub-grant. He could understand that, but Ms. Schmidt did inform them.

Chair Aila asked Mr. Simeona how many people are living there. Mr. Simeona said just his family about a dozen or so. There are many people who come and go on a regular

basis which is about 20. He invited the Board members to come and check out Kawa. That he is an owner of his land passed down to him. The Chair acknowledged there are differences of opinion of ownership.

Member Edlao asked if this item should go through will the County come back to the Land Board with the management archaeological plan and everything else. Mr. Conry said he doesn't believe there was a requirement that the Board would be approving that. The County is required to produce a plan. Member Edlao asked once they are holding the title they won't have to answer to us. Mr. Conry said they do have to answer to us to achieve the objectives of the plan. Member Edlao said right and asked but we don't get to review the plan or anything as submitted. It does say develop and implement, but there is no check or balance in terms of what they are doing. Mr. Conry said correct. One of the additional protections could be and he referred to "Scope of Performance", #5 which he read as well as #6. Item #4 outlines what the County obligations are going to be as far as the development of their management plan. Item #5, the County will provide the State the opportunity to participate in the planning process and review and provide comments on the management plan. It's not requiring concurrent approval. Member Gon asked and to assess compliance. Mr. Conry acknowledged that. The objectives are what the State have – compliance.

Member Agor suggested can they make a provision in there that would ask the County because this is conservation land and we have people on the property who really care for the land and to ask the County if they could have a stewardship program that would allow this one family to cooperate in the stewardship of the land and allow them to remain there. Member Gon said similar to a curatorship with the State Parks has. Member Agor acknowledged that because he doesn't hear a whole bunch of other families there. Ms. Morgan said its usually less than six people there. Chair Aila asked whether there is anything that prevents that. Is it conditional and Ms. Schmidt said no. Member Gon said it does authorize the Chair to negotiate and execute the agreement and other terms and conditions that maybe prescribed by the Chair. Member Goode said we can have language that would clarify what we want the Chair to do. I don't think you are that out there Ron. What I heard the gentleman from OHA said the land ownership may have to be adjudicated somewhere else and it's a very complicated issue on land ownership. What I saw and what I hear and what I feel is that Abel as the folks that are on the land where it may be personal ownership. This is the first case I have seen where this guy knows this piece of land. This individual and probably the people that he teaches really know the land – the flora and fauna, the spirits. What I saw was incredibly good. Hopefully within this complex relationship with the various agencies, etc. there is a place for you and your family and what you do to continue in the right way and I'm not sure what that is. I hope we can add language along the lines of what Ron was talking about to help direct the Chair and I'm sure the Chair's heart is in the same spot to make it happen. That is how I feel.

Member Morgan said he kind of agree that with the hour and a half exposure to this which is pretty limited that with the County's involvement and greater exposure to the situation to give some kind of deference to their wisdom too. I am a little bit

uncomfortable being the puppet master here. I would support accepting staff recommendation without additional strings and leave it up to the Chair who would then have a little bit more exposure as time goes on. Member Gon said assess the situation to contact the County as their plan develops and report that. Member Morgan said he is surprised that the County is not here, but he supports the recommendation.

Member Edlao asked on #5 of the "Scope of Performance", when you say DLNR is that the Chair or the Board. Mr. Conry said at the Board's direction it can be at any level. Member Edlao said he could see some sort of presentation to make sure certain things are done as well as working with community groups that are already on the property. Chair Aila asked a condition for the County to make a presentation. Member Edlao read #5 and said maybe some sort of presentation to the Land Board, at least a draft. Bring it to the Board so they can look at it and make sure all their concerns and community concerns are met before a final plan is done. You come up with the words. Mr. Conry said under #5 amend that to say "...provide comments on the Management Plan at a regularly scheduled meeting of the BLNR. Deputy Attorney General Linda Chow said Paul you may want to leave that to be word smith by the Chair because you may want to have staff participating in preliminary drafts and ultimately come to the Board as a presentation. You don't want to cut staff totally out of it. Mr. Conry agreed and said its possible including a briefing before the Board and Ms. Chow said yes, the exact wording we can work with, but that is the intent. Member Gon said he liked including a briefing before the Board.

Member Goode asked do they need to change the conditions or leave the conditions as is. Member Gon said he thinks with the change in the sub-agreement that we could leave the conditions as is. Mr. Conry suggested including a briefing of a draft Management Plan so it's complete. The Board agreed.

Chair Aila said before we go towards the motion, now that we are aware of some issues surrounding the poisoning can I get the Department to talk to the County and see what issues are there with regards to possible negative outcomes of the poisoning program is. Mr. Conry said he thinks even for Mr. Abel who is down there anytime he sees incidences and I'm not sure who is doing the spraying, but he does have cases where he believes endangered species are being killed that is something that can be reported to DOCARE and mitigation can investigate. Chair Aila said they will follow up.

Ms. Morgan said about a year and a half ago when Abel moved his main camp where he sleeps to the street was response to an article on the front page of WHT which was titled "Acquisition of Kawa Imminent" County working with landowners to formalize park plans. Abel was never spoken to and he decided to go to the drive and wait for them to pull in to talk to them. He is still waiting. In the meantime in January they sent a Sheriff in with an ejection lawsuit by the County. Just ejection, they never talked to him and the day they go to court for that ejection hearing he is handed another identical one from a Mr. Edmond Olson. Ejection. No consultation with any native tenants in his family. There is another third cousin, the Apikis moved in under the County about 3 or 4 years ago without Abel's knowledge and made up a PASH Trust. There are 10 members

of this family with an exclusive PASH Trust apparently getting money for being the new konohikis of the land. All they do is go down there to drink beer and cause trouble with Abel's family by throwing around these papers and they leave filing harassment charges. They provide no sanitation. They provide nothing. And that is who the County and Mr. Olson is speaking to now to claim themselves as konohikis to move in and rebuild some pilihales or something and get millions of dollars in grant money then go back to their jobs and brand new cars. As far as the County working with tenants, no and they keep calling WHT and printing blatant lies about Abel. That is another lawsuit when he has time after the courts on the slander with what they are doing here and the conspiracy.

Chair Aila said they will pay attention to that on the Management Plan.

Mr. Simeona expressed he opposed that his whole life is at stake and his children and the future. This is not about a park that you guys are going to diminish all of us. That you are going to make someone else be the care keeper of this land and they are going to get lock and key. They will move anybody at anytime all because of development. He is the evidence taking place on this land. The crimes committed to him and his family for the last 23 years going back to our Queen. He has written to the President and Attorney General concerning this land. He is in a Federal Court case now on what to do with this land on June 20<sup>th</sup> and let the Federal Court make the decision not you folks. You folks are taking away our land that they had for 200 years. Chair Aila said that is not our intent. Mr. Simeona said it is the County then. He speaks for our people and why do you folks need to take this park. This is not a park. It is his home. Our home. We share this with all the people. It is between him and the President dealing with the land issue and not with you folks or the State or County. All you people come from a different place show some consideration for his birthright and aloha. Now you are trying to take away the Battle of Kuamo'o because that is how his tutuman got this land because of his help and now you going to take it away for a park. This is his birthright and why do you want to take the last piece of land that is not connected. He is the only one to speak for the land and the animals because he lives on the land that he has books and pictures. Only his family is here. If you want to give grants give it to them because they take care of the place. He is willing to sit down with any of them, but not this kind of stuff that they are bringing. He sits down with the kupunas who appointed him because there was no crime on the land while he was there for the past 20 years. Go to any park there are always unsolved murders.

Chair Aila said that we don't want to take all of this and we don't want to destroy all of this. The point is to build things into the agreement. You may not agree with our process and that is fine. We understand you have concerns about land title and concerns about what might be if the County comes in, but the process we have today we are trying to help ensure that you're not evicted from that property. We understand what you are saying. We are not going to agree with everything you say, but we have to finish this process.

Mr. Simeona said that land is not for sale and he stands by it.

There was some Board discussion about the clarification and Ms. Chow said the clarification is to the Chairperson. Mr. Conry asked whether that clarification could go on the actual agreement. Ms. Chow said the clarification is from the Board to the Chairperson as to when he takes the terms of the agreement should include that item that they discussed. But, I don't think the recommendation itself needs to be changed because the authority of the Chairperson who sets those terms and conditions are already in there as listed.

Member Morgan moved to approve with clarification as described. Member Edlao seconded that. All voted in favor.

Member Edlao commented if the County says what happened, you can tell them if they were here they would know what happened and he is very disappointed that they were not here.

Chair Aila said Abel, if you can give me your number I will sit down with you later on and explain it. There was a misunderstanding maybe on your part or maybe on his part based on Abel's thought process, but I would like to sit down with you more in depth what we just did and what that means.

Mr. Simeona requested a contested case hearing. Chair Aila said you do know you have to follow up within 10 days with written. Mr. Simeona said got it and thanked him.

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

**Item J-4      Cancellation of Revocable Permit No. 4433 and Re-issue an Updated Revocable Permit to Surf N Sea, Inc., Haleiwa, Kawaihoa, Wailua, Oahu, Hawaii, Tax Map Key: 6-2-03:39.**

Bill Andrews, Property Manager for DOBOR conveyed staff is breaking down the RPs into small portions and gave some background history on the RP. Staff needed to do a rental re-evaluation where an appraisal was done November 2010 and they found the property was under valued and wanted to raise the rent to make it in line with the properties in the Haleiwa area. The rent should be increased to \$5010 per month. Staff is asking a cancellation of the RP and a re-issuance to Surf N Sea to continue subject to terms and conditions.

Member Edlao asked you are recommending a month-to-month. Mr. Andrews confirmed that. Eventually they are looking for a long term disposition. They are still under review on how they are going to approach this. Plus they may have to go through a public auction process.

Robert Joe Green representing Surf N Sea said that they are in agreement.

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

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

**Item D-4 Issuance of Direct Land License to the County of Maui, Department of Environmental Management for Removal of Cinder and Soil Purposes and Issuance of a Right-of-Entry to the County of Maui, Department of Environmental Management; Wakiu and Kawaipapa, Hana, Maui Tax Map Key: (2) 1-3-004:012 portion.**

Member Goode recused himself from this item.

Russell Tsuji representing Land Division conveyed this is a request to issue a land license known as the Hana Cinder Pit to County of Maui at gratis and they will be using the cinder for their community road projects as well as landfill. One of issue that always comes up when he looks at these land licenses is whether they (even a government entity) are going to sell it for profit 'cause in that is the case staff would probably recommend something different on the consideration and asking probably for a royalty. As you can see these lands are ceded, but because the cinder will be used for public projects and later on for the landfill which are all related to government services that they aren't charging them but to the extent if they were going to sell it to another private entity then staff built in a compensation to ensure revenues not only to the State but to make sure OHA gets its 20%. The County representative was here as well as their planner.

Member Edlao said the conditions would cover the concerns that they had besides the conditions described by the Chair.

Mr. Tsuji said in the exhibits it appears that the prior license from 1976 was executed by the County but for some reason wasn't executed by the State. But, now they've been operating it as a landfill and he would do it as a continued transaction. It did receive Board approval, it did receive everything it needed to do it just so happens it may not have been presented to the Chair and might have been lost. This is basically a continuation of that operation.

Member Morgan asked whether it was landfill as well as cinder pit removal. Mr. Tsuji said that is what he understands.

Mich Hirano (representing Hirano, Munekiyo and Haraga, Inc.) came before the Board and Member Morgan asked you mentioned landfill, a 150 yards extraction, but are you putting stuff in it too. Mr. Hirano said no, that the landfill sits three miles away from the cinder pit and the cinder pit material is used as cover for the landfill as well as road maintenance that the County does. Tracy Takamine with the County of Maui, Department of Environmental Management is here and he is head of the Solid Waste Division.

Member Gon said he noticed limits on removal and it says a minimum of a 150 cubic yards per week and asked whether there was a maximum. Mr. Hirano confirmed that.

The County takes about 450 cubic yards a week. However, they are looking at opportunities to reduce that somewhat because they have Department of Health approval to use tarp cover 40% of the time at the land fill to reduce the amount needed.

Member Morgan made a motion to approve. Member Edlao seconded it. All voted in favor.

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

**Item C-1      Request for Delegation of Authority to the Chairperson of the Board to Notify the Public of Habitat Conservation Plan and Safe Harbor Agreement Applications, Draft Habitat Conservation Plans and Safe Harbor Agreements, and Associated Licenses in the Office of Environmental Quality Control Environmental Notice and Initiate the Public and Endangered Species Recovery Committee Review Process**

Mr. Conry said this item is to get a process that staff uses for developing, reviewing and submitting for both public review, ESRC review and Board approvals of Habitat Conservation Plan and Safe Harbor Agreements, get it consistent with the Statute on the provisions for both public participation in the process and confidentiality of the materials that could go into one of these documents. A couple of the statute pertinent here is one under Chapter 195(d) there is a provision that requires that if there is a private lands involved in a project then you keep the information on the endangered species occurrences and locations confidential. It begins how do we go through the process of having it reviewed by the Endangered Species Recovery Committee and the Board while it's confidential because these are open public meetings. Staff looked at that process and worked with the Attorney General's office who advised staff work with the applicant to develop a draft plan at which point it will be noticed and go out to the OMQC Bulletin at which point would go out to the public and Board to consider. Staff is requesting delegation of authority to the Chairperson to be able to go ahead and process the notifications of both HCP State Harbors and incidental take licenses. Have it drafted and have the Chairperson go ahead and make the notice declaration which would open up the process.

Charles Jencks representing Honua'ula Partners and Ulupalakua Ranch testified that both entities have been working hard on HCP documents with DOFAW and trying to get to the process. Staff has been helpful, but it's good to see the beginnings of some organization to get through this process. They support this and gives certainty to everyone and allows them to get through this process in a timely manner.

Member Gon made a motion to approve as submitted. Member Morgan seconded it. All voted in favor.

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

**Item D-2      Withdrawal from General Lease No. S-3849, Withdrawal from Governor's Executive Order No. 1398 and Reset-Aside to the State Department of Transportation for Public Highway Purposes; Issuance of Immediate Construction and Management Right-of-Entry to the Department of Transportation, Kaohe 3rd, Hamakua, Hawaii; TMK: 3<sup>rd</sup>/ 4-4-15:04 por., 08 por. & 14 por.**

Mr. Tsuji said this was a request to withdraw a certain amount of lands from an existing EO and reset aside that to the DOT in connection with the Saddle Road Realignment Project on the Big Island. DOT was here to answer any questions.

Member Morgan made a motion to approve and Member Edlao seconded that. All voted in favor.

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

**Item C-3      Request Approval to Issue a Request for Proposals and Authorize the Chair to Award and Execute a Contract(s) for the Management of FY 2012 Statewide Youth Conservation Corps Program**

Mr. Conry related that this is a process where staff is coming to the Board to the approval to go ahead to issue the process and also asking to authorize the Chairperson to set-up a committee and go ahead and execute the contracts after the RFP process.

Member Gon moved to approve as recommended. Member Morgan seconded it. All voted in favor.

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

**Item C-5      Request Approval to Initiate the Competitive Sealed Proposal Process and Authorize the Chairperson to Issue a Request for Proposals and Award and Execute a Multi-Year Contract for the Purchase of Native Plants for Restoration of State Lands**

Mr. Conry said this process is one where we got a number of restoration recovery projects on-going and they need a larger supply of native plants. Staff would go out on bid to solicit bids from nurseries that could be single or multiple bids, but across the State where that they would give staff a price per various seedling that staff wants to produce. This process was effective when they worked on Maui to restore the forest reserve after a fire. One of the nurseries came forward and gave healthy production to speed up staff's process of out planting. This would give staff the authority to proceed with that and give authorization to the Chairperson to review and approve the selection process.

Member Goode said if we are going statewide and there is a particular species it may not be the best thing to go statewide. Maybe we should have some flexibility by looking at the needs on each island. Mr. Conry said he had a question for staff if someone on Maui

producing plants for Big Island would we provide the seed sources from the Big Island and they could produce in their nursery facility and then ship it out depending on the input response we get to on how to select that. It will be part of the selection process. It would not be produce all Maui species and spread them all over the rest of the State.

Member Gon asked would it not include different nurseries on different islands. Scott Fretz representing DOFAW said staff could set up the RFP so multiple entities could be awarded incrementally or if it's one the plants provided have to be genetically and geographically compatible for the location that they are going to be planted.

Member Morgan noticed he identified a 120,000 seedlings and he was curious what does the State produce now on its own. Mr. Fretz said he didn't know the numbers, but the reason they are doing this is because they are way beyond the capacity of their nurseries to meet what we need. Member Morgan said he supports it and was just curious.

Mr. Simeona asked whether it was someone's right to take a rare plant someone has on his property. Mr. Fretz said he didn't think so unless there was an enforcement issue. Mr. Conry said if they were collecting off of a private landowner's property then they would be doing so with their permission. Mr. Simeona asked if there were any guidelines. Mr. Conry said that their Endangered Plant Protection Program the genetic integrity of the species is all the way across the island. It's a huge issue and would be what they are ensuring in the RFP. They try and protect the uniqueness of flora and fauna all the way across the State.

Mr. Simeona asked do you have a right to take a plant from one island to another. The Chair said under several laws they have the right to do so, yes. Mr. Simeona said he was concerned with the cocqui frog going all over the place and protecting all of this. Chair Aila said that is the whole point of the strict processes.

Mr. Martin related after spending 10 years with Abel observing the land certain species grow better in certain areas. He asked is there some way to work with the community or has a particular type of species of lama? If you want a seed bank that is what they are always doing. Pahala is mostly sugar cane area. Upper Kawa is already set-up for subdivisions and their vision was to put green kukui nut back and forested. They have a budget and they have people and an education system that this is the kind of stuff that they can do. Chair Aila suggested giving them a call off line and see what they can do or they can tell you who is working along those lines.

It was moved and approved by Member Morgan and seconded by Member Gon. All voted in favor.

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

**Item D-1      Mutual Cancellation of General Lease No. S-4004 and Issuance of a Direct Lease to Christ Lutheran Church of Hilo, Hawaii for Church and Allied Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-001:120.**

- Item D-3**      **Rescind Prior Board Action of April 22, 1977, Item F-2; Set Aside to the County of Hawaii for Landscaping, Maintenance, Public Access, Pedestrian Way and Ancillary Purposes; Issuance of Immediate Management Right-of-Entry, Auhauekeae 2<sup>nd</sup>, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-5-09:26.**
- Item D-5**      **Grant of a Term, Non-Exclusive Easement to Keath B. Keathley, Anthony P. Amaral, Sr., Dolores Amaral, Vance N. Akinaka and Malia Akinaka for Access and Utility Purposes, at Waiakoa-Alae 3 and 4 Homesteads, Makawao, Maui, Tax Map Key: (2) 2-2-9:portion of 30.**
- Item D-6**      **Cancellation of Revocable Permit S-6933 to Beatrice Kekahuna and Re-Issuance of a New Revocable Permit to Wanda Vierra, Lurlyn Scott, and Beatrice Kekahuna for Intensive Agricultural Purposes, Honopou, Hamakualoa, Makawao, Maui, Tax Map Key: (2) 2-9-001:018.**
- Item D-7**      **Consent to Grant of Easement under Governor's Executive Order No.3939 to Hawaiian Electric Company, Inc., Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:005 portion.**

Mr. Tsuji said he had no changes.

Keola Lindsey representing Office of Hawaiian Affairs (OHA) said for Items D-1 and D-3 the submittals say OHA had no response and they were probably late with their responses and will try to do a better job of getting them in a timely fashion, but they did respond and did not have any objections. OHA understands the Department has worked with the applicant to negotiate a lease with minimum rent for an organization of that nature and that's appreciated.

Items D-1, D-3, D-5, D-6 and D-7 was moved and approved by Member Morgan. Member Goode seconded it. All voted in favor.

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

- Item F-1**      **Request for Approval to Enter into a New 2011-2012 Federally-Funded (\$385,291) Department of Land and Natural Resources (DLNR)/University of Hawaii (UH) Contract to Continue the Work Performed under Contract No. 55137 for Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery**

Francis Oishi representing Division of Aquatic Resources (DAR) reported that this item came before, but it had some flaws and staff re-submitted in terms of the matching amount that was erroneously stated in the original. The Board approved it with the correct matching last April and more recently we learned we couldn't continue amending

an extending contract that was 5 years old which came from the AG's Office and DAGs. They ordered to do a new contract and the content of the contract is essentially the same, but a new contract. Everything that came before appended to the submittal is the same as the previous.

Member Morgan motioned to approve as submitted. Member Edlao seconded it. All voted in favor.

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

**Item F-2      Request for Approval of Special Activity Permit 2011-47 for Dr. Matthew Parry, National Marine Fisheries Service, Pacific Islands Regional Office to A) Restore Live Coral and B) Mitigate Damage from Loose Dead Coral in the Entrance Channel of Barber's Point Deep Draft Harbor, Oahu, Hawai'i**

**Item F-3      Request for Approval of Special Activity Permit 2011-80 for Mr. Randy Cates, Cates International, Inc. to A) Restore Live Coral and B) Mitigate Damage from Loose Dead Coral in the Entrance Channel of Barber's Point Deep Draft Harbor, Oahu, Hawai'i**

Mr. Oishi said these two items are the same project and he gave some background on each of them.

Member Edlao asked if there is a violation who is paying for this. He didn't see anything on that. Mr. Oishi said that NOAA Fisheries is working with the responsible party on a settlement and one of the provisions is to restore it which is before you today. Member Edlao said so NOAA is working with them. DAR has no say in it. Mr. Oishi said staff is trying to help them as much as possible. Chair Aila said at the same time we are trying to help them help us try to restore the damaged areas.

Member Goode asked but from a jurisdiction standpoint we're not involved this time. Chair Aila said in terms of issuing the permit yes. Member Goode asked but not the fine or negotiations. Member Edlao said he was concerned because we had all these other things that came before the Board and if somebody approaches him and say hey how come these guys didn't come before you guys. He needs to say something.

Dr. Matt Parry testified that he didn't know about a lot of the details on the jurisdictional issues within the State's jurisdiction, but they are working with the State Fish and Wildlife Service as they normally do as co-trustees to move this process forward. Our jurisdiction has the Oil and Pollution Act because of the grounding and risk from release from oil and other substances and they have been working under the auspices of that and the whole genesis for this permit is to work under the State jurisdiction and apply with the State regulations so they have been working with the State to move this whole process forward. It's not like the process is going forward without the State input. From

a State violation standpoint he doesn't understand the State's regulations well enough to comment on that.

Chair Aila asked what makes this case different from other cases. Dr. Parry said you mentioned other cases like Port Royal that he was only assisting on that because it was a public vessel and was exempt from the Oil Exclusion Act. That Act allows them to come in, look over trust resources and try to repair or replace. Member Edlao said your Oil Exclusion Act supersedes State responsibility in regards to damage to the coral. Dr. Parry said no he wouldn't say that. There are two processes or two parallel tracks and the State has a civil penalty system as far as he understands and the Oil Exclusion Act doesn't have a penalty system. It's based upon restoration cost. Getting the resources back to where they were before the incident. The State's penalty system was used before, but I don't have any control of.

Member Edlao asked are you looking at any fines for that Act itself. Dr. Parry said they don't have jurisdiction to fine. We don't have a penalty system in place. We only have a way to recoup losses to natural resources very similar to what is going on in Deep Water Horizon.

Member Edlao asked what kind of ship is Voge Trader. Mr. Oishi said it's a cargo ship carrying coal. To date staff has not pursued a violation against the responsible party because not enough man power. Member Edlao said that isn't fair to the other people who got fined before. He asked are you kidding me. Mr. Oishi said he is not that they don't have an administrator and they have one less program manager. Member Edlao said this doesn't sit well with me.

Member Morgan asked whether you anticipate any kind of fine. Mr. Oishi said staff will look into it. Member Morgan said he was always uncomfortable with the whole process and evaluation, the methodology and it all seems very unfair to throw the book at some people and let some people escape. Chair Aila said there are a number of incidences that occurred over time and as we get more familiar with incidences and how to deal with them you find us improving the systems that deal with that. This occurred before Port Royal and we learned from that incident and we learned from the incident prior to that. We're getting better at holding people accountable for their actions. Mr. Oishi said that the staff could treat the emergency restoration proposals which are before you today separately from pursuit of fines and penalties which is what is before you today from our Federal counterpart to conduct emergency restoration work. It was not they weren't interested in this work but there were certain impediments before us and we couldn't pursue it. Chair Aila said we are also trying to moving forward as quickly as possible to mitigate the damage that continues to occur because the rubble has not been removed. That is part of the problem is get in there and solve the damage that is occurring.

Member Goode said the proposal makes a lot of sense it's just odd that with all the previous years contested cases. There was the Makena one and Molokini and the one in Kawaihae Harbor. For an incident to happen with a very large vessel and for us, the Department not even looking at that I agree with the Chair to move this ahead, but I

would like to make a recommendation to look into it and come back to us within a certain time frame.

Member Edlao said he had no problem going forward with the repair work because that's got to be done, but to let these guys sail away is a problem. I think you should pursue and look into some sort of violation and bring it back to the Board because it doesn't sit well with me and it doesn't sit well with some of the other people. If I was the guys that got fined I'd be in uproar with this and suggested staff pursue and look into this. This is important to make the time to get somebody on this right away.

Member Goode said in most times you need to do an adequate investigation if you will. Mr. Oishi said if he gets back to you in a months time on what the status of the incident is at this point that certain people that were involved have left and because of shortages we haven't been able to pick that up and run. I'm not personally familiar where this case is at this point so he would have to go back and look at the records and talk to staff who are still here. Member Goode suggest 60 days for a complete report. Mr. Oishi said they will be back a month from now.

Member Edlao said he thinks NOAA has the extent of the damage and would be a big help to staff. It's looking at the species with regard to fines, etc, etc. Member Morgan wondered whether we had a cost on this. Mr. Oishi said just the cases retained by the responsible party. Those who own or are in charge of the ship and he believes the settlement is not so much how much it's going to cost as it is we will do this mitigation project which is to remove the loose rubble.

Member Morgan made a motion to approve Items F-2 and F-3. Member Agor seconded it. All voted in favor.

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

**Item E-1      Selection of Project for Federal Grant Award through the Land  
Water Conservation Fund Program for Fiscal Year 2011**

Mr. Quinn said that the Board is the body that awards these funds to the various projects for both the State and the Counties where he mentioned projects for Hapuna Beach and Panaewa Zoo in Hilo. Also some funds carried over from a project that cancelled and the request before you is to approve the selection of the project at the Ala Wai Community Park primarily lighting for the baseball field to be carried out by the City and County of Honolulu subject to final approval by the National Park Service.

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

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

**Item J-2      Request by the Division of Boating and Ocean Recreation (DOBOR) for Board Approval to Cancel Seven Revocable Permits (RP) Previously Issued for Use at State Small Boat Harbors (SBH) on Islands of Oahu and Maui:**

**Cancellation of Three RPs on the Island of Oahu**

**RP No. B-93-13 to Keehi Marine Inc., at Keehi Lagoon**

**RP No. B-93-24 to Royal Hawaiian Ocean Racing Club, at the Ala Wai SBH**

**RP B-96-74 to South Pacific Ocean Tours, Inc. at Haleiwa SBH**

**Cancellation of Four RPs on the Island of Maui**

**RP No. B-2002-1 to Braun Management Co., Ltd, at Maalaea SBH**

**RP No. B-99-04 to Excellence Charters, Inc. dba Apple Annie's Charters at Maalaea SBH**

**RP No. BM-09-50 to Island Ice Company, LLC**

**RP No. B-00-03 to Hone Heke Corporation, Lahaina SBH**

Mr. Andrews reported on this item that he had no changes.

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

**Item J-3      Request by the Division of Boating and Ocean Recreation (DOBOR) to Cancel/Re-issue Two Revocable Permits on the Island of Kauai, at Nawiliwili Small Boat Harbor (SBH), Cancel Outfitters Kauai (B-98-05) Re-issue to Outfitters Kauai, Ltd. and Cancel Island Adventure, Inc. (B-93-29) and Re-issue to True Blue, Inc.**

Member Agor recused himself from this item.

Mr. Andrews gave some background on this item that staff is upgrading the ramp on True Blue to be the same as Outfitters Kauai. They are dropping the percentage rent on Outfitters Kauai. Staff is asking both permittees to make sure they have a special use permit to operate within the river and would have to pay 3% of their gross.

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

**Item L-1      Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 46 - Hanamaulu Field 21 Reservoir (KA-0135) Dam Alteration and Removal, Kapaia, Kauai, Hawaii**

Staff had distributed an Exhibit 5 to the Board members.

Dickie Lee representing Engineering Division said there are no changes to this submittal.

Denise Manuel representing Engineering Division that staff is requesting for an issuance of a Dam Safety Permit for alteration and removal of Hanamaulu Field 21. Basically this project is that this is a regulated facility. Its ownership is under the Land Division and we are overseeing Dam Safety Regulations. The Land Division has decided that to their lessees and their use that it's no longer being utilized actively for a reservoir purposes and Land Division has decided to have it altered and removed. The extent of the project is to enlarge the spillway channel and the effective lowering and widening of the spillway channel will render it under the Department's regulatory standards for jurisdiction. In addition to altering the facility to a sizing that will not be regulated by the Dam Safety Program they will also be fixing the outlet structure which currently provides water through a tunnel system in the mountain on Hawaiian Home Lands properties. Because the Department of Hawaiian Home Lands (DHHL) is interested in continuing to potentially utilize the water in the future they agreed that we fix the outlet so that it is operational at the point in time that operations are requested or desired by DHHL.

Liko Martin testified he has concerns about this since he is involved with the road projects in Waialua Nui that he is a lineal descendent through his great grandmother. He related some applications were put in to the Federal agency for hydro electricity and was denied. They are concerned because they have a Comprehensive Management Plan for Wailua that he drafted that exposes use of a thousand acres of lo'i that would be affected by that dam. The question is where is the water going to go? SHPD suggested to the State to look at it. Aligning that with the possibility of hydro power and he is concerned with safety and where it is going. Mr. Martin related the importance of the o'opu that he was asked to comment for a group on Kauai and he is not in favor.

Member Gon made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it. All voted to go into Executive Session.

**1:25 PM      EXECUTIVE SESSION**

**1:52 PM      RECONVENED**

Denise Manuel described the Hanamaulu Reservoir System works that there is a ditch system that feeds the reservoir managed by the 8<sup>th</sup> Kauai Users Coop and all water is controlled to feed a small watershed. During the sugar cane days it acted as a sedimentation basin. There are some fields along the side that could have been irrigated and more recent history during the shutdown of operation. The basin has not been utilized over the years. Currently for that lease to pass maybe one or two years that the Coop has not been putting water into the ditch and the reservoir is at a very low, small pond. Because the reservoir has a tunnel outlet that provides water to the DHHL through a tunnel in the mountain. The outlet has been broken and unable to fully shut and because of that the DHHL did not want any water coming through. The pond in the reservoir has not been there for 1 to 2 years. The alteration will be to the existing spillway channel is and a widening and lowering to ensure the inflow design floods

during the 100 year flood under 5 foot height which meets regulation. It is a minor change to the existing structure.

Mr. Martin asked where the water is going. Ms. Manuel said there is no water going into it.

Morris Atta from Land Division clarified that how the water gets there is completely ditch fed there is no natural stream or water sources and the inflow is controlled by the Coop.

Mr. Martin explained that the developers want the water system because things can be done on the land. Chair Aila said that question is pertinent to the Water Commission.

Mr. Simeona testified about the 1,000 acres to feed all the people and a lot of things can be made from it instead of a road. Take it into consideration.

Member Agor made a motion to approve as submitted. Member Morgan seconded it. All voted in favor.

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

Liko Martin asked for a contested case hearing on this matter. Chair Aila said to submit his written petition within 10 days.

**Item L-2      Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. H10C803A, Malaekahana State Recreation Area, Kalanai Point, Renovate Comfort Stations "A" and "B", Laie-Kahuku, Oahu, Hawaii**

**Item L-3      Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. J45CO41B, Emergency Rockfall Mitigation at Aina Haina, Vicinity of Ahuwale Place, Oahu, Hawaii**

Staff had distributed an Exemption Notification.

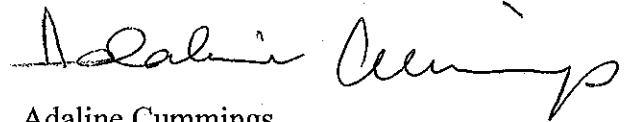
Mr. Lee said there are no changes and staff requests approval.

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

**Adjourned (Gon, Goode)**

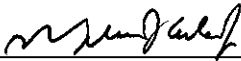
There being no further business, Chairperson Aila adjourned the meeting at 2:00 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



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