

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

DATE: THURSDAY, JUNE 23, 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 9:11 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Jerry Edlao
John Morgan

David Goode
Ron Agor
Rob Pacheco

STAFF

Ed Underwood/DOBOR
Russell Tsuji/LAND
Dan Quinn/PARKS
Carty Chang/ENG

Randy Awo/DOCARE
Sam Lemmo/OCCL
Dr. Bob Nishimoto/DAR

OTHERS

Colin Lau, Deputy Attorney General
Mahealani Cypher, J-1
Carol Bright, J-1
Andrew Jamilla, J-1
Matt Darrell, J-1
Jerry and Patricia William, J-1
Margaret Wille, J-1, K-2
Robert O'Conner, J-1
Eric Lavoy, J-1
Andy Bustamante, J-1
Ed Boteilho, D-7
Thorn Abbott, K-2
Marti Townsend, H-1

Senator Clayton Hee, J-1
Rocky Kaluhiwa, J-1
Jerry Kaluhiwa, J-1
Dino "Kaipo" Granito, J-1
Patrick O'Toole, J-1
Brett Phillips, J-1
Doug Correia, Jr, J-1
Scott McCully, J-1
Gil Thompson, J-1
Former Justice Klein, D-8
John Sakaguchi, K-1
David Frankel, K-2, H-1

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

Item A-1 April 21, 2011 Minutes

Member Agor recused from this item.

Unanimously approved as submitted. (Pacheco, Edlao)

Item A-2 May 13, 2011 Minutes

Item A-3 May 27, 2011 Minutes

Item A-4 June 9, 2011 Minutes

Were not ready for this Board meeting.

Item J-1 Request for Approval to Amend Hawaii Administrative Rules by Adopting a New Section 13-256-73.1, "Ahu O Laka Safety Zone," through Emergency Rulemaking Procedures. The Proposed New Section Identifies a Safety Zone Around Ahu O Laka (Kāne'ohe Sandbar) Subject to Restrictions on Weekends and State Holidays. The Safety Zone Prohibits Possession of Alcohol, Prohibits Disorderly Conduct, and Prohibits a Person Under the Influence of Alcohol, Narcotics, or Drugs from Remaining In or Entering the Safety Zone. [The New Section also Regulates the Operation, Anchoring or Landing of Motorized Vessels and Vessels Over 12 Feet in Total Length Within the Safety Zone.] *SUBMITTAL TO BE DISTRIBUTED.*

Numerous written testimonies were submitted and distributed to the Board.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) conveyed that this emergency rule making will allow staff to establish a safety zone around the Ahu O Laka/sandbar designated area subject to weekends and State Holidays only. The safety zone will prohibit possession of alcohol, prohibits disorderly conduct, and prohibits a person under the influence of alcohol, narcotics, or drugs remaining in or entering the safety zone. As the Board is aware of over the years, the Kaneohe Ahu O Laka/Sandbar area has become increasingly more popular where many more boats go out to enjoy the area. However, because of the number of boats in the area and associated alcohol and drinking that goes on we see more and more incidents occur. Back in 2008 staff did a surge operation during Memorial Day weekend to try to curtail some of the activity and that seemed to work well based on the outreach, but because staff can't be out there every weekend or every day the activity comes back again. Recently a lot of people were hurt as a result of activities going on at the Sandbar where the incident occurred at the small boat harbor. Unfortunately, an individual was killed due to an

altercation and it was believed alcohol was a contributing factor. In order to curtail this there are two major three day weekend holidays coming up – Fourth of July and Labor Day that staff would like to engage in emergency rule making to prohibit consumption of alcohol within the designated area at Ahu O Laka. Staff will be following Chapter 91.3(b) which allows the Board to enter into this emergency rule making. It's good for a 120 days which will give the Department time to decide whether we proceed with a Boating rule or come up with some other form. The recommendation that staff would like to ask the Board is the Board fine imminent peril to public safety and health that lead to the continued consumption of alcohol and disorderly conduct and overcrowding at Ahu O Laka, Kaneohe Bay during weekends and holidays and if the Board met final approval adopt the proposed emergency rules Section 13-256-73.13 Ahu O Laka Safety Zone. I would like to correct on the Agenda which says Section 13-256-73.1 should be 13-256-73.13.

It was asked by Member Edlao whether anyone can have concerts out there. Mr. Underwood said we do have a rule for a marine permitting process for any organized event on the water which is required, but he didn't think those people who put on that particular concert knew the rule existed. Member Edlao asked whether there was anything in these emergency rules that would prohibit that because you can say no alcohol and everything else and somebody comes up and holds a concert it's going to draw more people. Mr. Underwood said in order to hold such an event they would have to come to our Division as well. Member Edlao said that didn't happen the last time and asked is there something in these rules now. Mr. Underwood said in order to prevent an event they would have to apply with staff and they would look at the permit. Chair Aila explained that staff made the organizers of that previous concert aware of the existing rules that will be enforced.

Member Edlao asked why not attach a fine as a deterrent to these emergency rules because people think twice if there is a fine. Mr. Underwood said there is a fine schedule associated with these rules which between \$50 and a \$1,000 and it goes through the County prosecutor or it could be brought before this Land Board.

Member Edlao asked whether this will come back because these are temporary rules and Mr. Underwood confirmed that the Department is vetted to implementing some form of rule that he wasn't exactly sure what it will look like at the end, but staff wanted to make sure they addressed the two major bodies.

Member Pacheco asked the prohibition on alcohol is within the most frequently crowded sections of Ahu O Laka is where. Mr. Underwood pointed it out on the Exhibit X-2 map that anywhere within this zone is a prohibition of alcohol.

Member Morgan asked no open bottle and Mr. Underwood said no possession of alcohol. Outside of the area you can. Member Morgan noted there is a lot of boats out there. Mr. Underwood acknowledged that staff is working closely with the U.S. Coast Guard who will have things under control and has another campaign going on as well. Our Enforcement Officers will be there as well as staff in the harbor.

Member Morgan asked how do you anticipate getting the word out. Mr. Underwood said staff has taken this Exhibit and blown it up to map size which will be posted throughout the harbor and there will be flyers distributed to the Yacht Club and Kaneohe Marine Base where there are pontoon boats. They will have the location as well as what is prohibited and also it will be handed out throughout the weekend.

Member Morgan related walking through a scenario during Fourth of July weekend asking what the process is with a citation. Mr. Underwood said subject to the citation as well as past.

Member Edlao asked our DOCARE (Division of Conservation Resources Enforcement) representative to comment on the situation. Randy Awo said there are three possible ways staff could deal with it. 1) Warning. 2) Issue a citation. 3) Possible arrest. Much of that is determined by the response staff gets from the person.

It was asked by Member Edlao on looking into coolers where Mr. Awo said there are rules of engagement for probable cause and that is a constitutional issue that they have to abide by. You have to have a clear example of probable cause which would be staff witnessing someone removing from the cooler a clearly marked bottle of Heineken and they would use that observation as cause of proof. Member Pacheco asked how about a plastic cup. Mr. Awo said that is not sufficient cause to go into a cooler.

Member Pacheco asked we pass this rule and you get out there and you see most of the people are drinking alcohol – what is your plan for dealing with that. Mr. Awo said we recognize that we have limited staff. The details of our operation will be develop that all of this will occur within a narrow window recognizing we are working very closely with Honolulu Police Department, U.S. Coast Guard, Public Safety Department and we are reaching out to the military to form a coalition of departments to help us deal with this overwhelming violation issue.

Member Pacheco asked outside of the holiday weekends will we have this on other weekends at all. What kind of crowds do you get out there during the weekends? Mr. Awo said his current understanding based on his discussion with DOCARE officers here is the primary problems tend to occur on three day weekends particularly Memorial Day, Fourth of July and Labor Day.

Member Goode asked about the area on the map. Mr. Awo said that is their best attempt at providing some kind of offer to advise the public that you are in a restricted zone. GPS coordinates will be attached to the notification. The visual of the buoys and all of this will work in concert here in notifying the public that we are doing our best to provide the information so that prior to going out to Ahu O Laka that the public will understand those markers are there for a reason. Staff will be utilizing water born vessels to run up and down the perimeter, to engage the public to let them know that if you enter this area this is what you can expect and this is what we would like you to abide by. Mr. Underwood said DOBOR will install these buoys starting this week that they are putting them together right now.

Member Goode asked alcohol or not is an easy thing to enforce and is disorderly conduct more difficult to enforce. Mr. Awo explained there are certain rules of engagement that the officer has to understand that this conduct is imposed in such a way that it rises to level of disorderly conduct and that is the kind of stuff they defer to their officers who understand alcohol laws.

Member Goode asked the law abiding citizen goes out there with a glass of wine is he prohibited on Saturday and Sunday and Mr. Awo said that is correct. Member Goode asked whether there is a way to write the rules for those folks and still address the issue of rowdy crazy types. Mr. Awo said he would not support that for what they are trying to achieve here, but DLNR is recognizing that we have a situation that is an emergency and that for many years have witnessed unsafe behavior occurring in this area and recognizing that we need everybody spend a certain activity down in this zone until the Department can get caught up with permits so it can start building into it's emergency rules – you can, you no can – we have all kinds of enforcement challenges on our hands.

Member Morgan asked do you think all these people will get accustomed to or anticipate this expectation on the part of the public that this is okay and we will learn to live with it. Mr. Awo said I think many people will eventually stay that Ahu O Laka has recreational as well as cultural significance that people will understand that we are trying to promote responsible respectful behavior. This is not a prohibition. It is a prohibition on unsafe practices that led to Divisions and families no longer wanting to go there on certain weekends and we are recognizing our responsibility to restore this place to be safe for people who want to go there again.

Member Edlao suggested when looking at the new rules consider something similar to City and County on prohibiting no alcohol on County property. Mr. Underwood said currently they don't allow consuming alcohol on the small boat harbors as it is. Member Edlao said what happens it just moves these guys from one area to another. There are so few areas maybe come up rules that target these areas. Mr. Underwood said one of the things staff has been working on that is part of the Association of Safe Boating Law Demonstrators is done throughout the continental United States is doing active DUI enforcement on the water. It's similar to running your car through a road block. You would have buoys set up and every so many boats that come through those buoys the operator would be pulled, checked for carriage requirements and you'd be looked at whether or not you have been drinking and that is another avenue staff is looking at pursuing as well.

Chair Aila explained if you take a look at the zone that is rather large it encompasses what is recognized as Ahu O Laka, but it was also expanded to include an area known as Portagee Sandbar and that was to deal with exactly that we would have this prohibition of Ahu O Laka and people would go to this other area that is reasonably available for use of that and that is why it is as large an area as it is.

Member Agor said he thinks the emergency rules are a good start. We'll observe what happens over the next few holidays and come back and make adjustments but more than

that it's making the public aware of what is happening out there. Most citizens would like what you are doing here.

Senator Clayton Hee testified in agreement with Member Agor that this is a good start and a 120 days is enough time to evaluate the rules referring the tragedies. It's unfortunate a few individuals caused the concerns discussed today. Most visitors abide by the rules, common sense and good behavior. This Board cannot ignore historic events that have occurred at this site. One of the questions that arise out of this staff report is they may have to consider Holidays that may not fall on weekends beyond the 120 days referring to the Christmas and New Years holidays. There is a larger over arching issue not yet discussed by the Board that the Senator believes the Board needs to wrap their arms around that in isolation this Board chose a particular site where tragedies have occurred which is wholly appropriate. On the other hand Ahu O Laka is one of several islands that fall under the same category – whether it's a bird sanctuary or a wildlife sanctuary. It was alluded to one of the Board members moving this to a different site because Ahu O Laka is not the only offshore site that alcohol is permitted and consumptive events so this cause into question for the Board looking at Ahu O Laka not in isolation but as one of several elements where the category is the same. Hypothetically, Kapapa Island is a bird sanctuary. Perhaps a year ago a camera crew and reporters accompanied DOCARE and himself because dogs were on the island misbehaving and killing birds. Dogs don't belong at Ahu O Laka. It's not I personally don't want them there it's because Kapapa and Ahu O Laka fall into the same category. Look at what happened last week an incident involving dogs. There are good dog owners, but the event speaks for itself. If Ahu O Laka is a bird sanctuary then the law is not what we want it to be – dogs are not prohibited. Dogs are not allowed on Ahu O Laka period. Until such time you folks amend the rules. I applaud you for taking this issue on. Don't misunderstand me. But, this issue dealt in isolation may not be the total solution. You have 120 days and your staff has responded with some sensitivity to the issue, but this is an issue that deals with other off shore islands. If there was a concert at Mokuli'i, a bird sanctuary alcohol is permitted. You could have the same event there. Ahu O Laka affords the public safe mooring. Mokuli'i doesn't afford the public that same privilege. Rabbit Island does not afford the public that same privilege. But if all three are bird sanctuaries then rules apply to all three and that is the over arching issue. As far as I'm concerned the Board has taken a pro-active effort to address this issue, to evaluate this issue and in that effort make consideration of an over arching policy. Not something that is site specific to a particular offshore island. Referring back to what Mr. Awo said of checking of coolers. I want to be clear the law does not permit any arbitrary entering into somebody else's cooler which is a constitutional violation. There was an effort at one time to the Legislature to change the law. The Legislature declined and I agree with your DOCARE officer that probable cause is necessary and needs to be defended.

Member Edlao thanked Senator Hee for his comments and mentioning the situation of the dogs and how to handle that. It may be too late now, but when the permanent rules come out we have to really look at that kind of stuff. It irritates me when people don't pick up droppings. There are not so much bad dogs, but bad dog owners. This is something they

need to look into otherwise it will just hang, but then again can we say pets in general or do we target dogs or is that unconstitutional picking on one species. Senator Hee said if he isn't mistaken Ahu O Laka is a bird sanctuary. Just like Kapapa Island. As such I am not aware of any birds, but dogs are not permitted on a bird sanctuary. Alcohol is permitted on a bird sanctuary. That is the conundrum that this Board is confronted with. A lot has to do with educating the public. People probably don't know that Ahu O Laka is a bird sanctuary. Member Pacheco said Ahu O Laka was set aside in the Governor's Executive Order it does appear they put in a separate order...Senator Hee confirmed that and recognized that. The reason I raise that issue is because when Legislation was introduced and I was the one that did so. Because of the cultural significance of Ahu O Laka we looked to place that site as a site of importance as a monument that was the closest their attorneys could find where people could access Ahu O Laka like other State monuments. Diamond Head crater is a monument. When concerts are held at Diamond Head a permit is required. Alcohol is consumed during those concerts, but that is part of the permit process. We tried to find the best example already carved into law. The bill passed and the Governor vetoed the bill. I have not reviewed her message, but his recollection was she wanted BLNR to prescribe rules and you folks have that opportunity and I presume that is what you are doing to prescribe rules on conduct.

Member Goode asked it seems to me we could add language here to prohibit dogs during this 120 day period. Would you support that? Senator Hee said I think if you add language that says categorically that Ahu O Laka is a bird sanctuary and as such dogs are not permitted. Cats are not permitted. Birds are permitted. It's already there. It's a matter of and it's been several years since I reviewed the work, but Kapapa Island dogs are not permitted. That doesn't mean people don't bring dogs there – they do and that is against the law. Member Goode said it's enforceable.

Chair Aila said in the legal analysis provide to us today Ahu O Laka was included in the number of offshore islands that were eventually declared wildlife sanctuaries. Unfortunately, we do not have any historical evidence of Ahu O Laka being designated as a wildlife sanctuary. As it stands right now Ahu O Laka is out there sitting by itself and in our review of what will be brought back to the Board in terms of permanent rules we will seek to resolve that issue in the most appropriate manner taking into account the good Senator's suggestion to take a look at this from a global perspective for all those offshore islands. We will bring something to the Board that will include that analysis.

Member Edlao agreed with Senator Hee that maybe during this emergency rules we could make a comment that states that the area should be looked as a bird sanctuary and be treated as such. In the new rule making you can get your feet into that kind of thing. Senator Hee said that his point is to look at this globally so you don't keep revisiting the issue in a different area or on different islands. He thanked the Board and he said he is in support of this.

Mahealani Cypher representing Ko'olaupoko Hawaiian Civic Club amended their written testimony to clarify that they are referring to the amended rule .13 as requested by the Boating Administrator. She read from her written testimony that Ahu O Laka is sacred

that Chief Laka is buried there and referred back to Senator Hee's testimony regarding the bill vetoed by the Governor. Protect it from overuse and abusive activities noting the increased crowds on long weekends and the recent lost of life due to inappropriate activities. She urged the Board to support this new regulation that this rule is only pertaining to three day weekends and there are 49 other weekends in the year for those who want to have their wine coolers at Ahu O Laka.

Member Goode corrected her that it is for every weekend during this 120 day period. Ms. Cypher said she thinks you can enjoy Ahu O Laka without the alcohol.

Leialoha "Rocky" Kaluhiwa representing the Board of Directors of the Ko'olau Foundation testified from her written testimony in support of the recommendation that as a lifelong resident of He'eia-kea within the immediate sight-line to Ahu O Laka they have witnessed numerous incidents and problems there and at He'eia-kea pier. Dogs should not be on the island. The Ko'olau Foundation urged the Board to adopt this new regulation to safeguard from incidents and disrespectful behavior to the island's cultural value.

Ms. Kaluhiwa read from Frank Kawaikapuokalani Hewett's written testimony in support of this emergency rulemaking designating Ahu O Laka as a State Monument that he had testified as a cultural practitioner of hula and as a lineal descendent of the navigator Laka when Senator Hee introduced this bill. If this bill had gone through, the death of his nephew may have been prevented. Rules are needed to keep law and order. And, he related the problems with drunkenness and dogs that were presented earlier.

Carol Bright representing Kupa'aina, Ahupua'a of He'eia testified from written testimony in strong support which will result in greater protection for the public and in memory of their kupuna kahiko buried there.

Jerry Kaluhiwa, President of Kako'o 'Oiwī testified from his written testimony in support of this proposal and related being a lifelong fisherman living across He'eia pier. He watched Ahu O Laka change from a thriving place with trees and birds that it was much larger before. The government dredged the island to taking sand for Kualoa Park and later the owner of Moku o Lo'e took sand for Coconut Island. The island changed with the increased number of people coming for recreation which wasn't a problem, but the rock concerts, alcohol and animals brought to the island caused many problems. This all could have been prevented, but it took a death to change the laws. He also related troublemakers bothering those from the Marine Corp and problems with certain boaters.

Member Edlao asked about the dogs and Mr. Kaluhiwa said there are lots of dogs that they pick up after.

Member Pacheco asked whether he sees these problems every weekend. Mr. Kaluhiwa said no. Mostly on three day weekends that they need the community's support.

Andrew Jamilla, Jr. from Waimanalo testified frequenting the area from when he was a child and reported jet skis doing donuts that the problems are at the ramp. After a long day of drinking everyone wants to pull their boats out of the water and one time there was a fight involving 40-50 people. He suggested DLNR possibly extend the parking due to over crowding that he saw four cars side swiped. Dogs should be on leashes because they are scratching the kids. He doesn't take his family there on long weekends because of the dangers. DLNR is doing a good job and invited the Board members to come out on a long weekend to see what the residents are going through.

Dino "Kaipo" Granito testified going out to Ahu O Laka since 2003 and saw a lot of fights. When DLNR is present checking things he felt safe, but this past Memorial Day there was no DLNR or HPD at the ramp and he knew there would be problems. DLNR's presence at the launch would curb any problems. There were a lot of people at the pier asking for a ride to Ahu O Laka. Dogs should not be allowed. The problems are on three day weekends. There were a total of 20 boats staying out overnight and during this past Memorial Day weekend there were three barges with music and DJs.

Matt Darell is a member of the Kaneohe Yacht Club who testified thanking DLNR and wants DLNR to focus its role on the death. He supports a permit to help pay for security at the sand bar. Due to the death at the pier the rule is the best thing to curtail negative activity and suggested a Crime Stopper thing at the sand bar.

Patrick O'Toole, a retired military with 22 years of service submitted written testimony and testified that he bought a boat to go to the Sandbar and camp on the ocean. He doesn't want to see the government impose laws because of a few bad people and he felt it was unfair to penalize the ones who are good. The problem is enforcement and there needs to be a presence there supporting the last testifier's suggestion for a permit to raise money to increase security.

Jerry and Patricia William where Patricia testified to leash dogs and no speeding that after you spend some time out there you know who the regulars are. They wouldn't look at the Administrative Rules if it wasn't warranted.

Brett Phillips is a life long resident of Kaneohe Bay who submitted written testimony and testified that she observed the fight that broke out on Memorial Day at the Sandbar. She broke down this amendment in sections which was presented earlier by staff and agreed to all except prohibiting alcohol in the zone which would create additional problems – a) Environmental – Boaters will anchor outside the safety zone partying all over the bay causing damage to reefs rather than on the sand at Ahu O Laka which does little damage. b) Safety – the parties would spread around the bay compromising safety in deep water and it would be more difficult for emergency responders since drinkers will be spread apart. c) Policing – It would be harder to police parties spread all over the bay than currently in one place. If Enforcement made a few arrests people will take notice and the behavior would change. Suggested having DLNR Enforcement work from 12noon to 8:00pm and reported that the concerts at the Sandbar don't have permits reiterating previous testimony about the three barges with musicians and the extremely loud 100+

decibel sound systems and wants the Board to be able to ticket people for noise. Asked to approve Amendment 13-256-73.13, Items a, c and d and to add a section for noise.

Margaret Wille from the Big Island testified setting aside areas for drinking with enforcement that the issue is how to say no to a specific date. There is a need for greater enforcement. If you restrict with an absolute “no” then you may have problems with the public. Having people get permits may make it more manageable.

Doug Correia, Jr. testified reiterating previous testifiers that the problems occur on three day weekends that responsible people and families come on regular weekends. He wants to close on three day weekends.

Robert O’Conner, a Kaneohe resident testified that they don’t need more rules, but more enforcement.

Scott McCully, a Kaneohe resident testified that boaters go out at 3:00pm and there is no Enforcement around reiterating previous testimony enforcement is the big issue. By 8:00am people are drinking in the parking lot. He supports a permit system to pay for more enforcement. There should be no dogs and no jet skis.

Eric Lavoy, 15 years old testified that he has been out at the Sandbar since he was 12 years old reiterating previous testimony that problems occur on three day weekends and not to shut it down so he can enjoy it and later his own kids.

Gil Thompson, a resident of the Windward side and an airline pilot testified he has been going to the Sandbar since he was little that the problems are excessive use of alcohol, three day weekends and lack of enforcement officers at the time of the incident that occur typically between 12 noon to 8:00pm.

Andy Bustamante, an avid fisherman testified agreeing the problems occur on three day weekends and supports shutting down the Sandbar. He wants more regulations and enforcement at the pier which is where it all begins and ends at. Have consideration for the regulars who are out there every week and take it away from us where are we going to go? Chair Aila said there are no plans to take away the Sandbar from anybody yet. Mr. Bustamante said they don’t want to regulate down for us. He is for three day weekends closing it down – the alcohol, disorderly conduct and the noise. Member Goode said lets say we do three day weekends only and some loud and crazy guy is organizing these parties which is on some social network on Facebook and within hours a 100 people show up. Given that ability with technology they will look at the new rules and say no more three day weekends that’s fine. We’ll go on this two day weekend and they only need to be out there one day. What will stop them or changing there ways from coming in? Mr. Bustamante said they only come out on three day weekends. Member Goode asked that is what a lot testifiers are saying, but what would stop them from going on two day weekends? Mr. Bustamante said you don’t have to be close by to enforce because you can hear it. A lot of us call and report it in to bring Enforcement in.

Chair Aila explained that the Sandbar is a unique jurisdictional place and its not like a park on land where all the County rules apply, State rules apply. The Sandbar and how it's been treated in the past was never designated as part of the off shore islands that eventually were designated as wildlife sanctuaries. It is out there by itself jurisdictionally with all kinds of challenges. That is why we are here today to get these emergency rules in place for the Sandbar. We haven't looked at jurisdictionally at the issue of noise, but what I know of how it has been handed down there is a high likelihood there is no jurisdictional authority to enforce noise rules out there right now. That is why we are trying to get these rules in place so that the Enforcement folks have a tool to go out there and start changing behaviors. I want to make it real clear because I don't want you folks to leave with the idea that all we got to do is have more enforcement because that is not going to help with the jurisdictional issues specifically with Ahu O Laka. As we go through the permanent rule making process we will explore those issues with more clarity to find what is the most appropriate jurisdiction under which to put it so that most of these rules can apply. Don't leave thinking "just enforce the rules." It's not as simple as that. Mr. Bustamante noted when DLNR is at the pier people move on. Chair Aila said that is a good suggestion and we are hearing it from several people and we will definitely take a look at that.

Mr. Phillips testified in support of three day weekends. Two day weekends, he would like to see that happen. The only time he sees things get out of hand are people who have the resources and those tend to be smaller. Another aspect of enforcing the later hours mentioned earlier is "can I get a ride." You will see these guys come out three different times with people on a 6 person boat and end up with 18 people out there and they come back with two loads of 9. Having the guys in the water in between or the Coast Guard out there or DLNR guys on the pier rechecking life jackets that will also be a deterrent of some of the behavior that goes on. I would support the permit, but make it an access permit like a ramp launching permit and not a camping permit where you got to get one every time you want to go out.

Member Agor said he is from Kauai and was amazed. He had no idea this was happening here. Has it risen to the level of Spring Break on the Mainland? Mr. Underwood acknowledged he believe it has. Just so the Board knows jet skis or thrill craft are not permitted at the Sandbar. The actual designated riding area is seaward of the Sandbar.

The Board discussed wanting to discuss the dog issue, but Deputy Attorney General Colin Lau said the problem with addressing issues that aren't on the agenda is the Sunshine Law.

Member Edlao asked going back to the question if the issue is not part of this, but we've had issues before where we have put conditions into permits or whatever else that is not on the submittal anyway and so why is this different. Mr. Lau said it is not a permit. You are passing basically a law, a prohibition that the public hasn't had a chance to address. Member Edlao said this is an emergency. I thought this whole rule making excludes us from because it's an emergency. Otherwise, shouldn't this go to public

hearing then – out to public for comments. What is the difference? Chair Aila said I think the issue is public safety and the immediate threat. Right now, not taking into account what happened a couple days ago with the dog I'm not sure... Member Edlao said that has been going on from before is what I understand. Chair Aila said I'm sure we'll address it in the longer term permanent rule making process.

Member Edlao asked how long before you can get something before the Board to have permanent rule making. Mr. Underwood said this rule is only in affect for 120 days... Member Edlao asked what is it – 3 months, 1 year. Chair Aila said because of the jurisdictional issues that is associated with Ahu O Laka and the history I think 3 months is pushing it that I don't think we'll get it down shorter than 3 months. Member Edlao asked six months than. Member Goode reminded staff has to bring it to us they still have to go out to public hearing to bring it back. Member Edlao asked when does the draft come to us. Chair Aila said we will try to have it done within the next 120 days.

The Board had some discussion regarding the issue of the dogs to observe and bring back recommendations. Mr. Lau said there is an ordinance that would apply to the Sandbar so you can enforce this through the County and DOCARE can enforce County ordinances.

Member Pacheco asked so State law or County ordinance doesn't apply in this area. For example the City and County of Honolulu noise ordinance does not apply to this property. Mr. Lau acknowledged that.

Member Morgan said there is a lot of great testimony here on both sides. I think I am going to support the motion namely because there is an obvious problem. There has been a problem for a long time. Stuff happen with jurisdictional issues and we have to do something. I really support the fact that DLNR has come about with an attempt and I really like the 120 day thing because it gives an opportunity to really look and see there is a sunset that has to come back before the Board. Margaret came up with a great idea. I am troubled by a lot of good people not being able to do what they've done for years and have done without any negative impact and at the same time I see a serious problem that has had a lot of serious consequences.

Member Pacheco said as you listen to testimonies on both sides the one thing throughout is only on certain weekends, three day holiday weekends and it seems these issues happen during those pulses of time. It's that party mentality that develops and happens over periods like that. I would be more inclined to support emergency rule change that recognizes that and does not include all the other weekends in that period of time. Perhaps also the rest of the time people are not allowed alcohol off of their boats. I would support an alcohol restriction, the rest of the permit for the holiday weekends, but not for the regular weekends if there is some way to address the rules that way. The Board had some discussions about this which is in the rule. The difference between regular weekends and three day holiday weekends. Member Pacheco said government tends to when we have problems and I agree with the people who testified if we had stepped up enforcement out there, but the reality is this Department is not funded adequately and we don't have the resources to do that. Maybe there is a way to partner

with the military police or a military presence out there. Coast Guard could give more support to our Enforcement to regulate a State presence there would help because more enforcement is not going to happen because of our funding issues. In government, we have a problem with a few people so we take away the right of the people and it happened over and over again, then just don't let anybody do it and I have a hard time supporting something like that.

Member Morgan asked Mr. Underwood why staff chose every weekend when they knew the problems were only on the three day weekends. Mr. Underwood said basically is trying to get a handle on what is going on now. What we found when we did that surge operation was people found other ways of accessing the bay other than our small boat harbor because they knew staff would be there checking. What we also found was people started migrating to other bays. Maunalua Bay started seeing a lot more activity and we started getting flotillas out in the bay so we had to shift there. On Fourth of July weekends that is not our busiest area. The busiest is the Ala Wai Small Boat Harbor and all the activity that goes on there. We are trying to shift resources where we can. Like Board member Pacheco said we have a limited amount of resources that we can use. For the 120 day period we put the emergency rule in place, monitor it and we have to come back and address it in a long term rule. Member Morgan said its all problems that occur on three day weekends, why doesn't the proposed rule address three day weekends because you've included three day weekends and regular weekends. Member Agor asked better yet. Would you be opposed to passing these rules for the three day weekend and during the 120 days observe what is happening on the regular weekends and if that is a problem present it to us. Member Edlao agreed to that.

Chair Aila pointed out had this been an emergency rule making under Department of Transportation there would be no public hearing. The chair of that department could make the rules without this public hearing. This is a great public process and I hear some sense that you want to react to that public testimonies and address that.

Member Morgan made a more to accept staff's recommendation with an amendment to delete the ...

Member Goode said the way this is currently written it basically says "on Saturdays, Sundays, and State holidays these three items are not permitted. 1) alcohol, 2) under the influence of all that stuff, and the 3) is disorderly conduct. It implies Monday through Friday you can do all three. Maybe this thing should be rethought here that we don't want anybody to be under the influence or disorderly at any time. The consumption, use and possession of alcohol should only be prohibited during these three day weekends. Member Pacheco suggested maybe deferring this action to later in the meeting to allow staff to go back and re-write this or do you want to try and work this out now. Chair Aila said he thinks the Board can make a recommendation as to what the staff should do. I wanted everyone know that the discussions that staff had in coming up with this rule, we went through all the same scenarios you did especially this one. We are not advocating bad behavior during the week. We are just trying to balance the needs of the users and to do something during the times when we are having the problems that is why you have the

rule written as it is. The idea is 120 days including the weekends inbetween to try to bring some sense to Ahu O Laka understanding that there are people who can behave appropriately. We have this 120 day to have a paradigm shift in the thinking of the people who utilize that area. In the normal rule making we will continue to do so take into consideration all of the suggestions that were brought forward. It is the purvey of the Board to make recommendations of staff.

Member Edlao said the focus is only on the big holidays opposed to all weekends where the big holidays is when the problems are. Since its only 120 days if there is a problem we can monitor it. Member Morgan asked how do the boats and the like go forward.

Mr. Awo said he would like to address some of the challenges that are before the Board based on perception. Earlier I heard comments about if we stand down certain behaviors at Ahu O Laka it will push it out to other parts of Kaneohe Bay. I don't think that will necessarily occur because Ahu O Laka presents a different kind of plateform because what draws people to Ahu O Laka is that they can actually stand on this piece of land at low tide and as the tide rises they can still have a great time jumping up and down drinking listening to music. It is a very different dynamic. Emergency rules are established, this is not an end point. This is a starting point to look very carefully about our responsibility to the people of Hawaii and making this clear observation that unsafe behavior is occurring and has been occurring over a long period of time where people have gotten hurt over a long period of time which resulted in a recent death. Now the reason for including all weekends for this 120 days is important because it goes back to what Board member Goode said earlier. What's to prevent somebody from saying I get it. I can't be here on a three day weekend, but we can organize on another weekend. Having been in this business for 20 plus years I can tell you that is going to happen because that is the human dynamic, right? We always try to find ways to defeat the system so that is going to occur. I think that if there is a greater understanding that this 120 day shutting for weekends and holidays will get us to a better place. This is just a temporary plateform that will move us to a better place and we start to work on the establishment of permanent rules we will have the time to give it a very thoughtful approach. By that time, if we give ourselves time we can incorporate the messages that have come to us from both sides. I looked at this more carefully to set up a more permanent model to manage some of the behavior that concerns us. The reality of loss, it's unfortunately designed to curtail behavior that comes to us from the minority of society in order for the majority of society to go into these places and enhance our ability to enjoy them. That is the nature of rule making. We have to manage human behavior. I would ask that you think about that. Now as far as surges, I'm actually from Maui. I'm here on temporary assignment. I've listened very carefully to the staff here on Oahu. You can surge into an area, but they still need tools on the belt. This place is in limbo so they need a little bit of room to go into a restricted zone and start doing their job. Yes, there are other laws on the books that they can go to deal with this behavior, but this emergency rule gives them a better tool to enter into a large crowd and say this is clearly a violation. That is what we are asking the Board to consider based on our experience and the challenges that my staff face on the ground and on the water.

Member Agor commented with regards to the three day weekend versus the regular two day weekends. If they go with the rule as it stands now there really won't be an opportunity to observe what would happen if we allow things to go on a two day weekend. We won't know and we will always wonder. During this 120 day period if we try the three day weekend and be lax on the two day then we will know if we have to apply the rule on the two day weekend, but if we go with all weekends we will never know.

Member Morgan said I absolutely agree with that and I also agree with Mr. Awo. These rules do provide a clear and forceful thing. The whole behavior thing is always a slippery slope and he understands that is a tough thing to enforce but he supports that. Also, he is troubled by the three day versus the two day and I completely agree with Member Agor saying we don't have anything to study. If this is the first step maybe we should go with a small first step first and again how do you make a motion like that?

Member Pacheco 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 that. All voted to go into Executive Session.

11:11AM EXECUTIVE SESSION

11:34AM RECONVENED

A motion was made by Member Morgan to approve staff's recommendation with instructions to change the rules to reflect only on the three day weekends for this 120 day period rather than all weekends including State Holidays. Member Agor seconded that.

Member Pacheco said he thought it important on the record that the Board members learned in executive session is that items 2 and 3 which he read those activities are covered under State law and County ordinance and what this does on a criminal level so there is a higher burden of proof and by us adding these two in and the emergency administrative rules gives our Enforcement people the ability to enforce these from an administrative level which is a different level of proof which gives them a greater flexibility to do that. Also, one of the concerns by Board member Goode was that does this mean people can be under the influence of drugs or alcohol or disorderly conduct during the week out there and they cannot because that is something that is covered by law which is something he wanted to point out.

Member Agor asked he was wondering whether the Board needed to add instructions to observe the dog situation or is it with the Chairperson. Chair Aila said he will work with staff.

Member Goode said the 120 days is going to go by quickly in that timeframe it would be impossible to pass regular rules understanding it will take some time. We learned a lot today from the Kaneohe community and as the Department looks at those rules

understands the jurisdictional issues that the actual use of the area is required to have public meetings. He encouraged the Department to go out there and talk to as many user groups as possible and he looks forward to seeing the draft rules as soon as possible.

Member Edlao said he is sure Mr. Awo is aware of the concerns on when DOCARE should be there during the evening times to work with DOCARE to ensure they allow their times during the high peak times when people are coming back and problems start. Take into consideration seriously the permitting process and this will give us funds and all the other issues brought up today.

All voted in favor.

The Board:

Amended staff's recommendation to reflect only the three day weekends for the 120 day period, otherwise, staff's recommendation was approved as submitted.

Unanimously approved as amended (Morgan, Agor)

11:38 AM Chair Aila recused himself and turned the meeting over to Member Agor.

Item M-1 Lease of Federal Property for Mokapu Elementary School at Marine Corp Base Hawaii, Kaneohe, Oahu; Lease No. N6247811RP00024, Tax Map Key: (1) 4-4-009:007

Heidi Meeker representing Department of Education (DOE) said she had no changes to this item.

Unanimously approved as submitted (Morgan, Goode)

Item D-8 Acceptance of Department of Transportation's (DOT) Grant of Limited Vehicle Access Rights onto the Queen Kaahumanu Highway, Relating to Issuance of Grant of Perpetual, Non-Exclusive Easement (LODS-28,998) to Kona Residence Trust for Access and Utility Purposes at Puuanahulu, North Kona, Hawaii, Tax Map Key: (3) 7-1-003: portion of 002.

Russell Tsuji representing Land Division said this item and the following Item D-7 are similar where DOT – Highways Division with respect to D-8 has the right to limit access to any roads under their jurisdiction when an entity or even the State wants access we need certain permission from them. I don't agree. Staff previously took to the Board the granting of an easement over our property here the applicant will be accessing and one of the requirements was the execution of a document that was attached to the exhibit that they called a limited vehicle access from the State property. Apparently DOT asked to be compensated \$10,000 and I understand the applicant has already paid that. The applicant wants the project to move forward and is cooperating with DOT. He doesn't have any

other changes. Member Agor asked DOT is putting a dollar value on it. Mr. Tsuji said they did and personally he thinks it's outrageous. There is a private landowner who wants to proceed with this. Member Goode asked you think it's outrageous that they limit access or they got to pay a fee. Mr. Tsuji said both. Member Goode said he agreed on one of the points, but not the other.

Retired Justice Robert Klein from the Supreme Court testified that they fully support the staff recommendation and they had to in order to get the easement that staff granted the easement five years ago which was a condition to work with DOT. And their condition as Mr. Suzuki says was \$10,000 which we paid. The report says pending, but it has been paid. We did everything to satisfy them and hopefully we will finally get our easement.

It was questioned by Member Edlao the issue of liability or problems if something should happen and who is responsible for the easement. Mr. Tsuji said its non-exclusive. Mr. Klein explained the property is land locked and is trying to get to the highway where he related five years ago and they fell short because DOT controlled the last bit. As far as liability it will be in the grant easement itself.

Member Pacheco asked about any public access where Mr. Tsuji explained it's a non-exclusive easement that others maybe granted, but limited to those who have the easement. There are other issues like maintenance.

Member Pacheco asked under what statute authority is DOT able to charge for our easements. Mr. Klein said that is what we call a writ of right. If you have the power to do it, you can do it.

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

Unanimously approved as submitted (Pacheco, Edlao)

Item D-7 Issuance of Direct Lease to Boteilho Hawaii Enterprises, Inc. for Dairy Purposes, Opihipau-Hukiaa, Kokoiki, North Kohala, Hawaii, Tax Map Key: 3rd/ 5-5-003: 004, 005 & 006, 5-5-005: 001, and 5-5-006: 002, 003, 004 & 015.

Mr. Tsuji related that Boteilho has one dairy lease and two pasture leases on three different parcels. This is mutually cancelling all three and issuing one lease that dairy includes the right to pasture. While going through the EA, DOT made some comments and one was related to access. With respect to the last paragraph of page 7 before the recommendations he read and made amendments to it. What he means by paper road is it shows up on a map, but doesn't exist on the ground. From the State parcel you can access the main Akoni Pule Highway from Lincoln Avenue, but only by crossing someone else's property and one of the State parcels is landlocked if cannot use an existing dirt road on the State parcel abutting Akoni Pule Highway which has been in use by Mr. Boteilho and prior lease holders. Here is a situation that DOT is putting in all

these kinds of conditions that they initially asked staff to put it in here. I wouldn't object if this Board decided not to follow any of the recommended conditions of DOT because that is our access to the highway. I certainly don't think DLNR is obligated to follow any of DOT's requirements to access that property from a public road. Its to access our State property referring to Exhibit C. He would eliminate condition 2.F. and 3., but he'll leave it up to the Board.

Ed Boteilho, a dairy farmer testified that he is surprised after all these years being on the land knowing that the prior parties used the same access (Malama Solomon), Biogenics, and there is the Hawi reservoir where he described the water line. The plantation went there to fill their water troughs. Also it was used for fires and ranchers. Mr. Boteilho said the original gate rotted away and they put a new gate in referring to the map of the road system. He distributed a map explaining the red is the road we are talking about. Maliu Road is a private road and was never used for access. Lincoln Road is through Bishop Estate. When the EA came out and this came up, we had not done any violations and we believe that road was grandfathered in. He showed a 1963 map showing the same road.

Member Pacheco acknowledged what Mr. Boteilho said about the road in 1963.

Member Goode asked whether DOT indicated what they are looking for. Member Pacheco said \$10,000. Mr. Boteilho said he couldn't say for sure, but what surprises him is there was never any question with any of the previous parties. Why now? Mr. Tsuji said only during the EA. Mr. Boteilho said it is only an easement to work the cattle and check the reservoir once a week and that is it. He hoped this isn't a deterrent for him getting his leases. Mr. Tsuji agreed. But, what does this mean. Now DOT has control over our access to that highway? That means we issued a lease that is technically landlocked and that is not legal so I don't agree with DOT.

Member Pacheco explained when the roads widened and the government entity acquired properties on both sides of the road, but weren't successful all the way. When you get past Miloli'i the State doesn't own any of that and people's property lines are in the middle of the road. Maybe that is the situation with highways.

Mr. Boteilho said he wants to make improvements, but don't know which way this is going. Member Goode said the way it's written you have to resolve all this. Mr. Tsuji said and he doesn't appreciate that. Member Goode said if we take that out it's back to us as the land owner and we are potentially resolve it or say we've been doing business for 40 plus years. Mr. Tsuji said that is Mr. Boteilho's position to take conditions 2.F. and 3. out and I don't object. He just wants to add dairy use on the other two parcels.

There was some discussion with Member Pacheco and Mr. Boteilho on cattle and dairy pasture use where Mr. Boteilho gave some background on his operations why they need this and been in business for 50 years. Mr. Tsuji said they have a 35 year, 25 year and a 20 year leases.

Member Pacheco made a motion to approve staff recommendation with amendments to strike the paragraph preceding the recommendations, omit 2.F. and 3. Member Morgan seconded that. All voted in favor.

Mr. Boteilho invited the Board to come to his dairy operation.

The Board:

APPROVED AND AMENDED as follows:

Delete page 7, the paragraph which says: "Staff has reviewed, researched and acknowledges that the subject access above-mentioned was not formally approved by the DOT for permitted vehicular accesses onto the Akoni Pule Highway as depicted on attached Exhibit C. As a result, Boteilho Hawaii Enterprises, Inc. is recommended to remove the gate in question and to fence off the area until proper approval is obtained from DOT for vehicle accesses onto the Akoni Pule Highway. For the time being, accesses onto the Akoni Pule Highway from the subject State property should be through the designated/ planned roadways in the area, which include, Lincoln Avenue and Maliu Road."

Delete Recommendation 2.F. and 2.F.1. which says: "Obtain approval for limited vehicle access rights onto the Akoni Pule Highway from the Department of Transportation, Highways Division;

- 1) Boteilho Hawaii Enterprises, Inc., shall be responsible for all expenses, costs, fees and considerations relating to the acquisition of the vehicle access rights to the highway."**

Delete Recommendation 3 which says: "The Board of Land and Natural Resources, upon satisfactory review, shall accept the DOT Grant of Limited Vehicle Access Rights document for accessing the Akoni Pule Highway."

Unanimously approved as amended (Pacheco, Morgan)

Item K-1 Conservation District Use Application (CDUA) OA-3583 for Modifications to the Round Top Radio Facility, Including Consolidation and Resubdivision, by the Department of Accounting and General Services at the Puu Ualakaa State Wayside, Makiki, Honolulu, Oahu, TMK (1) 2-5-019:003

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) reported that the applicant is going to be adding an equipment building, 500 square feet, single story, security fence, concrete masonry wall, 1000 gallon diesel tank, new paving, under ground conduit and landscaping. They are taking a small telecom site at the park and expand by about 2,000 square feet to bolster the system to better serve police, fire and

other users of the State. Staff took this through the CDUA process and all the comments have been adequately addressed. They will need to get an EO for the area that will require a subdivision of the area. Staff recommends approval subject to standard conditions.

John Sakaguchi of Wilson Okamoto testified that they are the agent for DAGS on this application. They read the conditions and had one comment on item 11 on page 7 that he had spoken to staff and believes that is an inadvertent condition. They did go through an archaeological review of the site and it was surveyed by DLNR in the early 1990s when they were doing the master plan for the park and found no need to continue monitoring.

Mr. Lemmo said staff checked with SHPD and that condition shouldn't have been placed.

A motion was made by Member Morgan to delete item 11 of staff's recommendation. Otherwise, staff's recommendation was approved as submitted. Member Goode seconded it. All voted in favor.

Unanimously approved as amended (Morgan, Goode)

Item K-2 Decision-Making on Standing for a Contested Case Request by E. Kalani Flores on behalf of Mooninanea Regarding Conservation District Use Permit (CDUP) HA-3568 for the Thirty Meter Telescope, by the University of Hawaii at Hilo, at the Mauna Kea Science Reserve, Kahohe Mauka, Hamakua, Hawaii, TMK (3) 4-4-015:009

Mr. Lemmo reminded the Board that this item came before the Board earlier and there has been a request for a contested case hearing which is in process. The first phase is to decide what parties shall have standing to participate in contested case hearings. The hearings officer has made recommendations and because the hearings officer recommended one entity not be admitted as a party the rules of practice and procedure Chapter 31 require us to bring this matter before the Board where he read (g) at the top of page 2 of the submittal and not to discuss anything but the matter of standing. The process is staff cites sources of standing, the petitioners arguments are cited in the report, the objections to the petitioner's arguments are cited in the report, and staff basically makes a recommendation based on the hearings officer's comment that the party not be admitted. The hearings officer is saying Mo'oinanea does not qualify to be a party because they don't qualify as a person as we commonly understand people and that is clearly stated in the staff report. We're here before you today to recommend that Mo'oinanea not be admitted as a party in the contested case hearing.

Margaret Wille, an attorney testified that she has done a number of cases involving public interest concerns on standing. She encouraged to look at some rule making or have some sort of public hearing to address some of the issues related to individuals seeking to represent public interest. There have been a number of Hawaii Supreme Court cases on this. The rules are very complex and confusing having studied them. From the public's point of view sort of adversarial and un-friendly in particular how is an individual's

interest separate from the general public - is that proper under the current case laws. Its very inefficient. There is a way to stand back and look at these issues that there is only a legal issue involved, but yet the only way to appeal is by requesting a trial type hearing, a fact finding hearing. Looking at the first issue is really standing, you are going to appeal that to the court which goes all the way up and it goes back. I would like you to at some point to step back. These are very complex issues and at least look at how one can incorporate some of these more recent case law into the process, into the forms, into the procedures so that the public – where you don't have to be an expert in law to understand what you need to do in order to appeal or in order to participate. Where she gave the example of Section 5(b) of the Admissions Act which is for the benefit of the Native Hawaiians from the general public and she is just encouraging another public approach and doing it a way that is not case by case fight review law. Start with simplifying the rules to make it more understandable for the general public.

Unanimously approved as submitted (Agor, Pacheco)

Member Pacheco commented that he agreed with Ms. Wille's testimony that there are many times there is a lack of process in the administrative rules, statutes that aren't able to address permits where it falls through and have to come back to this Board.

Item K-3 Conservation District Use Application (CDUA) OA-3579 for the Honolulu Sea Water Air Conditioning (SWAC) Project, by Honolulu Seawater Air Conditioning, LLC. Located on Submerged Land, Makai of Kakaako Waterfront Park, Island of Oahu, Offshore of Plat (1) 2-1-060: and Channel D of Keehi Lagoon, Island of Oahu

Mr. Lemmo reported that the applicant wants to use Ke'ehi Lagoon's Channel D as a temporary staging area and portions of the park to fuse the pipes then move them in the water areas before moving them off shore. The applicant is proposing to obtain deep cold sea water and utilizing thermal properties to cool down fresh water in a closed cycle loop which would then be used to provide air conditioning to buildings in downtown Honolulu. He described the dimensions of the pipe which will be 5 miles off shore referring to the Exhibits that this is for temporary use. The biggest aspect of this project is they are going to be micro-tunneling the first 1800 feet under the Kaka'ako seawall and after the 1800 feet they are going to break it out by digging a pit where the micro-tunneling pipes will come in. The pipes will continue seaward another 1700 feet off shore which will be on the bottom and that will be the return pipe where there will be a diffuser at the end of that. It will go out 3500 feet off shore. The intake pipe will continue 5 miles off shore and at the end of the intake pipe be sucking water. The real affect for DLNR is at the break out point not touching the near shore inter tidal area which they are good with that. There will be some impacts at the 1800 feet site where there maybe some coral in the area. The applicant is bolting both pipelines to the sea floor out to about 3500 square feet and beyond that the intake pipe will be weighted down. From 1800 feet off shore there could be some affects to the benthic environment and possibly to some coral communities. The issue is the return water and will be coming back to the ocean a little bit cooler and will have nutrients because nutrients

dwelling in cooler waters so there is an issue possibly with affecting the area at the return. But, they will have to get an NPDES permit from the Department of Health (DOH) and a zone of mixing permit which will hopefully address those issues. As it states in the EIS the cooler, denser water tends to sink. The idea is it is going to sink and its not going to dwell in and around the exit and go necessarily in land. The CDUP is one of the initial permits the applicant has gotten for this process. Staff hasn't approved the EIS on this case. This is a unique case where it runs through Kaka'ako where the EIS has to be processed by the CZM Program and they did. Staff had a public hearing and no one really came or opposed it. They have to get a number permits which he named and a Section 10 which initiates the Section 7 Federal Consultation and various Federal Agencies. There are a lot of resource management issues that need to be addressed along the way. Staff recommends the Board approve the project today because we felt they did a very good job at assessing and mitigating the environmental impacts and there are a few more things they have to do to make everybody happy. We are going to give them an opportunity to move the process forward to take this to the other agencies and they do have to come back to us for a plan approval that we will still be involved in the oversight of this project. They will be using a portion of Sand Island Park and not sure how long that would be and what you would be getting back for that. Staff is comfortable with it and the benefits are tremendous that there will be other similar projects to make Hawaii more self sufficient and self reliant. It is pretty green and impacts are mitigated. Staff asked to approve the project.

Member Morgan asked if related to Big Island ocean thermal technology and whether there are other uses. Mr. Lemmo said you're talking about OTEC. This provides opportunities to learn that then can be applied to have an OTEC system somewhere.

There were some Board discussions with Mr. Lemmo on OTEC and NELHA.

Member Edlao asked if there were any mitigation plans for coral damage.

Thorn Abbott testified he represents Tech Inc. which is an environmental firm that they can't guarantee with the depth of the pipe, but they are not going to impact coral and the reason for the tunneling. The reef itself, they did some transects and surveys where he displayed some photos and described them. There isn't a lot of substrate and will put a 1200 square feet cap at the sea floor level and they think will be a good area for natural colonization of coral. At the break out point there was .1% coverage of cauliflower coral and they could go out there to do restoration work.

It was pointed out by Member Edlao that all it says there will be coral damage and nothing that says you'll be doing research or how other areas are contributing funds to re-establish corals or some place else. I want to hear what are you going to do about the coral damage. Mr. Abbott said they are working with Army Corp of Engineers (ACOE) and they are dictating to them what those mitigating will be. Member Edlao said he just wants to make sure this comes back because often times they say were the Corp we don't have to come to you guys. Mr. Abott said that they would be glad to report back to you and they will continue to work with DAR to look at the underwater videos. Chair Aila

said you will have to come back to the Board when you apply for the special activity permit and we can make recommendations on mitigation. Hopefully you'll have some recommendations for mitigation when you come back.

It was asked by Member Edlao whether they will be taking security measures. Mr. Abott said it would be up to the contractor.

Member Agor asked how many square foot will be serviced. How many buildings? Mr. Abott said roughly 40 buildings – 10 State buildings, about 4 or 5 County buildings. Member Goode asked whether a PUC will be serviced and Mr. Abott said it is not. The State Legislature provided an exemption.

David Frankel testified that this is an exciting project, but it involves digging in Kaka'ako and you should know that over 400 burials have been found in this area over the past decade. This project needs an archaeological survey before a decision is made and that is what the law requires. This Department signed a mutual release and settlement agreement to which it promised that in fact a fire ground service in the area of this part of Oahu cannot be the fact to determine to have no likely affect on historic sites. Although, this agreement was entered into by the BLNR, you folks have not been compliant and it's been disregarded. It's going to be a problem down the line when burials are found and one of the problems is it's going to be the jurisdiction of the HPD rather than the burial council.

Chair Aila said he understands what he is saying. For the portion that occurs on the seaward side there is none. Mr. Frankel says it doesn't matter. You can't segment a project. It's the whole project you're looking at. I understand the perspective, but this project can't go forward without digging mauka. Chair Aila said true and when they come forward to provide those plans for digging mauka...Mr. Frankel said you may not have any decision making authority at that point. Chair Aila said they would have to have the permits from either the County which will include...Mr. Frankel said right and not from you guys. The Chair said and then HPD would have the opportunity to afford and make those recommendations. Mr. Frankel agreed that is true. Unfortunately, HPD is not doing its job to do those kinds of things. Chair Aila said testimony taken into consideration.

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

Unanimously approved as submitted (Morgan, Goode)

Item E-1 Sale of Three (3) Concession Leases by Means of a Sealed Bid Auction for Business and/or Commercial Purposes, Wailua River State Park, Wailua, Kauai, Tax Map Key : (4) 3-9-004:010

Dan Quinn representing State Parks reminded the Board that staff submitted this item at the last meeting and the difference is this is a concession building at the Wailua River,

Kauai. They had two open commercial rental spaces after submittal of the last Board meeting. A third concession operation has written staff and they will be pulling out. Mr. Quinn described the area pointing it out on the map. Smith's Boats ticket booth will be put up for public auction. We tried before and we put too large a improvement requirement connected with the bid and staff will not do that this time around. This is a request for permission to go out for auction on those three spaces for commercial uses.

Unanimously approved as submitted (Agor, Goode)

Item D-1 Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to the Wailua Game Management Area, Kawaihau, Kauai, Tax Map Key: (4) 4-6-3:1

Item D-2 Grant of Sixteen (16) Perpetual, Non-Exclusive Easements to the Department of Defense for Emergency Civil Defense Warning Siren Purposes; Immediate Construction Right-of-Entry at Puna, South Hilo, Hamakua, North Kohala, South Kohala, North Kona, South Kona and Kau, Hawaii; Tax Map Keys: 3rd/ 1-6-03:110, 1-9-03:17, 2-2-56:26, 2-4-01:161, 2-4-35:04, 2-5-40:12, 2-8-06:12, 2-8-14:01, 4-5-03:20, 4-8-06:10, 5-6-01:37, 5-7-03:13, 6-9-01:17, 7-4-19:44, 8-9-04:08 & 9-6-05:08

Item D-3 Consent to Assign and Consent to Change the Character of Use, General Lease No. S-3606, Hilo Kala, Inc., Assignor, to The Food Basket Inc., Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key:3rd/2-2-50:96

Item D-4 Forfeiture of General Lease No. S-5357, Richard Leopoldino, Lessee, Waiakea, South Hilo, Tax Map Key:3rd/2-4-07:36

Item D-5 Amend Prior Board Action of May 13, 2011, Item D-3, Amendment of State Water Lease No. S-3853 to the United States of America for the Hopukani, Waihu and Lilo Springs, Kaohe & Kaohe IV, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 (por.) & 09 (por.)

Item D-6 Amendment of Easement No. S-3853a to the United States of America for Water Pipeline and Appurtenant Equipment Purposes, Kaohe & Kaohe IV, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 (por.) & 09 (por.), & 4-4-16:03 (por.) & 06 (por.)

Item D-9 Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display, Honolua, Lahaina, Maui, Tax Map Key:(2) 4-2-004: seaward of 015.

Item D-10 Set Aside to Department of Agriculture for Agricultural Purposes, Waimanalo, Oahu, Tax Map Key: (1) 4-1-9:269

Mr. Tsuji reported there were no changes and no one was present.

Unanimously approved as submitted (Pacheco, Agor)

Item F-1 Request for Approval of Special Activity Permit 2011-77 for Mr. Levi Lewis, Scripps Institution of Oceanography, for Temporary Take and Return of Urchins within the Kahekili Herbivore Fisheries Management Area, Maui

Dr. Bob Nishimoto representing Division of Aquatic Resources (DAR) conveyed that the applicant proposes to do underwater surveys and the grazing activities of eight species of urchins and the idea is to see which one does the best job. It will involve setting up a time lapse imaging camera and the second is to cage and monitor for 24 hours and return back to their original site.

Item F-2 Request for Approval of Special Activity Permit 2011-90 for Mr. Levi Lewis, Scripps Institution of Oceanography, for Research on Water Quality Effects on Coral Colonization and Accretion within the Kahekili Herbivore Fisheries Management Area and Seven Other Sites off Maui

Dr. Nishimoto said this item is similar to Item F-1 which is to understand the effect of water quality on sediment of coral where the applicant will put out a 167 plates and pick them up to see what there is. Staff recommended approval of both permits.

Unanimously approved as submitted (Agor, Edlao)

Item H-1 Non-Action Item Open Discussion by Board Members about Issues, Policies, etc. affecting the Department of Land and Natural Resources (DLNR) or Board of Land and Natural Resources (BLNR)

Chair Aila said this was a Board item suggested by Board members to talk and have discussions on things in general as they saw fit and asked the Deputy AG how far they can go.

Deputy Attorney General Colin Lau said if you are going to have a general discussion regarding that perhaps it might be allowed. Sunshine Law requires that a person from the public has to have some kind of idea of what you are going to address in order to give meaningful testimony if you talk specifically in anyway you will have to probably withdraw this item. Member Pacheco asked can we use this discussion time to identify issues or areas we want brought up for future Board meetings. To be put on the agenda.

There was some discussion that they were given the green light, but couldn't remember which Deputy Attorney General, might have been Bill Wynhoff.

Member Pacheco said the mechanism we are looking for is the ability for the Board to...because Sunshine Law as a group we can't openly discuss issues, strategies, Departmental operations, things like that are outside of the agenda. We have to do it in public. We have an opportunity to do those things as a full Board because we never get there. We are looking for a way to do that under the Sunshine Law. Mr. Lau said but could the item be indicated as an item to address future concerns or issues regarding something that Board members have specific or anything specific that someone from the public could get an idea to submit testimony even though it's a non-action item. Member Pacheco said perhaps as Board members if we wanted to have something discussed on this item we could let the Chairperson's Office know that broad subject line could be for example Revocable Permits. The Board wants a discussion about the nature of Revocable Permits would that be sufficient for them to have a discussion here on Revocable Permits? Mr. Lau said he would be more specific. Procedures for a revocable permits or are you looking at specific topics of areas. Member Pacheco agreed to be more specific.

Member Edlao said to give another example that there are a lot of items that come before the Board that the Administration could take care of. Could they talk about that and have the Chair look into this? It would cut down the agenda items. Mr. Lau said you are talking about delegation of authority on particular types of items and I understand you want to talk in general terms, but it sounds like you want to talk about specifics as well. I would recommend against doing that unless you agendize it that way. You are going to talk about policies involving issuance of revocable permits that have to do with _____ and agendize it that way. The problem with this item is it's so general that if I were reading it I would have a hard time picking up what you intend to discuss and whether I want to give testimony on it depending where you are going with it.

Mr. Tsuji explained that Bill Wynhoff and Julie China approved this item. The idea is this is a discussion time and no one knows what another Board member is thinking for discussion. This will be brought back to the Board at some future date as an action item on the agenda with specificity.

Member Agor said he had concerns with SHPD and he doesn't know whether his fellow Board members are experiencing the same thing with their Planning Department as we do in response to projects being held up because SHPD can't respond and is there a way we could help them along, to find a way to help them. Can we talk about things like that? Mr. Lau said he understands that, but maybe that could be a permitted action between you, the Chair and SHPD and not have it as a Board discussion. That would be allowable under Sunshine Law. Even as a non-action item. OIP has already said they discourage these kinds of items that is so nebulous that you can't have an idea of what exactly. That it applies to non-action items as well. He had no inkling that Bill (Wynhoff) and Julie (China) opinioned on this.

Mr. Tsuji said submittals are not subject to Sunshine Law.

Member Pacheco asked Mr. Lau if he could get an agreement from the Office of the AG and work with the Board to get an opinion on this. The Board members serve on many boards and this Board is the operation of this Department that the legal stuff is broad. Mr. Lau said if you go forth this opens it up to the public.

Item L-1 Certification of Election of East Kauai Soil and Water Conservation District Director

Item L-2 Certification of Election and Appointment of West Oahu Soil and Water Conservation District Directors

Item L-3 Certification of Election and Appointment of South Oahu Soil and Water Conservation district Directors

Carty Chang representing Engineering Division said he had no changes to Item L-3 and noted that staff has personal information on the Soil Water Conservation Directors' if the Board wants to see the information. Staff will not put that in as part of the submittal in the future. If the public wants to see it staff will redact the personal information.

Items L-1, L-2 and L-3 were moved to approve as submitted by Member Agor and seconded by Member Morgan. All voted in favor.

Unanimously approved as submitted (Agor, Morgan)

Item L-4 Application for a DLNR DAM Safety Construction/Alteration Permit, Permit No. 54-Paauilo Reservoir (HA-0131), DAM Repair, Paauilo, Hawaii

Mr. Chang said that the date on the submittal should have read as June 23, 2011 versus June 24, 2011.

Member Pacheco made a motion to approve as amended. Member Agor seconded that. All voted in favor.

Unanimously approved as amended (Pacheco, Agor)

Amend the date on the submittal from June 24, 2011 to June 23, 2011. Otherwise, the submittal was approved as submitted.

Item H-1 Non-Action Item Open Discussion by Board Members about Issues, Policies, etc. affecting the Department of Land and Natural Resources (DLNR) or Board of Land and Natural Resources (BLNR)

David Frankel testified that in the past DLNR was sued for the Hokulia Project, the Wal-Mart Project, Ward Project, Paradise Ranch Project, house in Wainiha, Kalaheo Church and the Rail Project because SHPD is not requiring an archaeological survey prior to the start of a project. They say it's problematic to the contractor and an EIS needs to be done

to give SHPD direction to require it. If SHPD makes a finding they ignore the process and an EIS can be done later, but it's not the way the rules are written.

Member Agor said an EIS is good.

Member Goode said it seems to be a good activity having consultants looking at it and Mr. Frankel said we hope so.

Marti Townsend representing KAHEA testified that she likes this process to be open and it provides an opportunity for the public to speak. They have several issues. With DAR, figure out a way for an exemption process to be done properly. Wants the Board to be more transparent, delegate more issues to the Chair and suggested more streamlining.

Chair Aila said that there are things that the Board does that exemption doesn't cover citing coral damage that you can't do an EA for every vessel grounding.

Member Pacheco asked whether the exemption process goes to OEQC.

Member Goode said streamlining on the staff level because what they see is in the submittal.

Ms. Townsend suggested making these Land Board meetings more accessible by using the third floor conference room. The Chair said we are working with our IT Division on these issues to be able to include outer islands' participation.

Ms. Townsend said that the DLNR contested case hearings process is being done wrong and is not working. You want the contested case outcome to help make an informed decision. The Land Use Commission contested case hearings work well.

Member Pacheco said he wants further clarification (Mr. Lau said from OIP) to be able to speak more freely on items. Chair Aila said that the Board will get an opinion from OIP. Member Pacheco asked how do other agencies deal with contested case hearings. Mr. Lau said each agency has their own administrative rules. The Office of the AG is covered under Chapter 13.1. There were more discussions about contested case hearings. Mr. Tsuji gave some information about a contested case at the Land Use Commission and a CDUP.

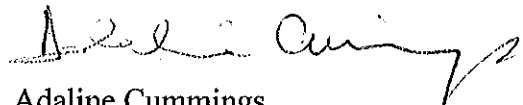
Both Mr. Frankel and Ms. Townsend discussed back and forth with the Board members about contested cases and its process. Mr. Tsuji said contested cases are expensive and time consuming.

Member Pacheco asked whether it was better to agenda items this way. Mr. Lau said it funnels through the Chair. Chair Aila said this exercise has been interesting and beneficial. The Chair asked can the Board be briefed by the Deputy Attorney General on this. Mr. Lau said it normally happens during executive session and that's when the Deputy AG gives legal advice.

Adjourned

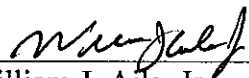
There being no further business, Chairperson Aila adjourned the meeting at 1:40 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants 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