

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

DATE: THURSDAY, NOVEMBER 10, 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 9:20 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
David Goode
Dr. Sam Gon

Ron Agor
Jerry Edlao

STAFF

Paul Conry/DOFAW
Russell Tsuji/LAND
Dr. Bob Nishimoto/DAR
Dan Quinn/PARKS
Lisa Hathaway/DOFAW

Scott Fretz/DOFAW
Molly Schmidt/DOFAW
Ed Underwood/DOBOR
Michael Cain/OCCL
Elliot Parsons/DOFAW

OTHERS

Cindy [Yee] Young, Deputy Attorney General
Ivan Nishiki, M-1
Ka'ala Duffy, D-5
Angela Ka'aihue, D-9, C-6, C-2, H-1
S. Nicholson, D-4
Dale Bonar, C-6
Doug Cole, C-6
Dennis Niles, F-2
Dora Beck, D-10
Brian Ho, J-2
Steve Martin, J-2

Gaylyn Nakasone, M-2
Heidi Meeker, M-4
Jean Campbell, D-9
Margaret Wille, D-9
Mark Fox, C-6
Butch Haase, C-6
Brian Tamanaha, F-2
Jim Coon, F-2
Jeff Nelson, J-2
Roy Fund, J-2
Nick Beck, E-2

Cindy Farias, J-1
Her Majesty Mahealani, H-1
His Highness Waeli, H-1

Maria Carnevele, F-1
Her Highness Hauwea, H-1

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

Item A-1 October 28, 2011 Minutes

Minutes were not ready for this Board meeting.

Chair Aila announced that items C-7 and K-1 will be withdrawn due to OIP issues.

Item M-2 Acquisition of Private Lands and Set Aside to Department of Education for New High School Campus, Portion of Kula, Makawao, Maui, Tax Map Key: (2) 2-2-02: por. 15 and (2) 2-2-02: por.54.

Gaylyn Nakasone representing Department of Education (DOE) - Planning Section reported on item M-2 and wanted to revise the EO for education purposes to be consistent.

Member Edlao asked whether the easement was done and ok. Ms. Nakasone said that staff has the values and the seller is in agreement.

Unanimously approved as submitted (Edlao, Goode)

Item M-1 Issuance of a Sublease to Showcase Hawaii Productions LLC., a Hawaii Limited Liability Company for a Museum Gift Shop, Production of Media Advertisements, and Related Retail and Office Uses at the No. 1 Capitol District (formerly the Hemmeter Building), Honolulu, Oahu, Tax Map Key: (1) 2-1-17-001.

Ivan Nishiki representing Department of Accounting and General Services (DAGS), Leasing Services Branch related item M-1 noting that the current revocable permit (RP) is expiring at the end of the year and they want a 3 year lease.

Unanimously approved as submitted (Gon, Agor)

Item M-4 Approval in Principle of the Acquisition of Private Lands and Set Aside to Department of Education for Educational Purposes, Wailuku, Island of Maui, County of Maui, Tax Map Key: (2) 3-5-001: 078 and por. 077.

Heidi Meeker representing Department of Education conveyed this is a preliminary approval of the transfer of their new campus.

Unanimously approved as submitted (Edlao, Gon)

Item C-3 Request for Approval of Incidental Take License and Habitat Conservation Plan for Kaheawa Wind Power II, on the Island of Maui, Hawai'i

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) related some background on item C-3 that this requires 2/3 majority vote of the Board to have final approval for this process. This Habitat Conservation Plan (HCP) is intended to mitigate impacts to endangered species. The species are listed in the permit and good for a period of 20 years which has gone through review with the Endangered Species Recovery Committee, meets State laws, in coordination with Federal Government (U.S. Fish and Wildlife) who will be issuing a similar permit. The intent is any take is fully mitigated and a net conservation benefit that does occur for the species. There is a list of possible take and doesn't mean it is exceeded. These HCPs are used in the broader conservation efforts.

Member Edlao asked whether there is an annual report. Mr. Conry confirmed that is one of the requirements to make sure the plan is implemented correctly.

Member Gon asked since wind power has been in place for several years has the limits been reached in regards to take or what are the impacts to endangered species.

Scott Fretz (DOFAW) said staff hasn't had any HCPs that have hit their limit and had to come back for an amendment. Most are well below the limit. He related Wind Farm I has similar take limits. The take has been lower for seabirds, but take on nene has been higher than expected, but is still under the take limit. There were nine per Member Edlao's inquiry. Member Goode asked about the bat. Mr. Fretz said two bats were observed.

It was asked by Member Gon what the mitigative actions were taken. Mr. Fretz said for nene it is to establish new nene populations in areas of the State in order to increase distribution. For this HCP it is to create a new place for nene on Molokai. For bats its habitat restoration to restore forests to provide habitat for bats. The mitigation for seabirds has been difficult because they are inherently difficult to find areas to manage seabirds in the West Maui Mountains. What the applicant has done was to create a social attraction project by creating a predator proof enclosure and attract birds to come and breed in that area. Staff is looking forward to that because this is the direction they are planning to go with seabird recovery. Member Gon said he was glad there was a process for balancing the impacts with mitigation and any harmful affects.

Member Edlao asked whether there were any nene pens in the area. Mr. Fretz acknowledged there is and are around the area and are the birds striking the turbine. Member Edlao wondered if they plan to move it. Mr. Fretz said that pen existed many years before the wind farm came along and reached its carrying capacity and are at the point to wait and see. They don't think they need to move it and will not put any more

birds in it. The Board member noted he sees the nene flying over Wailuku. Mr. Fretz said that nene has started to re-evolve their seasonal movements across the islands and what we are seeing are seasonal migrations to different areas.

The applicant didn't have anything to say, but would answer questions.

Unanimously approved as submitted (Edlao, Gon)

Item C-4 Request for Approval of Incidental Take License and Habitat Conservation Plan for Kawaihoa Wind Power, at Kawaihoa in the Northern Portion of the Island of O'ahu, Hawai'i

Mr. Conry indicated this is another HCP.

Mr. Fretz described that this is a 70 megawatt wind power project that will create a lot of energy. The take is water birds, bats and seabirds so the mitigation for this is working with Kamehameha Schools at 'Uko'a Pond and doing restoration of habitat for the wet land birds in the area by removing weeds that have degraded the wetlands. Create nesting areas for the birds and will be monitored and also create foraging habitat for bats and will monitor the number of bats in the area.

Member Gon asked if this is the first project. Mr. Fretz said there is the Kahuku Wind Power.

The applicant was happy to answer any questions.

Unanimously approved as submitted (Edlao, Gon)

Item D-5 Consent to Sublease of General Lease No. S-5511, New Cingular Wireless PCS, LLC, Lessee/Sublessor, to SprintCom, Inc., Sublessee, Humuula, North Hilo, Hawaii, Tax Map Key: 3rd/ 3-9-002:15.

Russell Tsuji representing Land Division conveyed some background on item D-5 noting that the ground rent paid to the State is \$16,000 annually and the proposed new sublease rent to Sprint is \$23,652 a year which was more than the ground rent paid to the State. Staff evaluated whether they should participate taking various things into consideration and referred to Mt. Ka'ala lease. This is its 15th year into a 30 year term lease and staff recommended a 25% share collected from the Lessee. The Lessee, New Cingular Wireless didn't object.

Ka'ala Duffy representing New Cingular Wireless testified in agreement.

Unanimously approved as submitted (Gon, Agor)

Item D-9 Status Report on Prior Board Action of January 8, 2010, Item D-12; Confirm Prior Board Action to Cancel Revocable Permit No. S-4350

and Issue Direct Lease to Hawaii Conference Foundation for Church and Landscaping Purposes; Authorize Chairperson to Sign Permit Applications Required for Project, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-9-02: 7, 8, 9 por. & 10 por.

Written testimony was submitted by Margaret Wille.

Mr. Tsuji indicated that item D-9 is a staff status report on a prior Land Board approval of a revocable permit (RP) and issuance of a direct lease to a church on the Big Island. The church complied with 343 and did a finding of no significant impact which is what staff is reporting and all they are asking is the Board be delegated to sign off on permits that maybe required – SMA, sub-division requirements and the Chair would need to sign off as the land owner similar to the fence issue on the Big Island.

Member Goode asked whether this item was a status report. Mr. Tsuji confirmed that this is informing the Board that we made a prior approval of a direct lease with the church and one of the requirements was a Chapter 343 which they did comply and had a finding of no significant impact that staff is reporting that to keep the Board informed and asking that now we're requesting the Chair sign off on applications as a landowner. We do that routinely, but in order to protect the State we asked the applicant to provide us a simple letter saying they take all responsibility for the application usually with the County and they always ask the fee owner sign off as well as the Lessee which is routine.

Member Gon noted that this is just a report, but there are recommendations. Mr. Tsuji acknowledged that this is confirming the prior approval and the delegation for the Chair to sign off on these permits.

The applicant's representative said they don't have a statement to record and are here to answer any questions.

Margaret Wille, attorney for Joseph and Helen Pickering testified that they own a parcel that abuts three of the parcels at issue and they have a lease easement interest in one of those parcels. These are shoreline parcels along Puako Bay. The reason I'm here is there was a 2009 court approval for the Pickering's access easement and utilities easement and then a January 10th approval for the Church's 65 year lease of this State public lands at issue today. Because I believe there's a clear potential conflict between the intent of implementation of those two permits, I'm here today. You might ask then why you weren't here in January of 2010 and the reason was her clients never received any notice of that hearing. As a general concern I want to focus on the issue of the Department's of what I see as often failure to notify parties who have an easement interest in a property that you are addressing. I am dealing with other case where her client weren't given notice on and that's why I'm here. This issue could have been addressed when that second permit came up. I tried to get clarification and felt that I have not been able to do so with Island of Hawaii Department staff. The issue is less than a half dozen kiawe trees that line along the designated access easement for the Pickerings. Your permit issued to them December 2009 was completely configured as to preserve and protect those trees

which are right along the shoreline. What I really at issue here is something I don't feel is church members or other private parties is really to completely grasp, but I feel that it's very important for the Board to think of in terms of time and cumulative impact. When I say time there is no reason for me to be here today if that shoreline stays right where it is today. It's right against these trees right up to the boundary, but if you take a look at the different maps that have been submitted you have open ocean from where it was surveyed in 1950. There's a whole different issue going on here. I did send in testimony, but unfortunately the notice that was sent out to me said this meeting was on the 3rd so there is a lot of notice issues problem going on. If it hadn't been for your listening session on Saturday I would have thought I had received the notice for this hearing the day after it occurred. I did send information out and did send it out yesterday and I don't know if you've received it. These are just photos that were included if you are not familiar with the area. We are talking about a bunch of kiawe trees. This is from you also received from the Pickering's approval their easement access showing those trees of that border that we are trying to protect. My understanding from the director...this is a survey showing the over hangs if anyone wants to see that. It is my sense from the director Kevin Moore is that he doesn't have a problem if the church wants to cut those trees down. I see that piece of land won't exist within a very short time. If you read the permit to my clients the importance of those trees is stressed. In fact, the whole easement is being moved over at the request of shoreline management people of the County of Hawaii in order to preserve them. We have a second court approval at which we did not have the opportunity to comment basically being interrupted by you all as allowing for those trees to be eliminated. If you were to look at what was submitted by the church of what their configuration is shows us ample amount of land available. The Pickering's surveyor showed that the actual shoreline is different from a map done 6 or 8 years ago. The understanding of my client's was that those trees were to be protected that they have a responsibility of the maintenance of that area. What I ask is there maybe other ways of doing it is the trees that is before the access easement and the shore in this very short stretch are removed that the Pickering's have a say in that. They are very reasonable. I have asked lets just go out there, designate those four to six trees and move on when this is done. There is noting against the church, but their feeling was it was up to you all. They don't know what they want to do. I think they should be able to have that level of expertise of what the cumulative impact is here.

Ms. Wille also noted what happens this is a 65 year lease when the water does move in. I feel it should be available to them to come back and relocate that access. This is kuleana lot it has statutory if not constitutional right to access. How does one rectify this situation? I want to add just one public interest background point is that there was a great deal of testimonies submitted including by William Walsh of the Aquatics Division, including by Department of Interior, including by engineers, including massive that these kiawe trees are in many ways very important, but Walsh said is directly contradicting. The consultant is saying this is where the overhang of kiawe trees is a key breeding ground for native fish. So you may want to call kiawe invasive, but this if you go to Puako is all the shade and the environment. It's not just a private interest in looking at those trees. It's also a public interest that was expressed by many. Many of these government officials and by the parties that we need in order to comment a current

shoreline certification that was not required. That's where we stand today. The Pickerings are elderly people. This is very difficult. This is their neighbor church and neighbor community, but they are very afraid that they have watched their land and the water recede and for that reason I come to you and looking to your advice. If you have another way to resolve this – say go out there guys and figure it out and come back to us or want to say before you cut down these are massive trees. Some are 15 feet around and stretch way out over the water. One is called the rainbow tree. We are talking only talking about a few trees here. I am just looking to you that I feel there is a conflict between your two permits at least to how I read them and how to address this situation.

Member Edlao said if you are talking about a few trees I don't understand why you guys can't get together to resolve this by yourselves and if it gets to the point where erosion occurs and the road affected the State is not the bad guy. If something drastic like that happens changes can be made that we are not saying that this is it and we don't want to hear any more. I think you guys can resolve this issue by yourselves than get us involved. I don't understand why. We've had cases where two parties were grumbling and we told them to go work it out. Ms. Wille said because I have requested that and was referred that it was not a possibility and that I needed to come to you all.

Member Goode asked whether they commented on the draft EA. Ms. Wille acknowledged they did and their comment was the project did not touch any portion of the Pickering's parcel 11, although it will be visible from parcel 11 and the Pickering's access easement is duly set forth on the land State plan and will remain accessible to the Pickerings. That is why I'm talking about time and impacts. If you could say why don't we do an environmental impact statement (EIS) to address these trees and I don't feel that should be necessary. Member Goode asked the EA was filed in September and it's past the 30 day challenge period. Ms. Wille said it is and they (the Pickerings) are not going to.

Mr. Tsuji noted that Ms. Wille's client has a non-exclusive access easement and what that means is staff could issue a thousand easements on this very same lot. They don't have exclusive rights to it. They don't have exclusive power to say what can or cannot be removed over this. That puts to rest the legal side on that position. Second, what her client seems to be asking for is something I would ask why isn't it addressed or shouldn't be addressed which is something in an RP in all our leases which complies to all laws, rules, regulations, SMA and OCCL if they are in the conservation district. It appears none of those apply in this case. That is why Ms. Wille is coming here to you to ask this Board to make a choice about who should cut what trees on an area that the law does not regulate. I think this Board has a lot more important duties than getting into what trees should be cut down when there is no law currently protecting or regulating that area. Third, on the issue of notice as counsel is fully aware, we comply with Chapter 92. If this counsel felt incumbent upon putting her name on the Board Secretary's list I'm sure she should have gotten the agenda. In addition, my staff went out of its way because normally we inform the applicant what's coming up on the Board. She is not the applicant, but we went out of our way to separately inform her in addition to all the other requirements that we are required to follow and all the deadlines every two weeks that

has these Board meetings. Yes, maybe Hilo District did write a letter to her having a typo indicating November 3, but again if this was so important to Ms. Wille she knows very well to get her name on the Board Secretary's list and every single meeting she would get a copy of the agenda and would know what is coming up.

Jean Campbell testified on behalf of the applicant, Hawaii Conference Foundation that they reiterate what the State said and pointed out in response to Margaret's request for identification of trees. We did respond that the landscaping part is still very general. The church has not figured out what trees will be cut down and what will be planted in its place as addressed in the final EA. The landscaping plan is to gradually replace trees. There is no indication anywhere and it's never been the church's intent to clear cut the area or wipe everything out and start over again. It's addressed in the final EA. It's going to be a gradual process. Things will be cut by hand as they are replaced with other plants. At this point we don't have the level of detail to identify specific trees that can or can't be saved or preserved in anyway. At the point when we do get to that level of detail we would be happy to work with the Pickerings. The church has always been very cooperative and would be happy to work with the Pickerings in identifying trees that they are particularly concerned about. The Chair asked whether they are willing to not cut them down and Ms. Campbell said if it works, yes absolutely. It will be a work in process and at this point they can't say the specific trees will or won't be cut. We don't know right now. We are absolutely willing to work with them. It was never the church's intent to wipe out all the kiawe off the lot. I believe they intend to keep some of the kiawe trees, but we don't know exactly which ones. They might be pruned so it provides a nice canopy and make the area more usable.

Member Edlao asked whether she was the legal counsel for the church and Ms. Campbell said she was. Member Edlao commented that the pastor and the Pickerings should talk and not the two lawyers and maybe we can get things resolved. Ms. Campbell said they will keep that in mind.

Member Goode asked during a prior Board action a cancelled RP and issue a direct lease can there be a lease term that says they shall consult with the easement holder whether it's the Pickerings or some successor with those trees. The Chair acknowledged we can make that part of the recommendation. The recommendation is to delegate to the Chair. Member Gon said that is condition 2. Member Goode said they contend it could be years from now by the time they get to that area. Ms. Campbell said it will be done by volunteer work. It is a hard timeline and agreed to condition 2.

Mr. Tsuji said the easement holder and the lessee are both obligated over the area. Not one has necessarily more power over the other. A non-exclusive easement holder may not necessarily have more power over someone else. Ms. Wille is saying they don't agree and she wants the authority or someone to make that decision. My question is there has been a lot of allegations about the trees if they were cut down would affect the integrity of the soil and I'm not sure if that's correct. I would defer to the experts such as the shoreline folks. In a dam maintenance situation staff has been instructed by the Dam Safety Division to cut down trees that are situated on top of dams because it affects the

integrity of the dam. But, she is saying is don't cut it down because it will make it more weak. I don't know if what she is saying is accurate and we would defer to the experts. What the shoreline folks would say is outside of our jurisdiction, but again for the Land Division to be the decision maker in evaluating who should cut what trees we just want from a liability perspective and a health and safety issue what we would be looking at. All the RPs, leases and easements have the same thing – comply with all laws, rules, regulations, SMA and conservation district. As you are fully aware cutting down a tree in conservation district may bring you before the Board without having gotten prior approval.

Chair Aila asked whether this parcel is in the conservation district. Ms. Wille said a portion of the entire 4 State lots is in conservation and this specific area is not. They still have to do some re-zoning and she wasn't sure how that will end up when it is finally approved.

Member Goode said there is some ability to delegate to the Chair and craft some language or otherwise make a motion to ask the Chair to work with staff to figure out that condition. Mr. Tsuji asked what would be the gist of the provision to allow Ms. Wille's client to comment or veto or...Member Goode suggested that I would word consult. You are treating it that we have the authority. To just ask to consult is to go talk story. Chair Aila said they are neighbors and to go work it out.

Angela Ka'aihue testified that she was here to represent herself and referred to coming here for a similar situation that we are not talking about coastal lines, but talking about valleys and a valley that is a watershed. She reiterated what Mr. Tsuji said about laws, rules, etc. which the law does regulate, but Land Division after speaking to Mr. Tsuji he chooses not to regulate it. We are talking about an easement and she wanted to show a map. Chair Aila asked whether it pertained to this case and Ms. Ka'aihue said no. It's similar. All it is about land owners who are crossing other land owners' property to access their lands in the back. The back lands are owned by DLNR is being leased. I don't know if it's being leased because it's a month-to-month revocable permit (RP). It's being used to raise cock fighting roosters. The problem is they are crossing my property and I've asked the State to help me enforce and identify who the illegal trespassers are because it is a problem for me. Chair Aila said we can't talk about your case now. We have to talk about the agenda item before the Board.

Ms. Ka'aihue said the trees that are falling into the river are a problem because of the heavy traffic that is crossing properties to access the rooster farms property. Member Gon said this is not this case that this is Puako along the seaside and not a river. Ms. Ka'aihue said I am in favor and in support of the trees. If there are trees to be protected than please do so whether its trees near the coastal or on the watershed and I think we should enforce and do whatever we can to protect trees from falling in and jeopardizing coastal lands as well as the watershed.

Member Goode moved to approve with condition #2 - the Chair working with the applicant in craft some language that they would consult with the neighboring easement owners as it relates to the half dozen trees or so. Member Edlao seconded it.

Approved as amended. The Board amended the Recommendation section by adding a no. 3 authorizing the Chairperson to add conditions that he sees fit to the land documents (i.e., revocable permit or lease) to state that the permittee and lessee shall consult with the easement holder (Ms. Willie's client the Pickerings) about the cutting of trees within the easement area that may impact the integrity of the shoreline area.

Unanimously approved as amended (Goode, Edlao)

Item D-4 Consent to Assign General Lease No. S-5586, Island Dairy, Inc., Assignor, to Big Island Dairy, LLC, Assignee, and Consent to Mortgage, General Lease No. S-5586, Big Island Dairy, LLC, Manowaialee and Ookala, North Hilo and Hamakua, Humuula, Parcel B situate at Humuula, North Hilo, Hawaii, Tax Map Key:3rd/3-9-01:01 & 02, 3-9-02:07 & 08, 4-1-01:06 and 4-1-05:01.

Mr. Tsuji informed the Board that item D-4 has to do with an assignment of lease with Island Dairy which is a multi-million dollar transaction that counsels are trying to close on December 1. After reviewing the maps staff discovered an error with respect to the lease. Staff's recommendation is no sharing of the premium, but staff discovered that the lease was not an auction lease because it's a dairy operation and entitled under the Statute for a direct lease having certain amount of acres which was incorrect. Her related this lease was signed in 1997, but thereafter the surveyor wrote a letter to Land Division administrator at the time indicating that the maps attached to the lease was incorrect and he enclosed the corrected maps. The leased area on the ground that was fenced off was more than what was on the written lease document. Mr. Tsuji and Mr. Moore looked at their Statutes and because this was a direct lease the lease needed to be amended to reflect the increase of acres. As an example the specific acreage is a gross acreage and an exclusion of 9.45 acres because there was a reservoir and other items not included in the lease. What the lease has in writing is the gross acreage is 2,090.45 gross acres minus the 9.45 acres of exclusion netting 2,081.084 acres. It ought to say the gross area is 2,333.46 less than the 9.45 acres exclusion area with a net of 2,324 acres more or less. Staff didn't think the amendment would be a problem because the Board can approve it and because it was a direct lease we can document that. The question staff looked at with the appraisers was whether there needs an adjustment in the value of this lease and whether the appraised value was based upon the small acreage. There was a rent reopening in 2008 and our appraiser appraised the property in using this formula that came from the Department of Agriculture is how many animals can be grown out on this land and they have a formula depending on the quality of land and staff followed that formula. Going to the site you can have "X" amount of cattle and plug that into the formula with weight gain, cost of cattle, etc. which comes up with a rent. It is not based on fair market value

of the land as if you sell it or rent out. That was \$29,000 and some change per year for the entire acreage. Because it is a limited pasture and dairy provision and cannot do other kind of uses. The Lessee did not agree and went to arbitration panel and came down with a decision which was \$10,000 less per year than the landlord's appraiser. The final rent was determined to be \$19,780 per animal. It was not tied to any acres and nor was the original appraisal. Staff doesn't think the value needs to be adjusted and their recommendation to the Board would be to not only approve the consent to assignment, but we need to move to amend the lease to reflect the correct amount of acres and the rent stays the same. I believe that is accurate because my staff walked the site. What are on the ground are the increased acres and it just didn't reflect that on paper. I would move to amend the title to reflect not just the request for approval of the consent for assignment, but to approve amendment of the lease to reflect the correct amount of acres as he just stated. The buyer and seller are in favor of this and I don't know if there is any third party objecting to this. I don't think so because we are not changing what is on the ground and just change the paper document to reflect what is on the ground. The original lease was since September 10, 1999.

Member Goode inquired if this was with Hamakua Sugar because looks like someone's surveyor blew it. Mr. Tsuji explained that they had a lease document with DAGS original maps, leaps and bounds and acreage and later reported that was incorrect. Staff passes it on to the State surveyor for accuracy. The error was informed with Land Division in 1998, but...Member Goode wondered but they are leasing all these TMKs on these parcels. It's not like a portion of some parcel. It's the area that was originally fenced in 1999. What I'm curious about is from 1999 to the rent reopening it just happened. It seems like they've been renting based on 2000, but they actually have 2300 so we got slid a little bit. Mr. Tsuji said that is why we looked at it carefully whether the rent was adjusted, but it was my understanding that staff went out there and the site is fenced. The appraisers did review the lease files, but they probably saw that the map was in error because there is a document subsequent to that shows after the lease was signed from DAGS survey to Land Division indicating the correction and here are the replacement maps, but they stuck to the lease because that is what they saw which was the assignment. Our appraisal when we reopened in 1997-98 he documented the acres however the way he comes up with this animal unit carrying capacity that he charts from the quality of lands, he talks to the tenant and considering all of that and the chart saying quality A and evaluates that to come up with his best opinion that this site is X amount of animals. In that report he thought it was 600, the farmed cattle, etc. It's a way for the cattle industry to help them survive. The panel just got a number.

Member Gon said all he would include is an item in the recommendation that says clarify discrepancies in area reported in previous assessments and reflect true acreage based on most recent surveys.

Deputy Attorney General Cindy [Yee] Young explained citing to 92-7 which is the notice of this meeting that there are two issues going on – there is the substantive issue related to the lease itself with the addition of 200 something acres, but there is also a related issue that is a Sunshine Law issue of the notice itself not having that amendment to the

lease listed on it. The Board can amend its agenda if 2/3 of the vote of all members agree to add the item to the agenda can do so, but if it is not a reasonably major importance and won't affect a significant amount of persons than you can add it because if it pertains to adding items that are of reasonably major importance and that affect a significant amount of persons I would think you are dealing with public lands that people. There is a risk because you're dealing with State lands that can be interrupted to affect a significant number of people. You are not talking about just the lessor and the lessee. You are talking about public land that you are adding and not subtracting it. I think it could be a risk under Sunshine Law and under this analysis, but ultimately it is the Board's call to determine that it be able to amend the agenda and to do so you just need that 2/3 vote.

Mr. Tsuji reiterated it's correcting what is on paper and not what is on the ground. The TMKs are correct. Member Gon said as she pointed out the true acreage assessment was already made and that there was a discrepancy in the number. Mr. Tsuji said he will leave it up to the applicant to confirm to the Board that the December 1 deadline is what they really need is this consent to assign to close the deal and perhaps come back later to correct the acreage and amendment of the lease.

S. Nicholson, counsel for Island Dairy testified that they appeared before the Board in 1998 with the tax map keys and it was 2400 acres and that is what the lease they came in for based on the tax map keys. When the survey came in it was different and they thought that was correct, but the tax map key has never changed from day one. What we heard today we found out last night. December 1 is important for the closing of the calendar year and would like to stick to the approval of the assignment then correct the acreage at a later time. Mr. Tsuji said and that is the Board's recommendation as long as the Board is fully aware.

Chair Aila asked the representative of the new assignment. There was some discussion between the representative and Member Gon about the title where there is no mention of the acreage in the title.

Mr. Tsuji said what the Board is considering right now is rather than amending the title to say consent to assign the lease and amend the lease to reflect the correct additional acres. Just do the #1, consent to assign the lease. The text of the submittal notes the correct acreage and they follow up at the next meeting with the amendment of the lease to reflect the correct amount of acres. The representative agreed. Member Gon said the most important thing is the consent to assign. There was some discussion about this.

Member Goode made a motion to approve the consent to assignment. Member Gon seconded it. All voted in favor.

Staff informed the Board that this Request is for a Consent to an Assignment of Lease (staffs' analysis was no premium was due) and a Consent to Mortgage as indicated in the written submittal.

*Staff did discover a problem with the amount of acres identified in the subject written Lease in that it was short about 200 or so acres. In order to correct this problem, the Lease would need to be amended to reflect the correct amount of acres.¹ Staff suggested that the title for this Agenda item and text of the submittal and recommendation sections will need to be amended to allow for, in addition to Consent to the Assignment of the Lease and the Consent to Mortgage, an amendment of the Lease document to reflect an increase in the amount of acres from 2090.54 gross acres (minus exclusion area (reservoir etc. of 9.454, for a net of 2081.084 acres) to 2333.461 gross acres (less 9.454 exclusion area, for a net of 2324.00 acres), **more or less.***

In an abundance of caution, the Land Board suggested that the Amendment of the Lease area to increase the acreage as indicated by staff should come up in a subsequent meeting. The Land Board decided to proceed with amending the text of the submittal to indicate staff's report the correct and increase in acres under the Lease as aforesaid, with an understanding that coming up in a subsequent meeting would be the amendment of the Lease with no increase in rent as explained by staff.

Amended as aforesaid and unanimously approved.

Unanimously approved as amended (Goode, Gon)

Item C-6 Request for Approval to Hold Public Hearings on Proposed Hawaii Administrative Rules, Chapter 13-140 (Legacy Land Conservation Program Rules), for the Administration of the Legacy Land Conservation Program and Procedures and Criteria for the Legacy Land Conservation Commission, Including the Following Subchapters:

Subchapter 1. General Provisions – To Set Forth the Purpose of the Program, Contains a Standard Provision Relating to Severability,

¹ *Staff did study the file and came to the conclusion that even if the Lease was corrected to reflect the increase in acres, staff didn't believe it would impact the rent. Staff explained that the last reopening occurred in 2007-2008. The State's Appraiser Allan Conboy appraised the land using the animal unit carrying capacity in arriving at a value of \$28,475 per annum. This value was based on the expected amount of cattle that could be raised on the land, expected increase in size of the cattle and an expected rate of return. This value was not based on the fair market value of the land in the ordinary sense, but a special formula probably derived with the assistance of the Department of Agriculture specifically for pasture type operation, indicating generally a lower value than pure agricultural lease rents. The Lessee did not agree with the State's appraiser, and elected to arbitrate. A two panel arbitration/appraisal panel consisting of Mr. Conboy and Stewart Hussey issued a decision that the value of the land for the pasture/dairy operation was \$19,780 per annum. This decision did not articulate a value per acre, or animal unit carrying capacity as the basis for the decision; the decision was simply the value of the land for the use specified in the subject pasture/dairy Lease.*

Defines Terms Regularly Used in the Proposed Chapter, and Delegates Authority From the Department to the Division for the Administration of the Legacy Land Conservation Program (LLCP).

Subchapter 2. Program Administration – To Establish the LLCP, Sets Forth the Administration of Grants and Planning Activities for the Program, and Clarifies the Availability of the LLCP Records for the Public

Subchapter 3. Legacy Land Conservation Commission Practice and Procedure – To Clarify the Procedures of the Commission, Including Meeting Administration, Quorum, Communications, and Requirements Related to the Sunshine Law

Subchapter 4. Land Acquisition Grants – To Set Forth the Procedures, Eligibility Requirements, and Post-Award requirements for Land Acquisition Grants Through the LLCP. The Subchapter Includes Provisions Relating to Deed Restrictions, Reporting Requirements, Grant Disbursement, and Other Policies Formed to Protect the State’s Interests in Administering Public Funds Under Chapter 173, HRS.

Subchapter 5. Criteria for Land Acquisition Grants – To Set Forth the Procedures, Eligibility Requirements, and Post-Award Requirements for Land Acquisition Grants Through the LLCP. The Subchapter Includes Provisions Relating to Deed Restrictions, Reporting Requirements, Grant Disbursement, and Other Policies Formed to Protect the State’s Interests in Administering Public Funds Under Chapter 173, HRS.

Subchapter 6. Operations, Maintenance, and Management Grants – To Set Forth the Procedures, Eligibility Requirements, and Post-Award Requirements for Operations, Maintenance, and Management Grants Through the LLCP.

Subchapter 7. Criteria for Operations, Maintenance, and Management Grants – To Set Forth the Statutory Priorities and the Criteria That the Commission Applies in Advising the Department and the Board and Making Recommendations to the Board Regarding Land Acquisition Grants. The Subchapter Includes Provisions Relating to Grant Disbursement, Monitoring, and Other Policies Formed to Protect the State’s Interests in Administering Public Funds Under Chapter 173, HRS.

Subchapter 8. Enforcement – To Describe How the Board May Act Upon Breach by an Awardee of Contractual Agreements or Deed

Restrictions, and Clarifies That Statutory Provisions and Contractual Agreements or Deed Restrictions Will be Enforced by the Board.

Mr. Conry indicated that item C-6 is the initial rules that will outline both the implementation and administration of the new Legacy Land Conservation Program. The Legislature authorized it in 2005 with instructions to the Board to go ahead and develop rules for the program. It authorizes rules for the operation and the Department which has been done. It has gone through various stages and the commission to get their feedback and comment which is on page 4 of the submittal. They asked on recommendation #1 that ...After Board member Gon's inquiry Mr. Conry said if the Board could implement the changes now before it goes out for public hearing that staff's recommendation is these items can be addressed in a public hearing process.

Mark Fox representing The Nature Conservancy (TNC) testified that they support the creation of these rules that the Legacy Land Program has been operating for about 5 years and is very well organized and very well documented and very transparent. The Department has provided critical funding for some really good land protection projects. It has been operating well and should have publicly created administrative rules which are a good step in the evolution and maturation of the Legacy Land Program. During the public process they will work with the Division with respect to proposed section 13-140-28 where there are certain circumstances if a program is granting a funding for an organization to purchase land in fee in some circumstances be a requirement that organization grant a subsequent conservation easement over that property. He understands the motivation for that. He thinks what the Department is looking for is to protect the benefit of the grant that was given and affect the benefit of the bargain. We are talking particularly about non-profit organization that comes through the Department and the Program asks for a grant, receives it and goes out and uses that grant in holder and part to purchase land for protection. What I think the Division is seeking to do is to make sure for some reason that non-profit or organization goes away in the future or transfers the land away that there is a perpetual conservation easement over that land so the land is still protected even when the land changes hands. It may have unintended consequences, it maybe costly, time consuming for certain non-profits to meet their requirement of going out and finding what is require here is an accredited organization. There is only one land trust in Hawaii. We are looking forward to supporting the rules and working with the Division.

Dale Bonar, Executive Director of the Hawaiian Islands Land Trust and Chair of both the Legacy Lands Commission and the Natural Area Reserves System testified that the Legacy Lands Commission did recommend going out to public comment where a number of concerns were expressed. The testimonies highlighted these be addressed during the public comment period. As Mark Fox said our core principals is to make sure these lands are protected in perpetuity. There is interest in the Legislature in that DLNR has the ability to ensure what is being protected is being protected. This brings up the accreditation and whatever organization that holds the control over these lands needs to be committed to perpetual care. The three requirements are the accreditation requirement, the lack of required monitoring and enforcement by DLNR of easements

they may hold and allowing non-accredited or non-certified organizations to hold conservation easements with any other specific oversight. The rules as written any non-accredited organization that purchases land using Legacy funds place a permanent conservation easement on with a State, Federal, County agency or an accredited land trust. They are the only accredited land trust in the State. TNC should be shortly accredited. Mr. Bonar described the national accreditation process. An organization that says they are a land conservation organization comes to Legacy asking for funds to purchase an easement on someone else's property there is no requirement that they need to be accredited or need to demonstrate they are a land conservation organization that the Legacy Land Commission does not have the right to decide whether the organization is or is not which is a challenge. Additional concerns is that there is a limited number of people with conservation easement experience in perpetuity where the State will be the one developing and holding these conservation easements working with organizations trying to obtain land. There have been non-profit organizations they've granted to in the past, but are not land trusts. That means the resources DLNR is going to have to put into this just to do the up front work and legal work and additional costs to these little organizations will be substantial. Any accredited organization, ourselves and TNC, are willing to hold these easements, but we will have to pay our own. There is a stewardship fund that is required and could be easily \$20,000 or more in addition that they would have to come up with. They suggest establishing a State level accreditation certification where he cited Colorado and California where commissions review these and not as onerous as going through the national accreditation. It would require the establishment of some review panel or commission whether it's an appropriate land conservation organization. The second is to adopt alternative language such as organizations which are members in good standing with the National Land Trust Alliance and formally adopted the LTA standards and practices. The final one is to DLNR and the Legislature to recognize this does put a significant additional onus on DLNR to oversee these and identify the funding in order to do that in the future.

Mr. Bonar said this leads to the second core concern which is DLNR monitoring and enforcement. Around the nation, federal, state or county there is very poor monitoring and enforcing conservation easements on properties. Accredited organizations are required to do annual on-site monitoring, to file those reports and we're expected by the IRS required by our charters to have the resources available – funding time, expertise to go defend those easements. If we don't the IRS can pull our charters, this is core to our accreditation. As the rules say DLNR may monitor the awardees, additional managing entities of land required here and may require the managing entity to submit reports, photos, forms or documents. He encourages DLNR that there be actual annual on-site monitoring recording and is critical to our credibility in conservation in Hawaii. There were concerns if an organization ignores all the conservation values and the need to someone who is on top of it or it falls back on DLNR. The alternative is to put all the "shalls" in – that they shall be monitored and shall be reported on an annual basis. The concern with organizations that are not accredited, but based on the rules now could hold easements. To require that there be a way to determine an organization is an appropriate land conservation organization committed to perpetuity and/or be a co-holder which would come back to the State or the County. We recognize the urgency of formally

adopting the rules for the program but these are critical loopholes that need to be corrected and we want be sure they are addressed fully during the public process.

Butch Haase, Executive Director for the Molokai Land Trust testified in full agreement to the testimonies by Mark and Dale that they have been Legacy Land recipients in the past to preserve lands on Molokai. We appreciate your intent in the rule making and support that process. The definition of accreditation is a concern and they are in the process of being accredited like TNC reiterating previous points that it is a lengthy process. The language regarding the conservation easement and the holder of the conservation easement doesn't seem to be present in those rules and reiterated previous testimonies in regards to this. They would love to see a Hawaii standard put into place maybe some language adopting Hawaiian standards and practices and in good standing. Maybe operate in a three year period and have at least two projects of a thousand acres under management or stewardship to show a track record of monitoring these types of easements. If the accredited rule goes into affect we would like extra language get added that a non-profit conservation organization may hold an easement if working with an LTA accredited partner or a non-profit organization may co-hold an easement with a LTA accredited partner assuming that once the partner gains accreditation that prior agreement will allow them to transfer that easement over to the newly accredited partner.

Mr. Haase said there are no clear rules of the use of those funds for purchasing and holding the easement we would like to recommend that language get added into these draft rules before the public comment review to streamline the comments from the public. This program is important across the State and to leverage additional monies to preserve land. The LTA accreditation would apply to easement purchase and holders limiting the ability of non-accredited organizations because they wouldn't be allowed to hold that easement. We want clear language defining what is accredited, clear language of the use of the LLC funds to purchase an easement and how to apply it to an easement holder. Small non-accredited non-profits would be potentially restricted in getting accredited by not having this tool. He distributed his written testimony.

It was asked by Member Gon whether there was an association of land trusts. Mr. Haase confirmed they do, but it's a collaborative process, but it's informal. Member Gon suggested that would go hand in hand like a State certification requiring membership in a particular association in Hawaii, land trust organizations. Mr. Haase said that his organization would support something like that along those lines.

Doug Cole, Executive Director of the North Shore Community Land Trust testified that he echoes the concerns expressed by the previous speakers. We shall all those concerns and observations and look forward to working with the Board and other conservation groups to try to find a way to develop some rules that achieve intent agreeing with what Mark said. Mr. Cole noted the need for a group here or there and knowing the objectives of protecting this land. The bigger the pool of potential partners is the more successful they will be and the more land they will protect. The land is a great resource and encouraged the Board to put out for the rule making process highlighting these concerns then we can address them to find a solution.

James Manaku, Sr. testified that the issue is HAR 7.1 which is subsistence off of the land. He was grateful for them for buying all that land and preserving it, but taking the pigs off of the land is not going to work. All the land they are buying they are being restricted from. In the Hawaii Statute says they have a right to be there. Mr. Manaku is concerned they don't have access, people fence the land and kill all the meat for their table, but all the invasive plants and birds still exist in the area they are trying to protect. We need you folks to help us and we not saying to allow us to go in there and be malicious. But, many of us go into these lands without any permission and you can't tell we were there. It is time the State helped them with their subsistence by having these land owners work with them. We can help eradicate and at the same time they can put food on their table. The invasive birds are competing with the native birds. The responsible people should be allowed to work with the landowners and should not be called trespassers.

Angela Ka'aihue testified agreeing with Mr. Manaku that it is our food source that these animals that the DLNR or private landowners thinks are a nuisance whether its cattle or goats and they machine gun them down. In summary, rather than importing meat from outside of Hawaii use these sources of meat for the local consumer.

Member Gon asked is this ok for us to move to take to public hearing and hear these issues. Mr. Conry said he thinks so that during that process they can lay out our rational on the proposals are in the way we proposed them. He asked Molly whether if anything we heard today was a substantive change. There was a concern regarding Molokai Land Trust and NGOs that we didn't want to start the process and need to add something to address these comments to kick it back through another process.

Molly Schmidt, Legacy Land Conservation Program coordinator said that as far as she knows going through the rule making process you still have a chance to respond to public comment during the process. We would have to go back to the AG's office, but we wouldn't have to go back out to public comment again.

Member Edlao said isn't this the purpose for a public hearing is to get public comment and we make the decision in terms of taking into consideration all these ideas. Ms. Schmidt acknowledged that.

Chair Aila asked if there was ever been a conservation easement or purchase of lands for conservation that has not followed through in protecting the land. Ms. Schmidt said not that they know of.

Member Goode pointed out that conservation easements are relatively new because we are talking about perpetuity. The testimony from various organizations compelling and hope to work with them because we don't have these types of partners and we are limited in such a way to limit the pool of partners then we are limiting our mission. Try to work with them really hard.

Mr. Conry clarified why that proposal is in there. Many of them have concerns with the accredited land conservation entity as being the only one that can hold it. There was a

concern from the Legislature of a resolution session that the State's interest were not being adequately protected. There was a resolution to require all acquisitions be placed under a conservation easement with the State. In order to meet that concern we said you don't need the State to hold all conservation easements because that is the other part of the concern that was brought up as how can the Department affectively and affordably do that. We said this is how to meet that concern. Any Federal or State or County agency could hold it and any accredited conservation entity. We have great faith that any of those entities could do an equal job that the Department could do and that is why we moved forward with that proposal. During the public review process we'll need to develop another entity such as State accreditations and we could implement that. It is trying to meet the concern where an entity was small and could be the conservation easement holder. If they fell down who would pick up the pieces is the Legislature's concerns and this is our proposal on how to do that. The other provision he heard was there wasn't provision for position of conservation easements. We don't have fatal flaws at this point.

Unanimously approved as submitted (Edlao, Gon)

Item C-8 Consent to the Merger of Hawai'i Island Land Trust, O'ahu Land Trust, and Maui Coastal Land Trust to form Hawaiian Islands Land Trust, as this Merger Relates to Approval and Contracts for Three Open Fiscal Year 2010 Legacy Land Conservation Program Grant Awards and One North American Wetland Conservation Act (NAWCA) Award And

Consent to the Merger of Hawai'i Island Land Trust, Kaua'i Public Land Trust, O'ahu Land Trust, and Maui Coastal Land Trust to form Hawaiian Islands Land Trust, as this Merger Relates to all Prior-Year Closed Grant Awards Through the State Legacy Land Conservation Program and all Prior-Year Closed Subgrant Awards from the Federal Recovery Lands Acquisition and National Coastal Wetland Conservation Programs

Mr. Conry related that this item is to merge a number of land trusts into the Hawaiian Island Land Trust which is a housekeeping measure to combine into one organization. There was consultation with the AG's office and to approve the consolidation.

Ms. Schmidt said this is following the recommendation from the AG from the Federal grant folks.

Member Gon said this is a procedural action that would allow any relationships the State would have with any of those island land trusts to recognize they are incorporated into the larger Hawaiian Island Land Trust.

Unanimously approved as submitted (Agor, Gon)

**Item F-2 Enforcement Action against Maka Kai Charters, Inc. for Injuring
Coral within the Molokini Shoal Marine Life Conservation District**

Dr. Bob Nishimoto, Program manager for Division of Aquatic Resources (DAR) said that Russell Sparks from Maui is here if there are any questions and presented item F-2 which he summarized. In short the 49 passenger catamaran sailboat owned and operated by Maka Kai Charters, Inc. ran aground within the waters of Molokini Islet. The vessels rudders ran across a section of shallow reef breaking live coral and impacted coral reef as the vessel was towed to a day use mooring. Approximately 121 coral counts were harmed as a result of the grounding. Staff recommends that the Board approve the proposed settlement and fine to Maka Kai Charters, Inc. That the Board imposes a fine of \$18,000 against Maka Kai Charters, Inc. to be credited towards coral reef educational materials or programs as identified by staff within 60 days of the date of this submittal. And that the Board delegates to the Chair or his designee its authority to execute all necessary documents to carry out its recommendation under this submittal.

Member Edlao commented that this has been going on for awhile and should have been resolved a long time ago. He is ok with the fine, but he is opposed to waiving the administrative costs because we can't be doing all these things and not be compensated. DLNR is in dire needs. Looking at it as a business that incurs costs why would he continue if he doesn't charge for it. Staff spends a lot of time from being down in the water to the office staff all incurring costs and administrative costs are not being passed on and we cannot continue like this. It's not only this agenda item, but all of them.

Dr. Nishimoto agreed, but where to put this cost because they have only one source called the Commercial Fishing Fund. Member Edlao said it doesn't matter to him that it doesn't matter where it goes or how it's used he doesn't want to see waiving of these administrative costs.

Brian Tamanaha with Division of Aquatic Resources who handles the budget explained the Commercial Fish Trust Fund where there is a ceiling of \$300,000 that if they add any more money they would have to the Legislature to raise the ceiling.

Member Edlao reiterated he understands all that and you aren't getting my point that he doesn't want to waive the administrative costs. Don't talk to me about caps.

Mr. Tamanaha said that they could propose another special fund to put monies in. Member Edlao reiterated his previous comment about not waiving administrative costs. Dr. Nishimoto acknowledged that they understand and appreciates his concern.

Dennis Niles representing Maka Kai Charters, Inc. testified that when DAR approached Maka Kai with a proposed settlement they came to us with a number and they deemed that number to be adequate compensation for what occurred. It's a number that is not tied to a dollar value for a particular coral colony; it was a number of the Division's best judgment that represents an appropriate reasonable resolution of this matter. We would submit that the costs you're talking about are included in a number that we never

contested. Jim Coon took staff's number as recommended. This is a settlement. It is before the Board for approval of an agreement we worked out in good faith and I would submit your point is well taken, but the amount that was agreed upon takes into account the cost you incurred and the very substantial amounts of money that Maka Kai and the Coons have paid back through their efforts to address this unfortunate incident. It is not reflected in this dollar amount that they've done much beyond the \$18,000.

Member Edlao said he understands that, but you're saying the administrative cost is part of the \$18,000 and that is not what I read. There is a fine of \$18,000 and an administrative cost of \$3,000 or so but it doesn't say its part of the fine. Mr. Niles reiterated that the \$18,000 was a settlement amount and the unfortunate circumstances which Member Edlao totally agrees and asked did staff say administrative costs were exclusive of this \$18,000 fine. Mr. Niles replied no. In contrary when they got the number and said fine, we will take your proposed resolution. We chose not to contest how they put a dollar value ...Member Edlao said the submittal says \$18,000 to the damage to the reef and there is an administrative cost and you're saying its part of this \$18,000 that you assume this administrative cost was buried in this \$18,000. Mr. Niles said that is one way of characterizing it. I prefer to say they came to us with a number. We didn't quibble with them on how they calculate and said we will take your number. Let's bring this to closure. It's a reasonable outcome under the circumstances. Member Edlao said he thinks so that you're saying there are two different things, the \$18,000 and the administrative costs.

Chair Aila read the recommendation where the \$18,000 will be credited toward coral reef education or programs as identified by DAR staff. We certainly could incorporate the administrative costs to cover programs and fees incurred in investigation and adjudication of this process.

Jim Coon testified that it was a sad day when this happened and it was not premeditative or anticipated. Even the captain who is a great guy, it ruined his career and is working for the County. He left the sea and it was a very hard thing as well. We are really sorry that it happened. When DAR came to us with this number, it was just a number and we want to move on and get it behind us. We did take as our initiative, it happened 3 years ago, and given back many, many times way beyond dollar amounts and continued this without any mandates from the State which is part of their ethic.

Chair Aila said we do take the Board members recommendation to the Department very, very strong that in the future we will make sure that actual costs incurred in doing any investigation of any fines to be incorporated into the submittal and thanked the testifiers.

It was moved by Member Edlao to include in the recommendation to include the \$3183 be added to the \$18,000 and to be credited toward the coral reef education program as identified by DAR within 60 days. Member Agor seconded that.

Member Edlao said it is unfortunate, but it bothers me to think of the financial state of DLNR. He knows from the past when they had damages administrative costs was

included and he agrees that Jim is a nice guy on Maui who supports the community and given back and he agrees. He is concerned about administrative costs not ...because a lot of times things are put in to bring this to the Board. Honestly, the damages could have been worst than this where the fine could be \$20,000, \$30,000 that they've had a history of coral damage. The administrative costs have to be a part of this.

Member Agor said he will support the motion.

Member Goode said it's a little difficult here because there was a gentleman's agreement made between DAR and Maka Kai brought to the Board. I definitely agree with Member Edlao to recover administrative costs, but why it took 3 years? We haven't heard that story which only ratchets up the administrative costs. It should have taken a year. I have a hard time justifying Maka Kai paying \$3183 when they have no control over these costs in a 3 year time frame. It shouldn't have taken that long. I won't be supporting the motion, but I will support a more reasonable number for something that should have been brought to the Board 2 years ago.

Member Gon said he sympathizes with his fellow Board members regarding the administrative costs, but he tends to agree that the relationship between Maka Kai and DAR by offering a particular settlement amount and the acceptance of that I would have thought the administrative cost would have been folded into that settlement number. I realize that various statutes allow us to recover administrative costs above and beyond fees, but I also recognize that the maximum potential fine is much higher than that which was given. But, I also heard a lot of testimonies with regard to the cooperation that Maka Kai offered and to the activities that they've engaged in within the community. I also will not support this particular motion.

Chair Aila took the vote: 2 ayes (Edlao, Agor), 3 opposed (Aila, Goode, Gon)

Member Goode made another motion to adopt staff's recommendation with a \$1,000 additional fine, maybe \$19,000 to cover reasonable administrative costs associated with the matter. It was seconded by Member Agor.

Chair Aila took the vote: 4 ayes, 1 opposed (Edlao)

Unanimously approved as amended (Goode, Agor)

Item D-10 Approval in Concept for Set Aside to the County of Hawaii for its Proposed Naalehu Wastewater Treatment Plant; Grant of Perpetual, Non-Exclusive Easement for a Buffer Around the Perimeter of the Lands Set Aside; Issuance of Management Right-of-Entry at Poupouwela, Kau, Hawaii, Tax Map Key: (3) 9-5-012: portion of 002.

Mr. Tsuji indicated what this item was for by stating what the agenda was and he had nothing to add.

Dora Beck representing County of Hawaii, Department of Environmental Management testified that they didn't have anything and agreed with staff's recommendation after Member Gon's inquiry.

Unanimously approved as submitted (Gon, Goode)

Item J-2 Petition of Pacific Ocean Sports, LLC DBA Hawaii Ocean Thrills for Issuance of a Commercial Use Permit to Operate Within Waikiki Ocean Waters

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reported on what this is for that was similar to Red Dolphin proposing to run three vessels – one as a dive platform, another as an activity platform and will work with the commercial permittee in the area with a day package out in Waikiki. We don't have any issue with the request, but staff did speak with the petitioner on the location that they are not too close to the previous permittee that the Board approved and they want to make sure there is enough space to avoid any congestion. The Chair asked whether you will ensure that by issuing the permit. Mr. Underwood acknowledged that as well as sending staff out to visually look to see the proximity of the two operations.

It was asked by Member Goode whether the area is mostly all sand where Mr. Underwood said it is a mix of coral and sand outside of Waikiki it all depends. What they are proposing to do is install moorings, but prior to the permitting process will anchor in the sandy area to conduct their business.

Member Goode asked whether there were issues in the past with anchor(s) dragging into the coral. Mr. Underwood said we do have a dive team to check, but it's hard because anchors do drag.

Member Goode said because they aren't under any time limit proposed to get their mooring system installed it could go on for a long time. Mr. Underwood said that is correct. That is possible that they did not put a time limit for the mooring. Member Goode asked what is a reasonable time limits and if it's through the Army Corp. Mr. Underwood said it would be through the Army Corp and he would say it would take 90 days.

Member Edlao suggested using fore and aft anchoring to be more stable. Mr. Underwood said the applicant is here.

Jeff Nelson, Acting Manager for the Pacific Ocean Sports, LLC testified that they have some drawings which he presented. They plan to place a GPS in each location. The drawing is the final mooring and said they will tie stern to bow so that aren't able to swing out. There were some discussions regarding the mooring. Mr. Nelson confirmed that it is a sandy bottom and said their chief engineer is meeting with the Army Corp on this design. There were more discussions about the mooring between the Board and Mr. Nelson.

Member Edlao asked whether there were spotters on the boat and Mr. Nelson confirmed that.

Member Gon asked there were discussions earlier of minimizing any overlap of vessels and whether they took that into consideration. Mr. Nelson acknowledged that explaining spending several days out there looking at and taking pictures of other operations in the area and the distances between vessels and the beach. All distances are roughly 250 to 300 yards away from any operation on the water.

Member Goode referred to his previous question regarding the Army Corp permit and getting the moorings in place doing it sooner than later and asked whether he would be agreeable to some type of condition to resolve those within a time frame. Mr. Nelson said he doesn't see a problem with having a reasonable condition. Member Goode asked how long a time frame. Mr. Nelson said this is his first time working with the Army Corp and has heard it can be lengthy. The Chair said at least 6 months. Member Goode asked whether 9 months would work and Mr. Nelson agreed.

Member Gon noted that we have the recommendation that is partially outside of your control as soon as you recognize you cannot meet that (9 months) you need to come back on the agenda and make sure an extension is given. Mr. Nelson said he understands.

Member Edlao asked whether they will be serving alcohol. Mr. Nelson said beer and wine and they are working with the Liquor Commission for the permit.

Deputy AG Cindy [Yee] Young asked Mr. Underwood about the environmental assessment is the position of the Division that it not requires because of the exemption that it's a general exemption. Mr. Underwood said that is correct. She recommends that part of the Board action is incurred after the permit to have the exemption be part of the recommendation. Chair Aila said when you read the recommendation to make sure you include the recommendation to accept the exemption into the record.

Dennis Niles, attorney for the Red Dolphin, LLC testified which is the holder of one of the type of permits that the petitioner has applied for. Red Dolphin is concerned with the prematurity of this application. An ocean recreation management permit is a commercial permit that is issued to a vessel owner allowing operation of the vessel in a designated area. The petitioner is not the owner of the vessel. Permits are issued to vessel owners. There is a question what right if any the petitioner has to the two vessels it proposes to moor in close proximity to our vessel. The petitioner talks about their business plans that have been submitted that is not before you as part of the record, but it is anything but clear how they are going to meet the basic qualifications of vessel ownership. Staff's submittal says the petitioner has met all prerequisites for the issuance of the mooring permit. I respectfully submit that they have met none of them. The vessels in question do not possess Coast Guard certification for the activities they propose to engage off shore Waikiki. They remain dockside and can't be lawfully operated because their certificate of inspection has lapsed and because it's been more than 5 years since they were last certified they are going to be held at a much higher standard and those requirements have

to be met in order to operate these vessels even if we didn't have the ownership issue. Another issue is the lack of insurance noting that these boats have not been inspected and have not been insured for the type of activity proposed. That might be a permit condition to come in with adequate insurance. Historically, DOBOR will not consider any application for a permit until applicant shows it owns the vessel, the vessel is insured, the Coast Guard has certified the vessel to do what has been proposed and none of these conditions have been met. They are coming to you with a hypothetical situation saying if they are able to pull all of this off, give us a permit. Another issue is getting Army Corp approval for the mooring. Mr. Underwood had the petitioner contact Mr. Nelson's people to work out any conflicts with the mooring. They cited competitive reasons why they didn't want to sit down with us and agreed on a mutual degree of separation. Mr. Martin, another representative of the company is a master marina and can talk about what is a safe separation. What is proposed is not adequate and concerns to the proximity of known surf breaks. There are numerous reasons why this petition should be denied because it's premature and have not met the basic requirements. They need to come back when they have everything in order and then have a discussion on whether the permit should be issued.

Brian Ho testified that he has been practicing maritime law almost as long as Dennis. I am in favor of this item and asked the Board to pass it. There are considerations that have been talked about this morning I think are form over substance. You look at the amount of time its going to take for the necessary permits to be obtained and the cost of the investment this company needs to know whether you will have a tangible permit. To address Mr. Niles concerns is to place conditions in the issuance of the permit rather than the Board monitor those conditions, have Boating monitor to ensure those conditions are fulfilled. It's part of the normal permitting process anyway. The ownership of the vessel is not material and is not relevant when you look at the bottom line because ownership is a condition of a permit being issued. Whether its ownership by documentation and you are having the petitioners name on the certificate of documentation or they have a valid verbal charter agreement that meets the ownership requirements. As for the certificate of inspection is concerned I think Mr. Niles misspoke because in this instance it's just required when carrying paying passengers for hire. The actual activities don't require Coast Guard approval, but is part of the overall inspection process that the Coast Guard goes through when it looks at the vessel and whether it qualifies for a certificate of inspection.

Member Agor asked when will the owner have the permit. Mr. Ho deferred to Roy Fund and said it's like filling out a bill of sale and sending it to the Coast Guard comparing it to getting a car registration. It's a condition of any commercial permit.

Member Edlao asked whether there will be a problem with the inspection of the vessel. Mr. Ho said he doesn't believe so because these vessels have been operating as passenger carrying vessels. They are undergoing an inspection right now.

Roy Fund, Vice President of Roberts Hawaii testified he is one of two partners with the petitioner that the ownership of the vessels is held in either Roberts Hawaii or R&I which

are two partners of Pacific Ocean Sports. The intent is to transfer ownership to the LLC prior to us starting up. Secondedly, with respect to the COI issue the vessels are currently undergoing the certificate process working with the Coast Guard and going through the final stability test right now. Nothing is going to be put on the water unless it is COI. We on the Roberts side have been in the marine business for 30 years. They've done dinner sales, different ocean activities and their captain has been in the business for a long time. We are not going to put out any vessel that's not Coast Guard approved to carry passengers. We maintain a safe operation. The question about the insurance we do have a policy in place once we start the operations. He agreed to list those in the conditions and will have no problem meeting those.

It was asked by the Chair about having discussions between the two operators regarding a safe distance between to operate. Mr. Fund said its 250-300 yards and if there is any issue they will work that out and agreed to make that a condition.

Member Edlao asked whether there will be proper disposal of food, etc. Mr. Fund acknowledged that is normal standard operations.

There were some discussions about the mooring and the distance between the surf break. Mr. Fund related that they are selling day activities working with the jet skis, banana sled and will work with the parasail companies, but the intent is for half a day. No 24 hour mooring. They might do evening activity later on. The jet skis are part of the company and parasailing is an outside vendor.

Member Gon asked whether those activities have existing permits or still have to come before the Board. Mr. Fund said it's the thrill craft zone off of Waikiki are in the process of transferring over and they will operate the banana boat and jet skis out there. If there were any emergency they try to allow the jet skis within the proximity of their vessel. The further they move the more danger to their customers. They are close enough proximity that they can take their customers on the small shuttle boats from the platform boat to the jet ski area and bring them back.

Steve Martin, operator and officer for the Red Dolphin, LLC testified having operated here for 40 years at Waikiki that in years past there were many operators out there at the same time. There is a large area anchored zone for all of us to operate in. His concern is where they say they want to anchor is only six boat lengths away from us and if they are shuttling between their thrill craft zone they come within three boat lengths if they do a direct route. It is too close especially with the swing rates, vessels have dive flags up to stay 30 yards away and having two flags is 60 yards with a swing rate of 2-1/2 boat lengths. I feel it's too close to swimmers in the water.

Member Edlao asked is the horse before the carriage. Mr. Underwood said he didn't think. In all their facilities there is a wait list and when they come up on the list a lot of times they don't have boats because they have been waiting for the opportunity. They gave us a plan and this is what they propose. Roberts has been in the industry for a long time. When he reviewed it his concern was the location of the operation. We don't want

to get in a beef between two commercial operators over where they are at. They want to make sure that there is enough room between the two operations and can operate safely. They usually monitor themselves because DOBOR does not have the staff to be out there all the time. He confirmed testimony about the numerous operations out there and there is plenty of room and we want to make sure there is adequate space between operations. Chair Aila suggested that you could also consult with the Coast Guard in making that recommendation. Mr. Underwood acknowledged that.

Member Goode asked about the insurance, the certification, vessel ownership is handled...Mr. Underwood said they wouldn't issue a permit until all of that is in their hands. All of that has to be completed. The COI is the Coast Guard's kuleana and won't issue until the boat meets all the requirements. The insurance and ownership will submit to staff and then they would issue the permit. This gives us the authority to do so. Member Gon said the recommendation is kind of brief and all subject to customary terms and conditions. Mr. Underwood said that is everything he just said. Chair Aila said but would also be inclusive the conditions that you put on this permit should we vote on it would be to consult with the Coast Guard on a safe distance between the two operations and making sure all of those conditions were complied with before the actual issuance of the permit. Mr. Underwood acknowledged that.

Member Edlao asked whether staff does periodic spot checks. Mr. Underwood confirmed that and said they also do random audits of the companies.

Member Goode said he brought up earlier about the Corp permit that they won't be operating for awhile and I would like to propose within 9 months the commencement of operations for the Corp permit because the Corp permit wouldn't be one of your customary terms and conditions. Mr. Underwood said no, it would not. It's a requirement under Federal law that any time you put anything in or on the water you got to get a permit. Unless they tell you don't need it.

Member Goode made a motion to adopt to the recommendation 1) the Chair mentioned working with the Coast Guard on the separation of the two vessels for the operations and 2) the permittee obtain the necessary Army Corp permits for the permit of mooring within 9 months of the commencement of operations. Member Gon seconded that. All voted in favor.

The Board:

Amended staff's recommendation by adding that staff work with the Coast Guard on the separation of the two vessels for safe operations and the permittee obtain the necessary Army Corp permits for the permit of mooring within 9 months of the commencement of operations. Otherwise, the submittal was approved as submitted.

Unanimously approved as amended (Goode, Gon)

12:10 PM RECESS

1:06 PM RECONVENED

Item E-2 Consent to Assign General Lease No. SP-0163 Alma Zalopany, Assignor, to Nichols Beck, Assignee, Lot 9, Koke'e Campsites Lots, Waimea (Kona), Kaua'i, Hawai'i, TMK: (4) 1-4-003:006

Dan Quinn representing State Parks Division reminded the Board has entered a number of these assignments in the past, but the current tenant isn't up to date on his lease rent, the surety bond, fire insurance and the coverage insurance is not in place as well. There is some inconsistency with the signature in the original lease. It has nothing to do with Mr. Beck. Staff is asking the Board approve this assignment and there is no recommended premium and no consideration from one party to the other that it's a transfer of the lease. It will require approval by the Attorney General's office.

Nick Beck, the assignee testified related he has stayed in that cabin since he was a baby is very familiar with that particular cabin. The opportunity to get back to that cabin would be a good experience for him. He is a retired principal and spent a lot of time doing outdoor education programs. He is looking forward to getting back to Koke'e to fix the cabin right and request the Board's consideration for approval.

Unanimously approved as submitted (Agor, Gon)

Item J-1 Recommend the Board Approve the Issuance of Commercial Use Permits According to the Provisions Of §13-231-50 To §13-231-70 for Commercial Catamaran Activities Taking Place On Waikiki Beach and Near Shore Waters to the Following Operators: Waikiki Cruises, Welakahao Catamaran, Inc., King Parsons Enterprises, Woodbridge, Inc., Keпоikai, Ltd., Island Beach Activities, Inc., and Anela Kai Catamaran, Inc.

Mr. Underwood said he had a request from the attorney representing the Waikiki Catamaran operators to defer this matter until the December 9th Board meeting. Apparently, 3 of the 7 have gone up on dry dock and are not able to operate because APEC is here and asked to testify at a later date. He didn't have an issue with it.

Deferred to Dec. 12, 2011 meeting. (Gon, Edlao)

Cynthia Farias spoke saying she was here on behalf of the catamaran operators noting that some of them did show up today and that Mr. Rocky Akea did bring a declaration that he wanted to submit and whether he should. Chair Aila said they will take it.

Item J-3 Request Approval for Continuation of Twelve Revocable Permits for Use at State Small Boat Harbors to the following: Cates International, Inc., Honolulu Transpac, Ltd., Waianae Ice House, DLNR, DAR (Honokohau), Keahole Point Fish, Hawaii Island Paddlesport, Kona Sailing Club, UH Institute of Marine Biology,

**Island Ice Co., Lahaina Yacht Club, Maalaea Boat & Fishing Club,
and Trilogy, Inc.**

Mr. Underwood indicated this is a renewal of existing revocable permits and there are no changes that staff has contacted all the various tenants who are all in favor.

Member Edlao asked about the ice thing and whether it was sub-divided to get the lease. Mr. Underwood said no, that they came to us to do it on a trial basis on an RP. If they do it long term they will have to put it out to bid where people can when they decide to go long term on that. He noted an issue at the Kahului Ramp vendors.

Unanimously approved as submitted (Agor, Gon)

Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to the Monument Co-Trustee Representatives of the U.S. Department of the Interior, U.S. Fish and Wildlife Service; U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and State of Hawai'i Department of Land and Natural Resources, for Access to State Waters to Conduct Conservation and Management Activities

Dr. Nishimoto introduced Marie Carmavele from the Monument Management Board and recognized the Federal partners. He related item F-1 background. Marie Carmavele noted an amendment to the review period that it has been closed since the writing of this submittal and she distributed that amendment. Dr. Nishimoto continued relating more agenda item background having to do with monk seal recovery efforts. One of the recommendations was to have more outreach and transfer of materials or resources. All three partners agreed to bring it before the Board. The Monument Management Board recommended approval as well as staff based on special conditions.

Unanimously approved as submitted (Edlao, Gon)

Item C-2 Request for Approval to Conduct Public Hearings for Rule Making Proceedings to Amend Hawai'i Administrative Rules Title 13 Subtitle 5 Part 2 Chapter 124 "Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds" as Follows:

- a. Amend Title of Chapter to Replace "Wild Birds" with "Introduced Wildlife,"**
- b. Re-Organize Chapter into Subchapters to Clarify Statutory Authority;**
- c. Amend Section 13-124-2 "Definitions" to Provide Definitions for the Terms "Established," "Introduce," and "Release," and Amend the Definitions of "Injurious" and "Wildlife"**
- d. Amend Section 13-124-3 "Prohibited Activities" to Prohibit the Transport or Release of Introduced Wildlife.**

- e. Amend Section 13-124-8 “Penalty” to Include a Fine System Pursuant to HRS 183D and Seizure and Forfeiture Language;**
- f. Add Section 13-124-13 “Penalty” Pursuant to HRS 195D and Seizure and Forfeiture Language; and**
- g. Update Exhibits of Injurious Species, Introduced Wild Birds, and Threatened and Endangered Species to Add New Listings**

Mr. Conry conveyed that item C-2 is to go out and conduct public hearings for rule making proceedings and the purpose is how to regulate inter-island movement of non-native wildlife referring to the situation on the Big Island regarding moving axis deer from Maui County. In looking at are there any provisions to prevent that our rule indicated that there was a rule that existed where moving from private land to private land is not covered by our regulations. Staff worked with the Attorney General’s office, the Department of Agriculture and the Hawaiian Invasive Species Council to come up with the changes in our rules that would then put restrictions on that and provide an administrative rule that would regulate that. There is one amendment that was on a prior Board agenda that was withdrawn because of title insufficiency, but since that time they received comments from a number of members of the public that suggested additional restrictions. Staff reviewed those and agreed with them. They propose an amendment to the rule before it goes out to add a restriction on moving non-native wildlife from private lands to areas that they no longer exist, but have a requirement to even move them within an island areas would require a permit for that for additional protections.

Scott Fretz (DOFAW) distributed the amendments and said they initially wrote the rules consistent with what was there for injurious species which is to prohibit the release of animals to areas where they are not already established. It was suggested that we should prohibit the release of introduced species anywhere and staff concurs with that.

Mr. Conry said it would be under a permit basis. The issues of concern was taking them from an area say within an island and releasing them on private land to a watershed/partnership and providing an ability to regulate that.

Member Edlao noted there are permits for keeping wildlife and asked about regulating breeding referring to Maui and the problems on Maui. Mr. Fretz said that the section he is referring to allows them to issue permits for something that is otherwise prohibited. Take of wild birds, take of indigenous species is prohibited. If somebody wanted to hold and breed those we would have to issue a permit for that, but we don’t regulate game mammals on private lands. There is no prohibition. Mr. Conry related if you have a big ranch and wanted to raise deer a for a fee program on your ranch that would not be prohibited. Member Edlao said there is a problem when these animals jump the fence. Mr. Conry acknowledged that problem exists even without breeding because they are common and occur on most private land. The Legislature wants to change the Statutes years ago that we do not regulate game mammals.

Member Gon queried that this motion is to take this to public hearing. Mr. Conry confirmed that what they propose would make these amendments take.

Member Gon asked about Exhibit 2 species on what basis you need a species. For example, there are species on this list that have not been seen for decades. Kauai akialoa is on there. Mr. Fretz said they would take them off if they were officially declared extinct. Mr. Conry said the provision under our law is if it is listed by the Federal Government it is automatically listed on the State.

Angela Ka'aihue testified that she was unclear of all the rules and details and wanted to make sure whether we are prohibiting livestock movement between island to island. I don't understand what it is trying to do. Chair Aila said not livestock movement, but the movement of animals from one island where it is established to another island where it is not established. That would be prohibited. Member Gon gave the example that you couldn't take coqui frogs from Hilo to Kauai. That would be illegal. Ms. Ka'aihue said that pretty much answers it. She advocates food products suggesting having deer on Oahu as a food product options and leaves it up to the Board. Chair Aila said it doesn't prevent a family from Molokai from bringing the deer meat here. It prevents them from bringing deer to Oahu to establish.

The Board:

Approved staff's amendments as follows:

§13-124-2 Definitions. Delete ["Establish" means documented as widely distributed, abundant, and self sustaining.] In first sentence delete [except game birds and game mammals] and add , except where specified otherwise by rule or permitted by the department of agriculture as conditionally approved, delete [2/1/97] and add 10/28/11 and add at the end ...reference, except where specified otherwise by rule or permitted by the department of agriculture as conditionally approved or restricted.

§13-124-3 Prohibited activities.

Delete [(d)] and add (c), delete (c) and add (e), delete [(1) Release injurious wildlife into the wild; (2) Transport them to islands or locations within the State where they are not already established and living in a wild state; add after 1) Transport and release such species , delete [transport them to, or release in, islands or locations within the State where they are not already established.]

Unanimously approved as amended (Gon, Agor)

Item J-2 Petition of Pacific Ocean Sports, LLC DBA Hawaii Ocean Thrills for Issuance of a Commercial Use Permit to Operate Within Waikiki Ocean Waters

Chair Aila asked the Board to reconsider item J-2 and to include or add the EA exemption finding in the action.

Member Agor moved to reconsider and Member Edlao seconded it. All voted in favor.

Chair Aila made a motion to add the EA exemption in the finding as submitted in the submittal with the other conditions that they approved earlier.

Member Agor made a motion to approve the conditions approved earlier and include the acceptance of the EA findings. Member Edlao seconded it. All voted in favor.

Unanimously approved as amended (Agor, Edlao)

Item K-1 Alleged Unauthorized Sand Nourishment on Conservation District Lands Adjacent to Sugar Cove Condominium Complex, Spreckelsville Beach Lots, Wailuku, Maui, Seaward of TMK: 3-8-002:003

Michael Cain representing Office of Conservation and Coastal Lands (OCCL) informed the Board that they were advised by the Attorney General's office that this item was not properly noticed for an enforcement action and asked to withdraw this report and will resubmit for January.

Member Edlao asked what the problem was. Mr. Cain explained that they wanted an enforcement number and list what the proposed actions were.

Withdrawn

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 cautioned Angela Ka'aihue that there is some litigation going on and you can talk about anything except the litigation.

In summary, Ms. Ka'aihue testified reiterating her previous testimony to protect our watershed and to not ignore violations of the laws or shorelines will be devastated referring back to the trees in item D-9. She had concerns with commercial industries that shouldn't be going on in these areas that are affecting our water supply naming certain watersheds.

In summary, Her Royal Majesty Mahealani testified regarding issues related to the closing of Iolani Palace and that her organization was there in peace.

In summary, Her Highness Haumea testified that the Board has no jurisdiction to the land that it belongs to the people with the blood that the deeds were given to the Hawaiian Kingdom Government. The State of Hawaii is a corporation that we are all foreign impersonators and this is unlawful occupation. They had to be arrested and read their Armada Rights. She related past history and that everyone except the homeless was taken off the Palace grounds.

Chair Aila corrected her that everyone who was not a State employee was taken out.

Her Highness Haumea noted that Calvin Say recognizes their organization with two letters. She presented copies of their deeds saying that the Hawaiian Kingdom Government is recognized.

Chair Aila said that the Board is in no position to agree or make that statement that State law does not recognize her letter(s).

Her Highness Haumea continued to testify regarding titles to Iolani Palace, cessation laws, archives and countries recognize them. They want to work with us, but never got arrested and want to be on the agenda. They want to sit down with the Board to have an open dialogue to have a calm transition.

His Highness Waeli testified that he respects what we believe in and wants respect for the Kanaka and the resource. He didn't do anything to disrespect and is representing the people who cannot oppose because they are in this closet.

Item C-1 Chairperson to Issue a Request for Proposals and Award and Execute a Multi-Year Contract to Design, Construct, and Implement an Accounting and Inventory Management System (AIMS) for the Department of Land and Natural Resources, Division of Forestry and Wildlife

Mr. Conry conveyed item C-1. The complexity of our budget and the number of Federal grants that they have and keeping track of State and Federal funds is a large process that this will bring us up to date to implement a management system which will be efficient in managing those grants. Staff is asking for approval.

Member Gon pointed out this has Chapter 343 exemption.

Unanimously approved as submitted (Gon, Agor)

Item C-5 Annual Progress Briefing to the Board of Land and Natural Resources Regarding Implementation of the Management Plan for the Ahupua'a of Pu'u Wa'awa'a and the Makai Lands of Pu'u Anahulu

Mr. Conry informed the Board that this is a progress report.

Lisa Hathaway introduced Elliot Parsons who is the coordinator who briefed the Board displaying some pictures in his presentation. There is a website. Mr. Conry said the full report is attached to the Board agenda.

Item C-7 Request to Authorize the Chairperson to Approve a Memorandum of Understanding Between Moanalua Garden Foundation and the State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife

Chair Aila said that he needs the Board to formally withdraw item C-7 and Mr. Conry asked to withdraw it.

Withdrawn

Item D-13 Resubmittal – Request to Cancel Grant of Term, Non-Exclusive Easement to TLM Partners Ltd. for Seawall, Lanai and Landscaping Purposes, and Request for Refund of Consideration Paid, situated at Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:seaward of 009.

Mr. Tsuji said he got a call from counsel for TLM asking to withdraw it and asked for a meeting in January.

Withdrawn again at the Request of TLM. TLM asked that this matter be put this off until either January meeting.

Item D-1 Amend Prior Board Action of July 22, 2011, Agenda Item D-1, Set Aside to Department of Agriculture for Agricultural Purposes, Puna, South Hilo, North Hilo, Hamakua, North Kohala, South Kohala and Kau, Hawaii, Tax Map Keys: (3) 1-2-6:5 and 77; 1-4-34:27; 1-8-6:103; 1-9-1:18; 2-4-49:29; 3-1-4:1 and 2; 3-9-1:1 and 2; 3-9-2:7 and 8; 4-1-1:6; 4-1-5:1; 4-4-11:33; 4-6-4:1, 2, 3, 5 and 6; 4-9-11:2; 5-5-3:12, 18, 4, 5 and 6; 5-5-4:51; 5-5-6:2, 3, 4 and 15; 5-5-7:11; 8-8-4:10; 9-5-15:3; 9-6-2:55; 5-5-5:1.

Mr. Tsuji conveyed this was an attempt to correct one of the leases that will be transferring to the Department of Ag and the TMK listed only 51 and not both 51 and 52. Staff repeated the prior agenda title was. It would have been clearer if it said and 52. The lessee understood the transfer and had no objection to the change. He asked to include 51 and 52.

Deputy Attorney General Cindy [Yee] Young said that when the agenda is suppose to inform the public what is going to be discussed so it can be determined whether or not they want to testify. It was a concern that there was no reference to parcel 52. It is the Board's call to make that determination. Chair Aila asked do we have enough members to do so. There was some discussion that they might need the full Board to do it. Mr. Tsuji expressed his displeasure. Ms. [Yee] Young said you will have to bring it back. Chair Aila asked if he wants to withdraw it.

There was some discussion over how many people this would affect. It is the same lease transferred to DOA. There was more discussion whether they need this to transfer the EO. Ms. [Yee] Young said the title is questionable. Mr. Tsuji said the text of the submittals says they want to add 51 and 52 and they approve and no one objects. Ms. [Yee] Young said Russell is right if nobody challenges you. Member Gon said to chance it.

Unanimously approved as submitted (Gon, Edlao)

- Item D-2** Sale of Remnant (Railroad Right-of-Way) to Ronald Takahashi Tsunezumi & Carol Akemi Wada Tsunezumi and Joseph C. Bratton & Vivian U. Bratton, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/ 2-2-023: portion of abandoned railroad right-of-way.
- Item D-3** Sale of Remnant to Herbert P. Ornellas and Lorraine B. Ornellas, Waiakea Homesteads, 1st Series, South Hilo, Hawaii, Tax Map Key: 3rd/2-4-46:08.
- Item D-6** Consent to Assign Land Office Deed No. S-28,304, Wachi, Inc., Assignor, to Kenneth Francis Miranda and Morag Rice Miranda, Assignee, Kalopa, Hamakua, Hawai'i, Tax Map Key:3rd/4-4-03: portion of 03.
- Item D-7** Authorize the Issuance of a Bill of Sale to the Water Board of the County of Hawaii for Honokaa Well Development (Well No. 6428-01) Improvements, Namoku, Hamakua, Hawaii, Tax Map Key: 3rd/ 4-5-19:20.
- Item D-8** Issuance of Revocable Permit to Hawaii Explosives & Pyrotechnics, Inc., Ouli, Waimea, South Kohala, Hawaii Tax Map Key: (3) 6-2-2: portion seaward of 4.
- Item D-11** Cancellation of Revocable Permit Number S-7059 to Julia Kaiwi, Deja Kaiwi, and Randall Manaba, and Issuance of a New Revocable Permit to Julia Kaiwi and Deja Kaiwi, at Kahakuloa, Wailuku, Maui, Tax Map Key: (2) 3-1-004: 046, 056, 059, and 061.
- Item D-12** Issuance of Revocable Permit to Hawaii Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on December 10, 2011, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:021 (Portion).
- Item D-14** Amend Prior Board Action dated April 13, 1995, Item F-4; Department of Transportation Request Set Aside for Road Drainage Purposes, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-023: portion of 009.
- Item D-15** Grant of Term, Non-Exclusive Easement to Robert E. Cambra and Agnes K. Freitas Trust for Seawall and Filled Land Purposes, Kaalaea, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-014:seaward of 010.

Unanimously approved as submitted (Edlao, Gon)

Item E-1 **Consent to Assign General Lease No. SP-0182 Kumuwela, Inc., Assignor, to Derek L. Souza, Assignee, Lot 30, Koke'e Campsites Lots, Waimea (Kona), Kaua'i, Hawai'i, TMK: (4) 1-4-004:020**

Written testimony was submitted from Erik Coopersmith.

Item E-3 **Consent to Assign General Lease No. SP-0107 Ardel Deppe, Assignor, to Denise Carswell, Assignee, Lot 40, Koke'e Campsites Lots, Waimea (Kona), Kaua'i, Hawai'i, TMK: (4) 1-4-004:005**

Dan Quinn for Division of State Parks noted that staff got some communication from the agent for Kumuwela. A gentleman, Erik Coopersmith representing Kumuwela objected to staff's recommendation as far as the premium – for consideration for the transfer of the assignment of this lease is \$50,000 in the way the place is set up and based on 50% in the first five years and the premium going to the State is 50% of that which is \$25,000. Their consideration included the sale of the furniture which was in the cabin from one entity to the other which is not at all our kuleana (responsibility). If they have a couch or other things in there and wanted to do a bill of sale then that is fine in which case perhaps the consideration would be lowered, but that's not the way it was presented as. Therefore it is not the way it's being recommended to the Board. Our recommendation remains as they are in the submittal.

Mr. Quinn said similarly there were no changes to item E-3. He pointed out that the Board members might recognize the name Carswell which is the daughter of another lessee up there. There will be two Carswell leases, but to two different individuals.

Member Agor commented that over the years that he doesn't ever remember having a transfer on assignment up there in Koke'e with the consideration of money and asked if this was the first one. Mr. Quinn said no, that they have had them, but this is the biggest. Others have been in the neighborhood of several thousand dollars. Most of the family ones were either gratis or \$1.00. The \$50,000 is clearly the most substantial that we've had. The State now receiving a portion of that money was put in place in the last lease because many of the leases were being sold and a windfall profit for the lessees. It was different the last time around, but now the cabins are public property and this is purely transfer of the lease or assignment of the lease.

Member Agor moved to approve as submitted. Member Edlao seconded it. All voted in favor.

Unanimously approved as submitted (Agor, Edlao)

Item M-3 **Conveyance of Road Remnant, Exclusion 1 of Land Court Application 1069, Farrington Highway, S-0900(4), Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-15: Road Remnant**

Item M-5 Issuance of a Direct Lease to Corporate Air, Honolulu International Airport, Island of Oahu, Hawaii, TMK: (1) 1-1-72:22

Item M-6 Issuance of Revocable Permit, The Hertz Corporation for Inconsistent Use, Honolulu International Airport, Oahu, Hawaii, TMK: (1) 1-1-70:20.

Chair Aila presented items M-3, M-5 and M-6 and to approve in the motion to include the recommendation that we accept the Department's 343 exemption.

Unanimously approved as submitted (Gon, Agor)

Adjourned (Edlao, Gon)

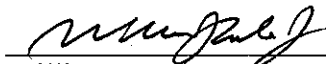
There being no further business, Chairperson Aila adjourned the meeting at 2:30 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants 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