

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

DATE: FRIDAY, DECEMBER 9, 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 9:10 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Dr. Sam Gon

Jerry Edlao
Rob Pacheco

STAFF

Dan Quinn/PARKS
Russell Tsuji/LAND
Marie Carnavale/DAR
Tiger Mills/OCCL

Paul Conry/DOFAW
Ed Underwood/DOBOR
Scott Fretz/DOFAW
Carty Chang/ENG

OTHERS

Bill Wynhoff, Deputy Attorney General
Patti Miyashiro, M-3
Alex Gamile, C-4
Caprice Itagaki, D-16
Margaret Wille, D-3
Jean Campbell, D-3
Rory Frampton, D-14
Cynthia Farias, J-1
Curtis Iaukea, J-1
Robert King, J-1
George Parsons, J-1
Earleen Kipapa, J-2

Mark Fridovich, M-5
Ethan Tomokiyo, M-1, M-4
Scott Higa, D-16
Philip Leas, D-18
Kathy Strahle, D-3
John Hoover, D-3
Lynn Higashi, D-4
Raymond Hillamas, J-1
Sheila Lipton, J-1
John Savio, J-1
Mark Fox, C-3
D.G. Andy Anderson, D-6

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

Item A-1 October 28, 2011 Minutes

Unanimously approved as submitted (Pacheco, Gon)

Item A-2 November 10, 2011 Minutes

Board member Pacheco had to recuse. No quorum. Need to defer.

Deferred.

Chair Aila announced that items C-7 and K-1 will be withdrawn due to OIP issues.

Item M-5 Issuance of Right-of-Entry Permit to Avalon Health Care, Incorporated on Lands Encumbered by Executive Order 3504, Kaneohe, Hawaii State Hospital, Oahu, TMK: (1) 4-5-023:002, to Conduct Environmental Studies.

Mark Fridovich representing Department of Health (DOH)

Member Gon asked whether he was fine with the recommendation and Mr. Fridovich replied in the affirmative.

Unanimously approved as submitted (Gon, Edlao)

Item M-3 Issuance of Right-of-Entry Permit to Hawaiian Electric Company, Inc., on Lands Encumbered by Governor's Executive Order No. 3542, Honolulu Harbor, Honolulu, Oahu, TMK: (1) 2-1-001:001 (portion)

Patti Miyashiro representing Department of Transportation (DOT), Harbors Division said she was here for questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item M-1 Issuance of a Direct Air Cargo Lease, Aeko Kula, Inc. dba Aloha Air Cargo, Hilo International Airport, Hilo, Hawaii, TMK: (3) 2-1-12: portion of 9

Ethan Tomokiyo representing DOT, Airports Division was here for any questions

Unanimously approved as submitted (Edlao, Gon)

Item M-4 Issuance of a Hangar Facility Lease to Jack Harter Helicopters, Inc. Lihue Airport, Island of Kauai, State of Hawaii, TMK: (4) 3-5-01: portion of 8

Ethan Tomokiyo related some background on item M-4.

Unanimously approved as submitted (Gon, Pacheco)

Item E-3 Preliminary Approval in Concept for the Department to Acquire Certain Private Lands for Park Purposes, Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-8-007:101 por.

Written testimony from Senate President Shan Tsutsui was distributed to the Board.

Dan Quinn representing State Parks indicated that this was a Legislature appropriation to purchase, design and develop a park. He referred to Exhibit A and there is a due diligence for acquisition which will come back to the Board.

It was asked by Member Edlao whether this will go to public hearing and Mr. Quinn confirmed that.

Member Pacheco inquired whether there were any recreational parks where Mr. Quinn noted the ball fields at Sand Island. It was suggested by Member Pacheco to outsource with the County that he doesn't want the Department to get into the recreational business and Mr. Quinn acknowledged that saying maybe in the end.

Dan Yasue representing Alexander and Baldwin was here for questions.

Unanimously approved as submitted (Edlao, Gon)

Item C-4 Request to Authorize the Chairperson to Approve a Memorandum of Understanding Between Moanalua Gardens Foundation, Inc., a Hawaii Nonprofit Corporation and the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife to Allow Moanalua Gardens Foundation, Inc. to Carry Out Educational Programs and Assist with Improvements to Kamananui (Moanalua) Valley, Oahu

Written testimony from Glenn Shiroma was distributed to the Board.

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) related some background on item C-4 to allow Moanalua Gardens Foundation to continue education and assistance with managing Kamananui Valley. The MOU (Memorandum of Understanding) is a formality to seek funds that the organization has worked cooperatively for years and staff requests the Board's approval.

Alex Gamile representing Moanalua Gardens Foundation thanked the Board for their consideration.

Unanimously approved as submitted (Gon, Edlao)

Item D-16 Issuance of Revocable Permit to Honolulu Seawater Air Conditioning, LLC, Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041:seaward of 006.

Russell Tsuji representing Land Division indicated that this is follow-up action for a revocable permit (RP) staging area and he has nothing further.

Scott Higa representing the applicant was here to answer any questions.-

Unanimously approved as submitted (Gon, Edlao)

Item D-22 Issuance of Revocable Permit to Wallace K. Lean III, Kaluaao, Ewa, Oahu, Tax Map Key: (1) 9-8-011:006.

Written testimony from Caprice Itagaki was distributed to the Board members.

Mr. Tsuji reminded the Board that about 5 or 6 months ago staff came to them about this item that access was questionable and to withdraw it. The father passed away and the son has been taking care of the RP. There is court litigation with the State. There is a suit filed to cancel this and to put it in the son's name. There were allegations made by Angela Ka'aihue and Mr. Tsuji has met with her noting that her boy friend is a police officer. There is a letter from her lawyer about illegal cock fighting. Access is an issue and needs to be resolved. There is more interest in the property.

Caprice Itagaki representing Wallace Lean III testified referring to a letter last June that Ms. Ka'aihue is making life difficult and there is no cock fighting on the property.

Unanimously approved as submitted (Pacheco, Edlao)

Item D-18 Sale of Remnant to Richard R. Kelley Living Trust, Honolulu, Oahu, Tax Map Key: (1) 3-1-038:042.

Mr. Tsuji conveyed that the location of the parcel is on Old Diamond Head Road below the existing Diamond Head Road. Deputy Attorney General Bill Wynhoff is familiar with this case. A certain portion is State land. Land Court may have ruled that the State has no interest and appears to be private property. The Department has tried to remedy the situation, but it was contentious and they want to put the matter to rest. It was appraised at \$1.8 million.

Philip Leas representing the applicant was here.

It was questioned by Member Pacheco whether they heard from State Historic Preservation Division (SHPD) and Mr. Tsuji said not since this was submitted. There was some discussion that this was brought before the Board before and nothing has happened. Mr. Wynhoff said that the State owned the whole road and the Supreme Court

said the owners owned the whole road. Other land owners have some quiet title and own the property.

Mr. Leas said that Dr. Kelley is fine with the recommendation, but haven't seen the appraisal that it is \$1.68 million.

Unanimously approved as submitted (Edlao, Pacheco)

Item D-3 Resubmittal: 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.

Photos were distributed.

Mr. Tsuji indicated this is a resubmittal status report to the Board regarding a prior action of an issuance or granting of a lease to the Hawaii Conference Foundation for church and landscaping purposes. What transpired since that last Board action is that the Lessee has completed the EA process, a FONSI was filed and the cure period has run. Staff is just bringing this back to the Board to keep the Board informed and we ask the Board to reconfirm their prior decision on issuance of the lease to the Church.

Margaret Wille representing Joseph and Helen Pickering testified that they abut 3 out of the 4 of the lots in question and they have a Department easement across a utility access easement across one of the parcels since approved by the Board in December 2009. They have still have not been...it's still been dragging on. They have not relocated. Kathy Strahle introduced herself who is a concerned property owner in Puako.

Ms. Wille said she wanted to make a few comments on points that were raised by the staff at the November meeting and if you recall I don't think Mr. Pacheco was here, but this came up at that time. The notice again there was a problem about it so you're hearing this again. I also had trouble with how the staff or how the amendment was drafted following the Board's decision of last month and just wanted to clarify what my understanding was. The real reason that I'm here is really because I see a conflict, a potential conflict between the lease that you issued to the Pickerings and the lease based on the EA. How it reads for the church. I want to address that now and not go on and have problems. The Pickerings easement was all relocated at the behest of the church and it was all designed to avoid having to cut the trees that are located along that easement, the easement and along the boundary of it. And, now my understanding from the head land agent on Hawaii is that if the church wants to cut those trees down that it has its prerogative and can do so. Their concern is...Rob didn't see the pictures which she showed him. The trees run right along the shore. You have some maps in there that make it look as if there is a lot of land between this easement and the ocean and there is

not. It goes right up to the easement. Staff said my client doesn't have any legal right to have any say. I just want to say that they spent many thousands of dollars working to get that easement so it would avoid removing those trees along an area where the shoreline is very fragile and sensitive. The second thing that was said and this is the bigger picture which is the thing that really the Board has better things to do with it's time or has more important duties than overseeing these trees. I want to stress that Puako; this is one of the few areas left in Puako where there is an undisturbed shoreline. It's in an area where it's considered one of the top 10 ecosystems to save. The Federal classification is to the extent to preserve wilderness character to be preserved. You're Aquatics Division; Bill Walsh disagrees with the Land Division and said these trees are very important here in terms of protecting the fish habitat, in terms of Puako and the fish.

Member Pacheco asked whether she had the testimony from Bill Walsh which Ms. Wille gave to Board member Pacheco.

Chair Aila said what you are saying is the trees are important to the wholehole...Ms. Wille said so that the ecosystem at the same time we are talking easement we are talking ecosystem. I do want to say the church is their neighbors. This is not against the church. This is not against their doing, but I don't expect them to be looking out how do we protect an ecosystem and that is where we come in here. I think...Let me say these are kiawe trees that in 1960s, 70s these trees were written up as some of the most valuable trees in Hawaii. They are now considered invasive, but these are native fish they are protecting. This whole issue of invasive species I think is something black and white. These are enemy trees. It's a more complex issue than are the kiawe...I wanted to bring up the recommendation at last month's meeting. My understanding from the Board and one point that was made was can we all go back and get an informal agreement and work between neighbors. I have submitted a suggestion to them. I'm pursuing that. Up until now the church and their attorney has been all the communications should be to the Board and we haven't had any direct communications, but I'm seeking that. At the same time since that's been difficult over the past few years what the Board suggested was to authorize the Chairman to include conditions that he deems appropriate in the lease or revocable permit(s) to Hawaii Conference Foundation. As I understood it, relating to removal of the trees within adjacent to the easement area as may impact the integrity of the shoreline. The way it was written up it said authorize the Chairperson to include conditions he deems appropriate in the lease or revocable permit to Hawaii Conference Foundation to the affect that the church will consult with the Pickerings. I think when the staff was here and made that suggestion I think what one Board member said to go talk story with them, but where is our authority with the Board. I just ask that it be authorizing the Chairperson to include conditions in the lease related to the removal of trees within adjacent to the easement area that may impact the integrity of the shoreline. I would say allow us time to see if we can work this out informally as neighbors, but that way once there is a certified shoreline and everyone can really see what is going on if this hasn't been figured out I would know that the Board or Chairman Aila said you would oversee that, that you retain some authority to review the removal of the trees which is what I understood. Reading this you just check the box having consulted and I worry how that would be interpreted.

Member Pacheco asked whether this is the easement pointing to a photo. Ms. Wille explained that there is a current going up that little pathway, roadway is where they go now, but the church had asked it be moved over basically right on the shoreline and in response we negotiated. They want to put a fence and move it as close to the water as possible. So we negotiated where it would be so that we would not have to remove those trees. It was designed so we don't have to cut these trees down that are right along the shore. My clients didn't want to get into a litigation and said ok, just as long as you are not going to cut the trees down so in our view...

Chair Aila asked in your view would you say that goes for all trees or some trees. Ms. Wille said no. What I actually suggested there are around six big trees that are there sort of holding the ground. In my informal suggestion lets first go out and look at the trees as neighbors and figure it out and that didn't happen. We agreed that any tree that was over 10 or 20 inches in diameter that both parties agreed before its cut down so they can clean up the area or if you have any other suggestions. The Pickerings are in their 80s and this is very stressful for them. It's trying to pull this all together. We still keep waiting for their access easement to be approved. It's just one thing after another. The last from the Department was it was lost in an out tray and they haven't gotten to it. I am just trying to get something to happen here.

Member Edlao asked whether the church refuses to even talk with you. Ms. Wille said to them (the Pickerings), yes. Yes, they directed.

Chair Aila asked is it favorable if I fly out to Puako, we all meet out there and look at the trees. Jean Campbell, attorney for the church spoke saying that I am out of turn here, but I refused Margaret's petition to only speak to you. I asked that Margaret speak only to me rather than directly to my client as she is an attorney representing her party I felt it more appropriate she and I speak rather than with her client. The Chair said let us do this. We'll have time to go look at the trees and talk about which trees remain. Ms. Wille said we'd be very happy. We're going to recommend approving the submittal as written and with that we'll go out there to talk about which trees. The Board is inclined to give you the authority that we can distinguish which tree(s).

Kathy Strahle testified introducing herself that she is a concerned property owner down there. In the folder I highlighted some elements that I think are important. This involves lot 7, 8, 9 and 10. If you refer to the second page you will see that 9 and 10 involves the property where the church is. The lots 7 and 8 are substantially different and that is the pristine area that we are concerned with. She gave the Board members a photo album and folder to look over.

Chair Aila asked who the property owners of lots 7 and 8 are and you said are pristine where Ms. Strahle replied I am. No, you are that lots 7 and 8 are owned by the State and that is the pristine area.

Member Pacheco said pristine, that is not a pristine area. It's undeveloped, it's full of weeds and it's been disturbed. Ms. Strahle said if you look in that scrapbook there are

pictures from 1959. The first one I marked there on page 4 at the top is the picture that shows how the trees hang over the property so it's been that way over 50 years and maybe a lot more. If you go to the other marker which is page 22 you will see a panoramic view of the entire area. So 50 or more years ago probably much longer that land has been like that protecting the shoreline. I took these pictures last week. Picture 1 is of the shoreline as it is today which shows it's pretty much unchanged from 50 years ago and of the next picture is of how the trees overhang today as of last week and it's basically the same as it was in 1959. This is the pristine ecosystem that we are talking about. Photo 3 shows an area that has been protected for quite awhile and turtles do come there. It's a safe haven for turtles. The other ecosystems that are going on that are just unbelievable. Its 4 (photo) and those trees go out 20 to 30 feet and they have protected a very calm area. If you can see it's a very blue area and this is the area where the fish breed. Again on the front one of the points they do here is they will not use heavy equipment in clearing this lot. Photos 5 and 6 are taken from the road. There is a lot to be removed and I really doubt that can be removed without dump trucks or some kind of machinery that can grub the lot. It's pretty dense right there. In Exhibit 3 is their landscape plan. The shoreline is not accurate if you look to the right hand side you will see the ends of that little trail is out into the ocean. I don't know how many feet, but there is a wall that goes along there and the shoreline is within 2 or 3 feet of that wall. So they've gone up quite as much further in this rendition which is actually pristine. I don't want to ignore the church. It's beautiful and it's historic so the last picture is of the church. This is on lot 9 and 10 is south of it. What this picture shows is the front of the church actually faces south and that is where they have everything. The land in question is back behind the church more than 50 feet and they bring up here historical integrity that this land be cleared maybe 500 feet or more back will affect the historical integrity of the church. So this lot and perhaps 10 because that is front of the church. In summary, protect the area. I thought it may not be possible that maybe the church or you could split this into two different areas - lots 7 and 8 that we want to protect and lots 9 and 10 which the church did sign and there really is no argument on that. It's valuable. That the landscape plan be redrawn to reflect the 40 foot setback land use ordinance that we have there and the accurate shoreline which I feel does not show right now.

Member Pacheco asked the 40 foot setback is the community setback. Ms. Strahle said it's the County's setback. In that landscape plan extend the shoreline 40 foot back and also the sides of the trees are not noted on here. In Puako, trees grow very, very slowly unless you apply a lot of water to them. The water is very expensive down there. I ask that you not have this.

Jean Campbell representing the applicant testified she'll keep this brief since the Board has heard all of this before, but wanted to include some comments. With all due respect to Ms. Strahle everything I heard from her was comments that are on the EA which are already final. I don't know that there is much for the Board to do with those. As I've already pointed out I never did direct, maybe you need to speak directly to the Board I asked her to speak directly to me as attorney for her client. There never have been plans for a fence along the side of the easement area there. The proposed fence is a low hog wire fence that is going to go along the shoreline so there is easy access back and forth

through the easement area from the church to these other areas. I would ask that the Board be cognizant to the fact that part of what Ms. Wille is asking for is an extension of the easement rights that her client has. If she wants them to have some sort of approval power over trees that are outside of the easement area potentially an extension of the easement and asking for further rights in a way I think is inappropriate. The church is very willing to work with the neighbors as I quite often do in the past. The reason why we haven't agreed yet to her (Ms. Wille) proposal...I received her proposal for the 10 inch standard on Wednesday and my client is traveling and I haven't had a chance to speak to him about it. As you can see our landscaping plan is not greatly detailed at this point. The church is essentially an all volunteer discounted rate pro-bono type project for the church so they aren't moving ahead with detailed plans on anything until things like the leases are in place and are ready to start doing something. I've communicated that to Ms. Wille as well that once we have a more detailed landscaping plan we expect to speak to her and her client about it. I've offered several times to take all of her input and keep it on file and do our best to accommodate their requests once we get there. We will be happy to meet with you Chairman Aila at your convenience at Puako any time.

Member Pacheco said that the applicant is saying they'll be replacing kiawe with native plants and mid-19th century vegetation. Kiawe is mid-19th century. Ms. Campbell said to some degree what they are looking for, and you having missed our whole presentation the last time, what the church is planning to do is they are establishing themselves on the State Historic Register in the process of getting on the National Historic Register and the idea behind the whole plan is to expand the usable church area to when it was an active church back in the 1800s and despite what Ms. Wille said. They did actually use the two lots 7 and 8 there was a small school located over there as you are well aware old missionary churches were often attached to schools. What happened was I believe the school building burned down a long time ago, but that was a portion of the church area and parishioners would come from other areas around Puako and further north and they would land their canoes on the nice flat area next door which is essentially lots 7 and 8. What the church is hoping to be able to do by getting a State lease and sort of re-landscaping this area. It will take the look of this area back to when it was an active church and like I said the last time the church has no plans to cut down all of the kiawe trees. They are large beautiful trees and many of them are going to be saved. They just want to be able to thin it out so that it's a usable area for the church and add in plants that sort of reflect the 18th century time frame when the church was most active.

Member Pacheco asked the trees that are growing into the shoreline into the ocean; our conservation district rules require them to get a conservation district use permit to do any clearing of the trees. Is that correct? Ms. Campbell acknowledged that saying I believe that is in the EA they trying to get a permit. Member Pacheco queried who the landscape architect was and Ms. Campbell said I don't think they (the church) had a landscape architect on board. Ron Terry of Geometrician Associates in Hilo prepared the EA for us. I believe he worked mostly on the landscaping plan. Although they have worked with landscapers in the past – Jean Power and Associates and the Hualalai Resort on their landscaping plans and, also on identifying the historic plantings so to speak for the registration on the State and National Historic Registers.

Member Pacheco asked would your client be open to in having a community meeting to get input before the final landscape plan is in place. Ms. Campbell said certainly, they've done an awful lot of that and they'd be happy take input from the community.

John Hoover, Pastor of the church testified that we had a landscaper that worked with Ron Terry who helped design the picture that was presented in the EA and the details of that landscaping discussed here. It is a preliminary drawing. The other thing that the attorney did not mention is that the Ala Kahakai Trail was designed to go through lots 7 and 8 as an extension around lot 6. We're still in the process of working with the trail people to design actually where the trail will go. He thanked the Board.

Member Gon asked do we need any adjustment to the recommendation that being on the record that you will meet with them. Mr. Tsuji said no.

Member Pacheco said we're (the Board) authorizing the Chairperson to include those conditions and we heard from the Chairperson that he's going to get approval.

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

Unanimously approved as submitted (Pacheco, Gon)

Chair Aila said we'll you in Puako and will make arrangements.

Item D-14 Grant of Two (2) Perpetual, Non-Exclusive (Re-Locatable) Easements and Grant of a Right of Entry to Kahoma Land, LLC, and General Finance Group, Inc., Collectively "Kahoma", for Access and Utility Purposes, Wahikuli, Lahaina, Maui, Hawaii, Portions of Tax Map Keys (2) 4-5-21:04 and 22.

Mr. Tsuji presented a well written Item D-14 and said he had nothing to add. These two actions are over State land and the applicant or the applicant's representative was here to answer any questions.

Rory Frampton, consultant and agent for the two applicants testified thanking staff for a comprehensive report and they acknowledge and accept the recommended conditions.

Unanimously approved as submitted (Edlao, Gon)

Item D-4 Amend Prior Board Action of October 23, 1981, Agenda Item F-3, Direct Sale of Highway Remnants, Kaupulehu, North Kona, Hawaii, Tax Map Key:(3) 7-2-05, 06, and 07: R-19, R-20, R-21, R-23, R-24-A, R-24-B, R-26, R-27, R-28, R-29, and R-31.

Mr. Tsuji said he had nothing to add to item D-4. Counsel for the buyer maybe here.

Lynn Higashi representing Kukio Mauka testified that she was here to answer any questions and requested the Department's recommendation.

Unanimously approved as submitted (Pacheco, Edlao)

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, HAR, 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., Kepoikai, Ltd., Island Beach Activities, Inc., and Anela Kai Catamaran, Inc.

A number of written testimonies were submitted.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reminded the Board that this item came before them in August regarding the Waikiki catamaran operators. Staff requested to issue the operators a commercial use permit as well as charge the appropriate commercial use fee. During that meeting and after hearing discussions, the Board instructed staff to meet with the catamaran operators of Waikiki to discuss the various issues and come back before you. Some of those issues were whether or not we should allocate births specifically for the Waikiki catamaran operators at the Ala Wai Small Boat Harbor (AWSBH). Staff is looking at maybe coming up with a different fee structure for them versus other commercial operators and they did meet with the operators to discuss the various issues. Subsequent to the meeting some other things came up. The question was raised regarding the validity of the existing rule or the boating program. As stated in the submittal in Chapter 91-3 regarding revising rules in the Statute you have 3 years to protest a rule and after that you are barred from protesting. Although the owners claimed they didn't know this rule was being amended or would affect them it went through the rule making process, it became a rule and is now a law. Staff looked at the issue of dedicating slips within the AWSBH. Right now it's about a 7 year wait list for the catamarans. The person that is #1 has been waiting for 7 years. We could amend the rule to allow them to have first choice within the harbor to moor their catamarans, however, that wasn't part of their request when they gave us their proposal. We have two areas being built out right now that would be able to handle the size of the catamarans so that could work and that is another option. Staff didn't think it would be fair for those who waited for so long to get their boats into the harbor just to be bumped from the list and that is the Board's decision on that.

Mr. Underwood said there is the big question regarding commercial use permit versus issuing a registration. Every commercial boat on the sea is issued a commercial use permit out of our harbors, out of our launch ramps or any of the facilities used. This Board authorized the issuance of commercial use permits to the catamaran operators at Ka'anapali Beach. Staff feels that would be standardizing to issue all boats including Waikiki catamaran operators commercial use permits. The other issue with that comes down with the fees. All commercial boats and operators pay the same fee. It's a flat rate

\$200 a month or 3% of gross. We recommend the Waikiki catamaran operators pay that same fee. That was something we discussed at the meeting. The operators came back with their proposal giving a different rate which would be \$60 per seat per year of the COI (certificate of inspection) on the vessel. He gave the example of a six-pack vessel, \$60 x 6 for the year. Staff feels it's fair that all operators should pay the same fee. Now we're getting into different classes. Staff had been contacted by the Ka'anapali commercial operators to have their fees be amended as well. Some testimonies from Ka'anapali stated that the fees they are paying are adequate for them. Staff asked that the Board make the tough call there. I was given written testimony from Ms. Farias for that meeting and Mr. Underwood wanted to clarify at that meeting we discussed all the various issues and when we left they said the catamaran operators is going to give staff their proposal. At no time did we agree we would go one way or the other. Everything was still on the table at that time. The Waikiki operators felt that staff had agreed at that meeting that staff would not issue a commercial use permit and that staff were okay with the registration only. That is not correct. Ms. Stats and Ms. Alakai who were at that meeting with Mr. Underwood both discussed this matter and both agreed that was still on the table at the time. Staff also told the operators at the meeting to be realistic in the fee you are going to ask to pay and I didn't recommend they base it on a surf school because a surf school and catamaran operation are completely two different entities. The fee that is being proposed is the same one at the meeting based on surf schools. Staff could go either way on the fee. The Division feels it should remain the same and should be the same for all commercial catamaran operators, however, if the Board feels it justifiable to amend that particular fee for this type of operation staff would be open to that. Mr. Underwood read staff's recommendations from the submittal.

Cynthia Farias representing the Association of Waikiki Catamaran Owners had submitted written testimony and testified from it and that all of the owners were present today. Ms. Farias clarified about the meeting of all the owners and staff which they appreciated, but every one of us came away from that meeting with the clear understanding that Mr. Underwood had agreed to go with the registration, an increase in the registration in lieu of the commercial use permit. He would withdraw his offer and revise his recommendation for the issuance of a commercial use permit. The proposal that we were going to submit has to do with the amount of the registration. Everybody got together and they felt that \$60 per seat based upon the certificate of inspection from the Coast Guard was a fair amount. We were surprised when we got the submission request from Mr. Underwood's office. The agency can't do anything unless it has authority. They cannot issue permits unless it has authority. One of the main issues they are raising is that DOBOR does not have authority to issue commercial use permits to the catamaran owners of Waikiki. The law that was cited which DOBOR is relying on is 13-251-76 - the agency rule made in 2003. That rule is fatally defective. The notice that was issued did not advise anybody that rule would result in commercial use permit issued to the Waikiki catamaran owners. It only talked about Ka'anapali, Maui. The public hearings were only held on Maui and on the Big Island. There is a 3 year limitation period for contesting rules that maybe true; however, you have to have some notice that the rule is in place and that the rule applies to you. If you have no way of knowing whether a rule applies to you or applies to you in a certain way you cannot contest it. It is simply

impossible. One of the points raised in our submission is that time limitation, 91-3(e)(3) doesn't apply here because the catamaran owners had no notice of the rule and no notice that the rule applied to them. Even if they read the rule or the proposed rule they still wouldn't have thought that it meant they were going to get a commercial use permit because the rule says "no person shall engage in commercial activities without a written permit from the Board." They have written permits. They actually have two written permits. Each catamaran operator has an operator permit and that's required. Their registration is also in the nature of a permit which allows them to operate in the waters, to land on the beach and to load passengers on and off the beach. This is what they have been doing for years. They have been using the registration as their permission to do this. Nobody has said hey you guys can't do this you're violating the law. This is the way it's been done for many, many years. Even if the operators read the rules they still wouldn't have known it would ultimately apply to them.

Ms. Farias said what they suggest to the Board is that they don't think even DOBOR back in 2003 when they made this rule; we don't think that they even thought it would mean issuing commercial use permits to Waikiki catamarans because otherwise they would have said something. At that point the acting administrator was W. Mason Young and in his proposal to the Board he listed all the sections they wanted to amend. It doesn't talk about Waikiki at all. He just talks about Ka'anapali Beach waters, the harbor and some technical clarifications regarding waters off of Maui. Nothing about Waikiki and nothing about commercial use permits. So we think this is an after-the-fact interpretation of this rule which DOBOR is now looking for a forward issue for commercial use permits. So they find a rule and they are looking at it and say this might apply. I think that is what they are trying to do, but you have the authority and it has to be legally sound. In any event as far as the 3 year limitation period we don't believe it applies. There is something called equitable holdings of limitations period and that is like a...there is no way we would've known and would've been impossible for you to contest it then you are not held to this 3 year limitation period because it would've just been impossible. We would have had to form action in June of 2006 and I bet if we started action in 2006 DOBOR would've said what are you guys doing? We are not going to issue commercial use permit to you guys. That is not what we are doing with this rule. So, that is our position about that. Now, there are other challenges and even if there is a problem with this new year limitation period there are other challenges to the rule which don't fall under the 3 year limitation period. There are constitutional challenges. The challenges to an agency exceeding their authority there are challenges based on arbitrary capriciousness. It doesn't mean you now don't have the ability to contest it at this point and time. I think we still have the ability to contest this authority. Looking at it over the past few months it is legally capricious and does not provide the agency with the legal authority to issue commercial use permits.

Ms. Farias referred back to Mr. Underwood's most recent submission of November 10, 2011 he included some additional agency rules under which he would like the Board to issue the commercial use permit. This is 13-231-50 to 13-231-70. This is the section which deals with commercial use permits in small boat harbors. These are the rules and regulations that govern the use permits that people who are in the mooring slips need to

have to moor their vessels there. There are other permits that are in those rules too. Now these rules also do not permit DOBOR or DLNR to issue commercial use permits to the Waikiki catamarans 13-231-50 and she read it. It does not talk about issuing permits or commercial use. I think Bob King; one of the operators is going to address the issues yet they do provide a lot of other benefits ...

Chair Aila asked whether it says no regular or extended use of any State properties. Are you indicating that State marine waters for Exhibit 3 don't meet that definition? Ms. Farias said there is a question on whether a beach is considered a State facility; I don't think that's been set forth yet. The Chair clarified the term used is waters. Ms. Farias said I don't believe that is what DOBOR has interpreted. I think at this point there is no permit needed to use State waters. At least with the point of Mr. Underwood, the disposition is that when you use off shore mooring, when you're using submerged lands or when you use the harbor facilities then you are using the State facility. But, to just go in the water you don't need a commercial use permit. Chair Aila said it includes State property and keep in mind that it includes all of the resources. Ms. Farias acknowledged that and said she understands what he is saying. It is a language brought rule and it doesn't talk about issuance of permits or the need for permits for any particular industry or group of people. Now 13-231-51 talks about "no person shall engage in any business or commercial activities in any small boat harbor or any other small boat facility without prior written approval from the Department." Chapter 231 sets forth the rules for the allocation and transferability of commercial use permits and refers to the small boat harbors and off-shore mooring facilities. What's interesting is the definition that is contained in 13-231-3 as to what a commercial use permit is. Under that definition it has several different permits and they describe what each permit is, live aboard and what not. But a commercial permit is a use permit which authorizes the owner of a commercial vessel to use the small boat harbor and its facilities or an off shore mooring for commercial activities as specified in the permit. Even the definition of commercial permit here doesn't include either using the beach or using the water.

Member Pacheco asked in the paragraph Ms. Farias quoted it does include utilizing boating facilities, off shore mooring areas and State ocean waters on page 6 of the submittal, 13-231-3. It does include State ocean waters. Ms. Farias acknowledged saying yes, but what I'm saying is the definition of commercial permit is specified in #7 that specifies it's for the facilities. Again, I don't believe it's the tradition of DOBOR that you need a permit to use the State waters for commercial purposes. Their position is there is no legally sound basis for the issuance of these commercial use permits. Mr. Underwood cited Act 197 which was passed in the 2011 Legislative session as providing authority and searing up the whole issue, but Act 197 was to amend HAR 200-9(c) which supports our position that the Legislature recognized that the registration is sufficient to allow the use of the State beaches and that the commercial use permit is an alternative to that. I attached Randy Vitousek's memo to the submission that outlines the implication of Act 197 and how it applies to the current structure in the rules. I would like to call the Board's attention to Section 200-9(c) and this is the Statute now. She read it and said the Department shall allow both the proprietor of a catamaran operating with a valid commercial use permit or existing registration certificate issued by the Department a

commercial catamaran can land its commercial catamaran on Waikiki Beach to operate Waikiki shore waters for hire and to transfer ownership of the vessel without terminating the right to operate. There is an acknowledgement by the Legislature that the existing registration which the catamaran owners had for many, many years allows them, permits them to use the beach at Waikiki to land, disembark passengers and load passengers and that a commercial use permit is not necessary because a Waikiki catamaran can operate for the same purpose. It would be an additional regulation that there is no authority. The DOBOR rules, the fee seems to be designed for small boat harbors and I understand what Mr. Underwood and DLNR wants to do that and that's to make it the same for the whole State. That is not a bad thing, but these rules needs to be looked at and it should be adjusted to create a comprehensive scheme and until that happens we feel that any issuance of a commercial use permit would be piecemeal and it would be without necessary authority. We request the Board keep the status quo and allow the catamaran operators to continue with their registration until a time that the Legislature or DOBOR is able to take a look at these rules to come up with something comprehensive and something that really addresses the issues that we want addressed as opposed to getting some rules that applies to the harbor and off shore mooring and see if we can apply those rules to vessels landing on the beach or using the ocean which it was not originally designed to do. The catamaran owners would like to contribute additional monies to the State instead of the current registration fee and that is why we proposed the \$60 per seat registration fee and it would still be amenable to raising the registration fee. When DOBOR or the Legislature looks at this we will talk about it as a comprehensive fee instead of here and there.

Raymond Hillamas testified asking 1) Is it the law that DLNR can take my beach registration away from me since I've had a license since 1947 to a commercial permit? Chair Aila said we believe so, yes. 2) Is it the law that DLNR can charge me \$200 per month or 3% of my gross? Chair Aila said there is difference of opinion whether those rules apply or not. 3) To DLNR whatever you guys write and whatever you guys say do you guys just do it? Chair Aila said the rule making process is one that goes out to public hearings, etc. and these rules were adopted at the end of that process. The answer to your question is no because we go through a rule making process.

Curtis Iaukea distributed some pictures introducing Woody Brown and Mr. Iaukea testified from their written testimony believing that DOBOR plans to get more money for the State which is shortsighted because we lose the best and brightest youth by competing on an uneven field. Their operation chose not sell alcohol to have an option for families. The State of Hawaii loses if they are unsuccessful competing for commercial use permits against those who sell booze. Mr. Iaukea asked the Board to give this young man, Woody Brown a chance to continue the family business that the State can be proud of to represent them. He related training Hawaii's young people contributing to our Tourism and Maritime industries. They asked the Board to help them navigate through this and to protect them from further assault. Their contributions and long term vision will far outweigh the few extra dollars that DOBOR plans to produce. They received their registration since 1947 to operate at Waikiki and they are not guilty of anything to justify any of these changes. They requested a catamaran registration fee of \$60 per seat.

Chair Aila asked where in the submittal does it talk about a bidding process. Mr. Iaukea said there were other vague and unfamiliar things that are subject to approval. The beach concessions started out with commercial use permits and as time went by it progressed into a bidding process going to who has the potential to pay more to remove us. Chair Aila asked are you referring to a City and County process, of bidding it out. Mr. Iaukea confirmed that. There was no talk of that originally, but morphed into that later.

Member Pacheco asked what is the term of your County registration. Mr. Iaukea said 1 year.

Sheila Lipton, owner of the catamaran Kepoikai testified from her written testimony reminding the Board of the last hearing about the financial impacts. She related her career as a court reporter for the State of Hawaii for 30 years and was disappointed by Mr. Underwood's submittal to the Board and thought they had agreed in good faith that the submittal was not a reflection of what was discussed.

Member Pacheco asked for clarification where Ms. Lipton explained that Mr. Underwood was amendable of the owners keeping their registration certificate and they were under the impression after coming up with \$60 per seat that they would keep their registration certificate. They agreed to turn over their tax returns, monthly gross sales, everything he wanted that was required under the commercial use permit. They left thinking everyone was on the same page.

The Chair asked what the certificate of inspection capacity of Kepoikai is. Ms. Lipton said 37 passengers. Then the Chair asked what your fee would be. Ms. Lipton said it would go from \$850 a year to \$2200 for me personally. Member Pacheco asked whether that would be the total monies you would pay for using the resource and Ms. Lipton acknowledged that if we agree on the \$60 per seat.

Robert King, owner of Welakahao Catamaran, Inc. testified that he only had one copy of his written testimony which he testified from. Mr. King reiterated previous testimonies about the meeting with the owners and DOBOR regarding the agreement to the \$60.00 per seat fee. It would increase his fee 500 times and he has a 40 passenger catamaran. He is opposed to the commercial use permit reiterating previous testimonies about the registrations which are their primary assets having significant vested property and historic value. Mr. King equates the loss and devaluation through the proposed DOBOR regulation as similar to the confiscation and/or forfeiture assets imposed on corporate criminals. He referred to the letter the owners received in November regarding the Land Board item for issuance of commercial use permits to Waikiki catamaran activities and that nowhere in these provisions are catamaran operations on Waikiki Beach discussed that these provisions are specific to commercial vessels moored in small boat harbor and cited 13-251-58 which doesn't mention Kewalo Basin and that 13-231-76 classifies it under special area rules.

Mr. King testified on what provision 13-231-50 states which he read and said last year his company paid \$50,000 in tax revenues to the State employs 10 people with medical,

dental, health insurance, wages, training unemployment insurance, disability insurance, workers comp and additional benefits. The catamarans provide history and information services, rescue and medical services and environmental conservation awareness. He cited 13-231-51 and said that DOBOR is taking regulations from something else and trying to hit them with it which isn't fair. The Waikiki catamaran operations are different from any operations throughout the Hawaiian Islands. DOBOR says that they will maintain our vessel registrations which the value will become \$8.50 and that are currently our primary corporate asset. The permit supersedes those registrations as far as the rules that govern it. For that, there has to be a Chapter 91 hearing to take away our registrations. The rules that govern our operations are bond in our registrations. If you invalidate the context, the bond in our registrations, we stand to lose them based on these next rules. Provision 13-231-60 Allocation of Commercial Permits – This provision provides the issuance of permits to qualified applicants, seniority and the mandatory establishment of “waiting lists.” The permit application is received, accepted and approved by the Department prior to issuance of the permit, a wait list is established and waiting list seniority begins upon the Department’s acceptance of the application. This is not the bidding process, but gives the Department the right to say they cannot sell or transfer their permits or registrations because there is a wait list that has to be established. Anyone on that wait list has a first come first serve basis has the right to grab their permits if they decide to transfer them and that’s unfair. Provision 13-231-61 discusses the re-issuance of permits provided the gross receipts meet the mandatory minimum established by the Department and all other requirements are satisfied. Provision 13-231-62 discusses the transferability of permits based upon the Departments acceptance and approval and refers to section 13-231-13 that discusses the transfer of permits and the expiration of permits. There is a lot of ambiguity in these provisions and some language is confusing. All provisions relate to vessels with mooring permits and harbor based commercial use permits. The one thing that stands clear is the Department’s requirement for acceptance and approval of all provisions and their overwhelming authority to terminate the permit and/or decline the re-issuance or transfer of the permit. One of our main concerns is the State’s right of refusal and termination of the permit based on a multitude of regulation factors. Additionally, the requirement of “mandatory minimum” grosses, a mandatory wait list, yearly re-application and the Department’s board latitude relating to termination and denial of permits are causes for great concern. We feel that these provisions, rules and regulations open the door for other persons to be able to get on the waiting list and if the Department/State believes that an operator with a new vessel or different type of operation can provide more financial benefits to the State, then the Department is authorized to deny re-issuance and terminate the permit and issue a new permit to someone that is wait listed. Essentially, the Department (based on these provisions) has the capacity to impose eminent domain. It should be noted that the transference of a vessel or corporation’s permit is separate then the transference of a mooring permit. If a person wished to purchase one of our companies then it is possible that they would not be able to retain a mooring permit (unless they were on the wait list) and would have nowhere to moor, hence, they would not be able to operate and would lose their use permit based on Department rules and section 13-231-80 that specifically dedicates the “allocation of berths” to “the vessel that affords maximum, safe, convenient and efficient utilization of the facilities.” That is similar to a bidding process. It takes

away our ability to retain our permits if someone comes along who has a more efficient utilization of the facilities. It would be interesting to see the names that appear on the wait list when it is established. Additionally, we are concerned that this new permit may just be the State's way of decreasing the number of vessels in Waikiki from the current seven (7) to the four (4) vessels as provided in 13-251-51 where the State says there are 4 registrations and will give it for attrition.

Mr. King related what the current registrations require – renew annually, provide current USCG Certificate of Inspection (COI), notice of any changes, proof of insurance and \$8.50 that their renewal is guaranteed based on their “grandfathered registration status” and they have a vested property interest in those registrations as corporate assets. DLNR doesn't have the authority to change or/take away those assets without a Legislative hearing to give them an opportunity to voice their opposition as granted by the Constitution. He reiterated previous testimony about rule 13-251-76 barring the Waikiki catamaran operators from challenging it because of the three (3) year statute of limitations and related previous history on it that DOBOR should be bound by the same statute of limitations and the owners were never informed of any hearing or passing of this rule. For the Ala Wai Small Boat Harbor dedicated slips, it will take years to get a slip for commercial vessel operations and that's if they decide to accept one of the slips then DOBOR should wait until then to impose the commercial use fee.

Mr. King testified that DOBOR has said the reason for recommending that the Waikiki catamarans be issued permits is to establish uniformity and consistency industry wide, but there is no possibility of that because every island and place has its own rules and regulations. Maui operators support DOBOR's request to issue permits to Waikiki operators, but Maui vessels has the potential to maximize revenues and profits. If DOBOR wants to establish the same universal regulations then they must enact the same rules across the board Statewide where he listed some limitations comparing Waikiki catamarans and operations with Maui's. They were not offered the same provisions and/or benefits as the Maui operators. Mr. King's company provides services to the military and schools and dedicates thousands of dollars to charity. They've rescued people in distress off shore. Insurance, fuel costs, equipment and operating costs have increased dramatically. The 3% fee is 6,000 times what they currently pay which is unreasonable and exorbitant especially with all the additional costs the commercial use permit will require. This is another tax and DLNR do not have the authority to authorize or levee taxes. The documents they are required to file with DOBOR are already filed with other State agencies which makes him question the motivation of DOBOR and the new regulations.

Chair Aila asked Mr. King about what permits he spoke of and Mr. King said Maui has a boarding permit, boat harbor permit and mooring permit. DOBOR is trying to create one commercial use permit which is difficult giving the example of zodiacs on Maui which they don't have in Waikiki. If the weather is bad they close down. All they know is what is brought by DOBOR in 13-231-50 and 13-231-70, but there is nothing in there that talks about Waikiki operations. Nobody has said what is in this permit, but their registrations has it and they are governed by that.

Chair Aila asked whether the permits are on line and if staff could provide the operators a copy of the commercial use permit. Mr. Underwood said he would have to check on the on line.

John Savio, owner of Na Hoku II testified agreeing with previous testimony that Waikiki is not identical to Ka'anapali and compared the two operations that someone from Ka'anapali would not be able to do Waikiki. You need skill to work at Waikiki. There is a lot of wear and tear and expenses on the catamarans at Waikiki which he described. He was at that meeting about the \$60 per seat fee and everyone agreed. Mr. Savio related some personal history with his business and training young people. These rules are ambiguous and not fair.

George Parsons, King Parsons Enterprises, Ltd. testified agreeing with John Savio and related their history together. He agrees with Cynthia Farias and Bob King. By the State requesting they switch to commercial use permits they are not providing them anything they don't already have. It is an additional tax on top of the tax they are already paying. They pay the Sheraton Hotel a percentage of their gross to have a place to sell tickets. All the operators pay for their own mooring already and storage. This tax would go to paying DLNR administrative costs and not to up keep Waikiki. Mr. Parsons reiterated Mr. King's testimony that not all vessels have a commercial use permit and not all places are the same. The DLNR has not issued any fee increases to the Waikiki catamarans for maybe 20 years and they would be glad to pay a fee increase years ago. We want to keep our registration as previous operators had mentioned.

Member Pacheco inquired what permits and licenses he has now. Mr. Parsons said a registration from DLNR, a Waikiki operator permit, liquor license, Coast Guard license, FCC license and GE license.

It was asked by Member Edlao how different Waikiki is to Ka'anapali aside from the loading of passengers. Mr. Parsons said the Ka'anapali boats has no length limit, most are 65 feet and Waikiki is limited is 45 feet. At Waikiki, there are only two (2) channels – one at the Moana and the other is at Halekulani. Chair Aila suggested describing from the start of your trip. Mr. Parsons said he starts at the Sheraton Waikiki Hotel and moor at the Ala Wai Yacht Harbor at night using their engines as much as possible. Waikiki is limited to little outboards which is part of their registration in the Hawaii Administrative Rules. It's a Coast Guard requirement to operate 3 miles off. There were some discussions on what is in the COI. Mr. Savio said that Waikiki has to deal with swimmers, surfers and canoes and Ka'anapali doesn't have that. Member Pacheco said the other difference between Waikiki and Ka'anapali is a larger visitor count to draw business from. Mr. Parsons said because of all the competition they keep their prices low to compete with all the other services offered.

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

11:20 AM EXECUTIVE SESSION

12:04 AM RECONVENED

Member Pacheco made a motion to defer this item and instructed staff to confer with the Attorney General's office regarding legal questions they had on this issue. Member Edlao seconded it. All voted in favor.

Chair Aila said we are going to defer and staff will work with the Attorney General's office to clarify some of the questions they have. Mr. Underwood agreed and said one of those was the current registration only authorizes use of the water and there is nothing in place for the beach. They need to put in place the actual use of the beach. The Chair suggested having that discussion with the AG.

Mr. Wynhoff said we are going to try to do it as fast as possible. I imagine someone from the office will be in touch with you. Ms. Farias asked if there is any possibility of input from us or do you guys review the analysis. Mr. Wynhoff said my personal view is I would like to understand if there is some scenario under which the Board has the legal right to do what it's been asked to do and if it does it's up to the Board to make that policy call. I've already read what you said and I would personally welcome your input into the legal question as to whether the Board has the power under any circumstances. I think at what you are saying or I heard you say that the Board doesn't have the power to look at it at all. If you are right then you are right. We certainly don't have any desire to go to a contested case or court.

Deferred (Pacheco, Edlao)

Chair Aila announced that the meeting will go to 12:30pm and then break for lunch.

Item C-3 Approval of Right-Of-Entry and Release of Liability Agreements for the Division of Forestry and Wildlife to Conduct Animal Control Activities for the East Molokai Watershed Partnership on Private Lands at Kapualei and Kawela, Moloka'i, Tax Map Key Nos.: (2) 5-4-003:001, (2) 5-4-003:028, and (2) 5-6-006:001 and

Request for Delegation of Authority to the Chairperson to (1) Negotiate, Approve, and Execute Right-Of-Entry and Release of Liability Agreements for the Division of Forestry and Wildlife to Conduct Animal Control Activities on Private Lands; and (2) Determine and Approve Chapter 343, HRS Environmental Compliance Requirements, Including Approval of Declarations of Exemptions from Environmental Assessment(s) for the Division of Forestry and Wildlife for Agreements with Private Landowners Related to Animal Control Activities

Mr. Conry related that staff is asking the Board to do three things: To approve immediate animal control activity and for the Board to put in place a process that staff can administer these kind of routine activities in the future. Authorize the Chairperson to negotiate the right-of-entry and release of liability agreements for the Division and authorize the Chairperson to make those 343 environmental compliance requirements decision – whether an EA or EIS is needed or an exemption could comply. Right now when staff conducts aerial shooting operations we need to enter into a cooperative agreement with the private landowners who conduct these on private lands where in the past the Chair has signed those. The AG advised that we should clarify whether the Board wants to retain that or if that will be delegated to the Chairperson and if that is the cast then we need to delegate the authority to make that 343 requirement decisions. In this case there are a couple projects that have been conducted over many years animal control on Molokai and what staff is asking for the Board is to approve entering into that right-of-entry agreement with the private landowners and approve going ahead with that operation. Mark Fox is here to answer questions.

It was questioned by Member Gon whether the request to delegate to the chair does not preclude the power of the Board to enter into these kinds of actions and Mr. Conry said that is not the intent. Going beyond that if the Chair or the Division thinks it's appropriate that rather than have it delegated action and bring it to the Board then staff would certainly go ahead and do that. It just streamlines it which is what the existing practices are. The requirement is that aerial shooting is conducted on private property and there has to be this right of entry agreement with the private landowner.

Mark Fox representing The Nature Conservancy testified in support of staff's submittal and the recommendations reiterating them and agreed that the Board should retain its authority. Even with the delegation of authority to the Chair would still be subject to working with the Attorney General's office. This is an effective partnership in managing the goat population that this is an extension of this work. Because Mr. Fox can't come back after lunch he related Items C-1 and C-2 are fencing proposals to care for our core watershed areas. Items C-1, 2 and 3 are consistent with the Department's new watershed initiative and putting primacy on our fresh water resources as well as the Governor's initiatives. They want to share their appreciation and for all 3 of these agenda items.

Member Pacheco said appreciate the work The Nature Conservancy does in the partnership and Mr. Fox acknowledged that.

Unanimously approved as submitted (Edlao, Gon)

Item E-1 Request for Approval to Continue Twenty-Eight (28) Revocable Permits for Use of State Parks Lands on the Islands of Kaua'i, O'ahu, Maui, and Hawai'i for the following: Kaua'i: Na Pali Kayak Inc., Kayak Kaua'i, Rick Haviland, (Na Pali Coast State Wilderness Park for commercial kayak landings), Clancy Greff, Na Pali Sea Tours, Inc., Lady Ann Cruises Inc., (Na Pali State Wilderness Park inflatable boat landings), Wailua Marina Restaurant (Wailua River State Park

restaurant), The Lodge at Koke'e (Koke'e State Park lodging accommodations/retail and restaurant use), Ka Imi Naauao o Hawai'i Nei, Hawai'i United Methodist, Kaua'i Christian Fellowship, Camp Hale Koa Association, (Waimea Canyon State Park non-profit recreation-residences/camps), Hawai'i Conference Foundation (Koke'e State Park non-profit camp), Sukhothai Corp. (Waimea Canyon State Park mobile food vendor), O'ahu: Rick Ralston (Pu'u 'Ualaka'a State Wayside recreational/residential use), Wesley and Joan Cash (Kawainui Marsh State Park Reserve, pasture use), Curtis K. Hong (Diamond Head State Monument food and beverage vending), Pepsi Bottling Group (Diamond Head State Monument beverage vending), Jose Gaceta (Ahupua'a O Kahana State Park, pasture use), Erlinda Molina Villanueva (Ahupua'a O Kahana State Park, agricultural use) Maui: Maui Ice and Soda Works, Ltd. (Wai'anapanapa State Park beverage vending), Island Inspirations, LLP (Makena State Park food service vending, Hawai'i: SMCA, Inc. (Hapuna Beach SRA food and beverage vending), Diamond Parking Services, LLC, ('Akaka Falls State Park parking management), Hawai'i Pack and Paddle, Kona Boys, Inc., Iwa Kalua, Adventures In Paradise, LLC (Kealahou Bay State Historical Park, commercial kayak tours).

Mr. Quinn briefed the Board that this is staff's annual request to renew 28 revocable permits for a variety of uses on State Parks land. In an abundance of caution they are all listed in the subject title. They are on every island and staff is asking for renewal as is status quo except for a permit for what is called the Nut Ridge House up at Pu'u Ualakaa which was restored by the tenant, Rick Ralston. He has been there for a number of years by providing services to staff by opening the gate every morning. Staff has been in discussion with him and would like to get the authority delegated to the Chair to renegotiate the rent amount less for the services he provides. For the Board's information there are several permits for non-profit organizations up at Koke'e and Waimea Canyon State Park. Yesterday, our staff auctioned off the 16 remaining cabins up there and all went out to new tenants which the Board approved several months ago. Staff asked to renew all of these status quo other than the Nut Ridge. Mr. Ralston was here, but had to leave.

Unanimously approved as submitted (Gon, Pacheco)

Member Pacheco requested getting reports or e-mail on the parking arrangements at Akaka Falls. Mr. Quinn briefed that staff entered into a full contract for Iao with a single bid at \$19,100 per month to us for operating there. It is substantial revenues to the program. There is a permanent contract for the Pali and Iao and still under permit for Akaka and will be moving to a bidding process which they will realize more revenue than we are right now.

Item J-2 Cancellation of Revocable Permit (RP) B-93-13 to Kaneohe Canoe Club (KCC) and Issuance of RP to Kaneohe Cultural Foundation (KCF), Located at Heeia Kea Small Boat Harbor, Heeia, Koolaupoko, Kaneohe, Oahu, Tax Map Key: 4-6-006-72, 69 por.

Mr. Underwood indicated staff is here to ask to cancel a revocable permit issued to the Kaneohe Canoe Club (KCC) and re-issue it to the same organization as the Kaneohe Cultural Foundation (KCF) and requested to charge a fee of a \$100 a month which is based on all the structures that they had built on the shoreline. Subsequent to the submittal staff had been asked to waive that fee and staff does not have an issue with that. It's up to the Board. There was the issue that they currently tap into the waterlines at the harbor and whether the Board would like staff to continue allowing them using the water as well.

Chair Aila said it's for washing the boats there.

Member Gon summarized the recommendation which is to waive the fee and use of the water.

Member Pacheco said other direct leases that we have with non-profits have a minimum of \$460 a year.

Chair Aila said one of the considerations we were asked were to waive the fee was the amount of work that the canoe club is doing in the community and working with DLNR on projects such as the sea urchin project in Kaneohe Bay in conjunction with the Super Sucker and other activities like that.

Earleen Kipapa, Board member with Kaneohe Cultural Foundation testified and asked to go ahead to waive the fee that they agree with the changing of the permit. The works that they do for the community is the project with the algae, invasive algae and beach clean up. She distributed some photos describing various projects – taking people from Japan out in the canoes, the Ka'a'awa Valley project - Mo'ai and Pa'epa'e o He'eia Fish Pond, Kaulili lo'i, they help with the Meriman School program and the Boy Scouts. They are a non-profit gaining nothing that it's to show the community and give them an education.

Clint Anderson, President of the Kaneohe Cultural Foundation testified that they do a lot of community service by taking out ashes and service the people. Aloha Dalire coming down bringing and sharing the culture to some of the people from Japan to go out to the Sand Bar to dance hula out there. We do a lot with the Meriman program and help them out. Boy Scouts come out to learn how to paddle. They welcome everybody. They now have a sailing canoe teaching people how to sail. That is why it is a cultural foundation to spread it out to everything.

Member Pacheco asked if folks who don't belong to the club using their own outriggers use the wash down facilities and showers. Mr. Anderson acknowledged that people come down shower down their canoes right there, but are one man's mostly. During the night

we don't know what is going on, but during the days that we practice four or five days a week starting at 4 to 6. All we do is rinse down our canoe and shower down ourselves.

Member Gon inquired about the Ka'a'awa Mo'ai. Ms. Kipapa explained they asked them to go there for their sailing canoe last November which was held by the University based on how the Mo'ai got there – the statue. He discussed that project with Ms. Kipapa and Mr. Anderson more in depth.

Unanimously approved as amended (Pacheco, Gon)

Item F-1 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Conservation and Management Permit to Commanding Officer Frank K. Dreflak, National Oceanic and Atmospheric Administration (NOAA) Ship OSCAR ELTON SETTE, for Access to State Waters to Conduct Shipboard Support Activities.

Marie Carnavale representing Division of Aquatic Resources (DAR) presented item F-1 that the permit would allow these activities in all State waters in Papahanaumokuakea between January 1, 2012 and December 31, 2012. The proposed activities are a renewal of Board's previously permitted and conducted within the Monument. This applicant proposes to provide a research platform to support research, education and management activities. There were no comments or concerns from the review process. Staff has made an exemption determination for 343 and staff is of the opinion that the applicant should be allowed to enter the Northwest Hawaiian Islands State waters to conduct the activity. The recommendation is for the Board to approve the permit with special conditions listed.

Item F-2 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Conservation and Management Permit to Commanding Officer Michael F. Ellis, National Oceanic and Atmospheric Administration (NOAA) Ship HI'IALAKAI, for Access to State Waters to Conduct Shipboard Support Activities.

Ms. Carnavale said that item F-2 is the same as item F-1, but on a different ship and different commanding officer. The two commanding officers were here for questions.

It was questioned by Member Edlao what her name was and Ms. Carnavale introduced herself as the Acting Co-Manager for Papahanaumokuakea.

Unanimously approved as submitted (Pacheco, Gon)

Item D-19 Amend Character of Use Provision in General Lease No. S-4513, Oahu Special Schools Association, Lessee, Fort Ruger, Honolulu, Oahu, Tax Map Key: (1) 3-1-042:034.

Mr. Tsuji related what item D-19 was noting that this lease was issued directly and not by auction based on a non-profit statute. The character use can be amended and he had nothing to add to the submittal.

Unanimously approved as submitted (Edlao, Pacheco)

Item D-6 Request for Additional Time to Cure Notice of Default, General Lease No. S-5188, Brad Radcliffe Anderson, Cord Dominis Anderson, and D.G. Anderson, Lessee, Auhaueake, North Kona, Hawaii, Tax Map Key: (3) 7-5-09:43.

Written testimony from LNR Partners, LLC was distributed to the Board.

Mr. Tsuji conveyed item D-6 and for the Board's recollection there was a Notice of Default issued with a 60 day cure and in October the Board had allowed an additional 30 days to cure this default.

Member Pacheco announced that he had to recuse from this item.

Mr. Wynhoff said you don't have to go anywhere since that is end of quorum. Chair Aila said that we won't be able to take action because we don't have quorum.

D.G. Andy Anderson asked Member Pacheco to reconsider that this decision was made 20 years ago and not us. Everything discussed we haven't made one of these decisions. We're caught between the State and the County as Mr. Moore's report tells you. It is not a policy deal that we are asking you to vote on. I'm sorry I rented you that parking stall, but you are not there anymore and this has nothing to do with the Waimea Country Club. I really don't see any conflict at all. I know it's the proper thing to do to be safe, but this is a 20 year problem of theirs and not ours.

Member Pacheco and Mr. Wynhoff stepped out to discuss.

Mr. Anderson said they do have before Kevin a contract to commercially comply. We have a signed contract, but we couldn't get on the agenda because of the Sunshine Law and is scheduled for January with the recommendation for approval, but we've been to you twice now. Russell's explaining the problems that even a rental contract for one day, one hour, two days is defined as a lease. Mr. Tsuji said there is a provision in the lease that you cannot sub-lease without prior...

Mr. Wynhoff said Mr. Anderson I had an opportunity to talk to the Board member (Pacheco) and he really feels that he can't. Mr. Wynhoff thanked Mr. Anderson for coming and apologized. Mr. Anderson asked so this item will be on January. Chair Aila acknowledged it will. Mr. Tsuji noted that is when staff will be bringing the contract as well. Chair Aila said and this will be cured by then.

Deferred to January due to no quorum.

12:33 PM RECESSED

1:12 PM RECONVENED

Item J-3 Request Approval to Initiate Rule-Making Process to Amend Title 13, by Adopting a New Section 13-256-73.13, "Ahu o Laka Safety Zone" Prohibiting the Possession of Alcohol, Disorderly Conduct and Prohibiting Persons Under the Influence of Alcohol, Narcotics or Drugs from Remaining in or Entering The Safety Zone on Three-day Weekends Involving a State Holiday

A copy of the Amendment to Chapter 13-256, HAR was distributed to the Board.

Mr. Underwood informed that staff is here to ask the Board's permission to initiate rule making.

Chair Aila said he was at a function at He'eia Kea last night where many Kaneohe Board members said they were excited about this.

Unanimously approved as submitted (Gon, Edlao)

Item C-1 Request Approval to Initiate the Competitive Sealed Proposal Process and Authorize the Chairperson to Issue a Request for Proposals and Award and Execute a Contract for the Construction of Approximately Three Miles of Ungulate-Proof Fence on Leeward Haleakala and

Request Approval of Declaration of Exemption from Chapter 343, HRS, Environmental Assessment Requirements for the Project

Item C-2 Request Approval to Initiate the Competitive Sealed Proposal Process, Authorize the Chairperson to Issue a Request for Proposals, and Award and Execute a Contract to Build Approximately 10 Miles of Ungulate-Proof Fence on Mauna Kea to Protect Palila Critical Habitat and

Request Approval of Declaration of Exemption from Chapter 343, HRS, Environmental Assessment Requirements for the Project

Exhibit A – Exemption Notification was distributed to the Board members.

Mr. Conry related items C-1 and C-2 and pointed out that on his agenda it referred to an attachment that wasn't there which was distributed. He wasn't sure if there was an amendment because it wasn't attached and had Scott Fretz come up who is administering the construction project. This continues the effort to complete the perimeter fence around Mauna Kea and asked Scott if this is the last of it.

Scott Fretz (DOFAW staff) said there are still 16 more miles to fence needed and this is set at 10 miles because that is what we have the money for. If the bids come in favorable they could extend the 6 more miles and put it all in there. It says 10 in the contract, but they could write the contract in such a way that it says the contract may extend if the funds allow and that would finish all 16 miles. It all depends on the bids.

Member Gon asked he had a question on the exemption it references Environmental Council, July 15, 2011 and are we assuming the exemption is the latest revision to the Administrative Rule. Mr. Fretz explained for Mauna Kea to replace an existing fence post there is another exemption in there.

Member Gon wondered whether the revised rule has been finalized. Mr. Conry said it has been approved by OEQC (Office of Environmental Quality Control) and they were allowed to. Member Gon asked has our AG review been completed for the revised. Mr. Conry said that is OEQC process. Mr. Wynhoff said I think the way the rules are written the Statute says the exemptions are to be determined by OEQC and OEQC says that they have rules and they are the ones approving the exemption. Mr. Conry once they approve it ...Mr. Wynhoff said once they approve it, it's good to go.

Member Pacheco said we did that whole update with all the exemptions. Mr. Conry said there was a large Departmental list that they pared that back down to emergency response and fencing was one of the ones that they approved. As I recall they approved 3 new exemptions to the Departmental list.

Member Pacheco asked once the fence is up does the Department have plans to get the rest out – fence maintenance budget and all that. Mr. Fretz said they are writing an Eradication Plan now so it's internal and we need to review and finalize it internally which will layout how they will get the animals out that once the fence is done they are substantially out of there. We have a 5 person permanent team on the mountain that will have to double in size and will use Federal grants for that. Mr. Conry said our discussions with Fish and Wildlife Service were pressed with the urgency to continue funding the habitat management work there. Once we get the fence completed to begin the funding to remove the animals inside the fence. They are in agreement with the importance of that the need to continue funding. We anticipate getting the funding supply. The status of the palila has gotten a lot of discussions at the wildlife societies and the national players there recognizing the critical management need.

Member Gon approved both items C-1 and C-2. Member Pacheco seconded it. All voted in favor.

Member Pacheco asked how long this will take and Mr. Fretz said 1 to 2 years.

Unanimously approved as submitted (Gon, Pacheco)

Item D-17 Cancellation of Governor's Executive Order No. 3576 and Reset Aside to Department of Accounting and General Services for Kalanimoku

**Building and Law Enforcement Memorial Purposes, Honolulu, Oahu,
Tax Map Key: (1) 2-1-033:025.**

Mr. Tsuji conveyed item D-17 that someone was here to testify and that the Legislature approved last year a State Law Enforcement Memorial on the Diamondhead end of the building. DAGS (Department of Accounting and General Services) will enter into an MOU (Memorandum of Use) with the private foundation as for the terms of construction, conditions, responsibilities and funding maintenance of the Memorial. He introduced a gentleman from DAGS who said he was here to answer any questions.

Unanimously approved as submitted (Edlao, Gon)

- Item D-1** Amend Prior Board Action of September 23, 2011 Item D-2, Issuance of Revocable permit to Donna Nunes-Hoopii for Residential Purposes, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-5-011: 010
- Item D-2** Cancellation of Revocable Permit No. S-7682; Re-issuance of new Revocable Permit to Volcano Island Honey Company, LLC, for apiary purposes at Lalamilo, South Kohala, Hawaii, Tax Map Key: 3rd/ 6-9-001: portion of 015.
- Item D-5** Cancellation of Revocable Permit No. S-6941, Julio Resureccion, Permittee and Set Aside to the Division of Forestry and Wildlife, Keopu 2, North Kona, Hawai'i, Tax Map Key:3rd/7-5-01:22.
- Item D-7** Rescind Prior Board Action of July 8, 2011, Item D-6, for the Issuance of a Revocable Permit to Eric Miller for Pasture Purposes, Waiohonu-Kakio, Hana, Maui, Tax Map Key: (2) 1-4-012:003.
- Item D-8** Issuance of Revocable Permit to Charles Gale for Pasture Purposes, Waiohonu-Kakio, Hana, Maui, Tax Map Key: (2) 1-4-012:003.
- Item D-9** Cancellation of Revocable Permit No. S-7626 to Pearl Pahukoa, and Request for Waiver of Level One (I) Hazardous Waste Evaluation Requirement, Wailua, Koolau, Hana, Maui, Tax Map Key:(2) 1-1-004:006.
- Item D-10** Cancellation of Land License No. S-340 to Hana Trucking & Equipment Co., and Request for Waiver of Level One (I) Hazardous Waste Evaluation Requirement, Kawaipapa, Hana, Maui, Tax Map Key: (2) 1-3-006:015.
- Item D-11** Issuance of Revocable Permit to Rikelle L. Inzano, for a Team Building Sand Sculpture Event for Amplifon USA, Inc. at Wailea

Beach, Honuaula, Wailea, Maui, Tax Map Key: (2) 2-1-008: seaward of 109.

- Item D-12 Rescind Prior Board Action of October 23, 2009, Item D-6, that involved the Issuance of Revocable Permit to John and Yvonne Medeiros for Pasture Purposes, Waiakoa-Alae 3 & 4 Homesteads, Makawao, Maui, Tax Map Key: (2) 2-2-013:029.**
- Item D-13 Issuance of Revocable Permit to Felix and Roxanne Vellina for Intensive Agriculture Purposes, Kahakuloa Valley, Wailuku, Maui, Tax Map Key: (2) 3-1-004: 092, 095 and 097.**
- Item D-15 Issuance of Right-of-Entry Permit to Geolabs, Inc. on Lands Encumbered by Revocable Permit No. 7212, Honolulu, Oahu, Tax Map Key: (1) 1-1-003:por.003.**
- Item D-20 Grant of Perpetual, Non-Exclusive Easement to Board of Water Supply for Drainage Purposes; Issuance of Construction and Management Right-of-Entry; Kahuku, Koolauloa, Oahu, Tax Map Key: (1) 5-6-006:037 & 055 portions.**
- Item D-21 Grant of Perpetual, Non-Exclusive Easement to The Gas Company LLC for Gas Pipeline Purposes, Kapolei, Ewa, Oahu, Tax Map Key: (1) 9-1-017:portion of 071.**

Unanimously approved as submitted (Gon, Edlao)

- Item E-2 Requesting Approval of the Issuance of License Agreement #760 between the Department of Hawaiian Home Lands (DHHL) and the Department of Land and Natural Resources for Pala'au State Park, Molokai, TMK: (2) 5-2-13:006.**

Written testimony was submitted from Erik Coopersmith.

Mr. Quinn related what item E-2 is that this will be for a 20 year term with the ability for the Chair to extend to a limit of 35 years with the rent being stable at \$979.00 per year for the license. For the Board's information, some years ago the DHHL decided they were going to charge us \$30,000 and staff told them they could have it back then we came up with this amount. There is a list of all the projects that we've done in the park in recent years and asked Board approval subject to the AG.

Unanimously approved as submitted (Pacheco, Gon)

- Item M-2 Issuance of a Revocable Permit to Klayton Koa, Adjacent to Pier 52, Honolulu Harbor, Oahu, TMK: (1)1-5-41:200 (portion)**

Chair Aila presented item M-2.

Unanimously approved as submitted (Pacheco, Gon)

Item K-1 Conservation District Use Application (CDUA) HA-3601 for Agriculture Pasture Fencing by the Yunis Family Trust Located at Pepekeo, South Hilo, Island of Hawaii, TMK: (3) 2-8-008:100

Tiger Mills conveyed item K-1 where the applicant will be living adjacent to this pasture area for the care and maintenance of his horses. The landowner is Continental Pacific has agreed. There is a 10 foot wide pedestrian easement makai of the shoreline and staff is providing the condition "if major coastal erosion were to happen then they may have to move out of the subject area."

Unanimously approved as submitted (Pacheco, Gon)

Item K-2 Conservation District Use Application (CDUA) MO-3597 for Mesic Native Forest Restoration and Fencing by Dunbar Ranch Partners Located at Kainalu Ranch, Puniuohua/Kainalu, Molokai, Island of Molokai, TMKs: (2) 5-7-003:053 and portion of (2) 5-7-005:022

Ms. Mills briefed the Board on item K-2 where the fence is to keep out ungulates. Once the ungulates are removed from the fenced area the invasive species will be removed and native plants will be planted to restore the area. Staff recommends approval subject to 14-52.

Member Gon commented that he was amazed that a private landowner was willing to do this and that he knows the family. It is good to see this kind of stuff happening.

Unanimously approved as submitted (Gon, Edlao)

Item L-1 Appointment of Dan Clegg as Central Maui Soil and Water Conservation District Director

Item L-2 Authorization to Enter Into Memoranda of Agreement between the State of Hawaii, Department of Land and Natural Resources, and State of Hawaii, Department of Transportation, and Other Documents Regarding the Implementation of Ferry System Improvements at Lahaina, Maalaea, and Manele Small Boat Harbors

Item L-3 Appointment of Dudley Kubo as South Oahu Soil and Water Conservation District Director

Item L-5 Authorization to Enter Supplemental Agreement No. 1 to Contract No. 59183 for Job No. B31XM82B, Manele Small Boat Harbor Ferry System Improvements

Item L-6 Certification of Election of Susan Cuffe as Hana Soil and Water Conservation District Director

Carty Chang, Chief Engineer for Engineering Division said there were no changes to items L-1, L-2, L-3, L-5 and L-6.

Unanimously approved as submitted (Edlao, Gon)

Item L-4 Authorization to Enter Into an Inter-Governmental Agreement with the City and County of Honolulu, Department of Environmental Services for the Transfer of Ownership of the Waimanalo Wastewater Treatment Plant, Honolulu, Oahu, Hawaii

Mr. Chang briefed the Board on item L-4. The wastewater treatment plant was constructed by DLNR in the 1960s on State land with the intent to turn it over to the City. At that time, the City was not ready to accept ownership without an ocean outfall which was determined to be unfeasible due to the shallow off shore conditions in the area. The alternative was to put in some additional injection wells to take care of the effluent. In 1972, there was an agreement where the City operated the plant and the State would be required to fund future upgrades to meet Federal and State water quality standards. Since 1972 and now, there was a number of projects about \$31 million dollars worth of upgrades that DLNR implemented between the late 1990s and 2007 to upgrade the systems using State and Federal standards. The City is currently operating the plant and partially accepted the improvements. The Scala System needs to be done and the O & M (Operation and Maintenance) Manual wasn't completed, but the State has since completed the O & M Manual and the State funded the necessary changes to the Scala System. The City is willing to accept the plant and now it's just the matter of documenting the paperwork. This inter-government agreement transfers the ownership and there will be a bill of sale document which is the instrument that transfers the improvements. Land Division will come in early next year with that. As for Chapter 343, it doesn't apply to this cooperative agreement since the improvements are completed already and this agreement supports the transfer from State to City.

Member Pacheco wondered what DLNR was doing with a sewage treatment plant. Mr. Chang said at that time there were a lot of State facilities in the area where a sewage treatment plant was needed. Staff recommends the Board approve delegating to the Chair and the transfer of ownership.

Unanimously approved as submitted (Gon, Edlao)

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

Member Gon asked whether a high level meeting needs to happen between DLNR and Department of Health (DOH) which is the response to the EPA's recent adjustment of

their pollution standards which changes the use of pesticides near or potentially impacting fresh water. He described receiving an e-mail from Department of Agriculture (DOA) and the use of Roundup around Ulupo Heiau to keep the weeds down and it is close to Kawai Nui Marsh. All use stopped until they could get a permit from the DOH. Pesticides and herbicides as according to the EPA after Member Pacheco's questioning. Member Gon said staff from State Parks was e-mailed asking how far reaching is this. DOH was caught off guard by the new regulations and doesn't have a permitting process in place. DOH was e-mailed that we have operations and State Parks do we now require permits from DOH per this new EPA regulation. Chair Aila said they could send a letter to DOH asking for clarification. Member Gon said he will send him the specific EPA site. Mr. Carty said it does apply to streams. Roundup does break down. There were more discussions about it.

Adjourned (Gon, Edlao)

There being no further business, Chairperson Aila adjourned the meeting at 1:38 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