

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

DATE: FRIDAY, OCTOBER 12, 2012
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:09 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
David Goode

Jerry Edlao
Dr. Sam Gon

STAFF

Ed Underwood/DOBOR
Dave Smith/DOFAW
Emily Fielding/DOFAW
Stephen Soares/PARKS

Kevin Moore/LAND
Randy Kennedy/DOFAW
David Quisenberry/DOFAW
Dan Quinn/PARKS

OTHER

Cindy Young, Deputy Attorney General (AG)
David Brittin, J-1
Nancy Muetting, J-1
John Popavits, J-1
Gary Rubio, D-3

Pam Matsukawa, Deputy AG
Bryson Chow, J-1
Bob Romo, J-1
Keith Avery, D-7

{NOTE: Language for deletion is [bracketed], new/added is underlined.}

Item A-1 September 14, 2012 Minutes

Member Gon recused himself. No quorum item deferred.

Deferred

Item A-2 September 28, 2012 Minutes

Item A-2 was not available.

Item M-1 Second Amendment to Prior Land Board Action of May 11, 2007, Under Agenda Item M-1, Regarding Issuance of Direct Lease and Right-of-Entry to Ameron International Corporation, dba Ameron Hawaii, Adjacent to and in Vicinity of Pier 60 and Ke'ehi Lagoon, Tax Map Key: (1) 1-2-23: portion of 33, Honolulu Harbor, Kapalama and Iwilei, Honolulu, Oahu

Calvert Chun representing Department of Transportation (DOT)/Harbor asked for an extension on the right-of-entry to December 31, 2012 and an issuance of a right-of-entry to the adjacent 2 acre parcel until December 31, 2012 for Ameron to use for heavy equipment.

It was asked by Member Goode whether there was sufficient time to do this and Mr. Chun confirmed that Ameron assured it will be done.

Unanimously approved as submitted (Goode, Gon)

Item J-1 Request to (1) Realign the Perpetual Public Access Easement Created by a 1963 Agreement, Recorded in Land Court as Document No. 324984 and Affecting Tax Map Key No. (1) 2-3-37:12, Over the Modern Honolulu (Hotel) Property Owned by M Waikiki LLC; (2) Accept a Perpetual Non-Exclusive Easement From M Waikiki LLC Over Pedestrian Overpass Above Hobron Lane as a Portion of the Realigned Easement; and (3) Grant a 55-Year Non-Exclusive Easement to M Waikiki LLC for Pool Deck and Outside Dining Purposes on Elevated Deck Adjacent to Second Floor of the Modern Honolulu

Ed Underwood, Administrator for the Division of Boating and Ocean Recreation (DOBOR) and Deputy Attorney General (AG) Pam Matsukawa introduced themselves. Mr. Underwood said they were here to request the realignment of a public access easement created in a 1963 agreement. He summarized back in 1963 an agreement was entered into by DOT, the Ilikai and Makaha Farms at the Ala Wai Harbor and is the main hotel which spans across Hobron Lane including the Ilikai Marina property. On Exhibit A, staff highlighted what this public access easement was going to look like. It was an elevated public access easement that fronted all of the properties, spanned Hobron Lane, fronted the Ilikai Marina property and it had 2 access ways down to the Harbor as well as one that lead down to the Hilton Lagoon. What happened was only the yellow/lighter colored portion of this access way was built. The darker colors were never constructed. What happened is we moved forward to today where the M Waikiki LLC came to staff last year requesting use of a portion of the public access easement that fronted their property and historically DOBOR had issued revocable permits (RP) to the Hotel for outdoor use – pool, dining, etc. Staff began discussions with M Waikiki LLC on what was going on because that public access easement goes to nowhere and dead ends in front of their property and there is

no real public access to get over to the Ilikai Marina property where the parking garage is. Staff wanted a continuous public easement and began discussions with M Waikiki, but they entered into bankruptcy proceedings last year and that is all resolved now. Staff met on numerous occasions and did site visits. Staff met with the Ilikai representatives and based on that they came to an agreement to have the public come up to where the new hotel is and they've agreed to allow the general public to access through their property, over their pool deck to access their elevators for ADA because there is a connector that takes you to the parking garage. When it was built it wasn't required to be ADA. Staff agreed to this and is a fair fix. It does what the access was always intended to do which doesn't do it now. Staff is not here to ask to change the 1963 agreement in any way they are asking to realign the public easement so it does its intended purpose. Staff is asking the Board to execute 3 easement agreements/documents. The first one is a perpetual easement granted to the State by M Waikiki, LLC for the realignment for the public access easement across the second floor pool deck which is on their property and the lobby of the M Waikiki Hotel. The second easement will be a perpetual easement to the State that runs with the first for the span over Hobron Lane which is the overhang that goes to the public parking garage. The third easement would be a non-exclusive 55 year easement granted to M Waikiki LLC for the use of that area that has been historically on an RP (revocable permit) that staff wants to put it on a 55 year and appraise at appraised value and they would pay the appraised rent for that. Staff looked at the requirements of Chapter 343 and we feel this project is exempt from that because it is existing use. What staff is asking the Board to do is accept the staff recommendations as outlined in the submittal.

Deputy Attorney General (AG) Pam Matsukawa said that the attorney for M Waikiki is here and he has a full presentation of what they would like to do. In addition, he represented to me that M Waikiki is willing to take full responsibility of all maintenance and indemnification of the elevated walkway of which they are asking for that non-exclusive easement. Because according to the 1963 agreement all of the private parties had maintenance indemnifications requirements. If they have an easement they agreed to its obligation. Generally speaking this whole situation has been a mess because this walkway was not entirely completed. If it had been entirely completed it would've been much more of a public easement, but because they cut off this walkway at the end of M Waikiki property, in effect, this elevated walkway only serves the 2 hotels – M Waikiki and the Ilikai. We are trying to negotiate a remedy here and we are not touching the 1963 agreement. We are taking the fact that agreement gave to the State the elevated walkway and also created a public access easement over the space held on behalf of the public and that is what we are working with. If we have to deal with the 1963 agreement we need to deal with the issue of what other private entities are and what the successors are going to do to remedy the situation for their non-compliance with their promises in that agreement.

Member Goode asked whether they had met with the Ilikai and Mr. Underwood said yes they have. They had one meeting last year and offers were made where M Waikiki initially was going to allow them through a hallway in their property which led directly to the overpass parking garage. The Ilikai folks didn't agree with that and felt it should be widened and restrooms should be removed and it should create a better access way into their property. Those two are in negotiations together and there is on-going litigation between the two, but we are not a party to that. Member Goode asked whether that litigation pertains to this issue and Mr. Underwood said it does. Ms. Matsukawa said we are not a party to that and are not keeping up

on everything that's happened except I do know that M Waikiki and Ilikai have gone through mediation and could not resolve the issue. The Ilikai would like a public access easement to lead to the elevated walkway and cut through their lanai area to get to an area where they have retail shops and create some kind of hallway between their retail area and M Waikiki. She understands that the Ilikai and M Waikiki have not been able to agree as to all the specifics on how to create where the public is supposed to pass through. They did have one meeting before the bankruptcy proceedings and everyone said okay that they will try. The bankruptcy proceedings went on for a year or so and staff was contacted by Dave Brittin, the attorney for M Waikiki who said the Ilikai doesn't want to settle, but they want to so staff has been working with M Waikiki.

Member Gon asked considering all the unresolved issues that may or may not be related directly to this request why is this coming before us before these are resolved. Ms. Matsukawa said because the public easement doesn't go through lanai areas or retail areas of the Ilikai or M Waikiki and that is what she thinks they are fighting over. All we are trying to do is resolve the legal issues with regard to the use of that elevated deck and being able to legally have the public cross over Hobron Lane to get to that parking lot. She sees this as a separate situation between the Ilikai and M Waikiki they can negotiate as long as they want, but that doesn't resolve our legal situation.

Member Gon asked why the 1963 plan didn't get realized. Why was it truncated? Ms. Matsukawa said she doesn't know if anyone knows that. Staff doesn't have it in their records. It was a long time ago. We just don't know. Member Gon asked what issue came up that made this 50 years later that this needed to be resolved when for 50 years it had not been. Ms. Matsukawa said the Ilikai and M Waikiki have at different times obstructed the elevated walkway by using it for their own hotel uses and then there were some RPs issued and the last RP that came up our office said "no." The way the situation is, the public access and all that, we can't approve this RP because we have a public access easement over this elevated walkway and until that is realigned we can't ask the Board to issue an RP that would restrict the public's access. For any use other than a public access we would have to realign the public access easement and then the elevated walkway would be available for the Board to issue an easement or an RP or whatever the Board thinks is appropriate.

Member Goode asked who was supposed to build that section. Ms. Matsukawa said she thinks Ilikai and Makaha Valley. Member Goode asked who their successor is. Ms. Matsukawa said M Waikiki, there is another Ilikai entity and Ilikai apartments entity – there are 3 separate entities. Member Goode asked whether we are the successor to DOT-Harbor and Ms. Matsukawa confirmed that. Mr. Underwood said at that time all the properties were owned by one individual. Ms. Matsukawa said a Mr. Chin Ho was involved.

David Brittin representing the M Waikiki, LLC and is now the Modern Honolulu distributed his presentation to the Board and testified that the relevant language is on page 2 which he read the underlined bolded section and referred to page 3 showing the map. There was going to be an integrated access way to run from the Hilton Lagoon along Holomoana Street to the end of the Ilikai Marina property with 2 causeways so the public wouldn't have to cross traffic at street level. Once the improvements were constructed our position was the State owns them and the rights transferred to the State because it was constructed on behalf of the State that the part that

overhangs is a State owned easement property. The State is the owner of the improvements and there is an easement created in favor of the public. On page 4 is the portion that was actually constructed and an overpass over Hobron Lane. The 1963 agreement was a trade between the State and the developer. It wasn't owned by one person that there was a variety of entities – Ilikai, Inc. was one. Lot 1B was already sold under an agreement of sale to a different entity called Capital Properties, Ltd. and Makaha Valley Farms owned the Ilikai Marina. Chin Ho was involved and was the party of interest in all 3 of those, but as to who owned what not one entity owned all 3 properties. Page 5, is the 1963 Agreement Section 4, a perpetual overhead easement...To build the overhead easement was never transferred to the Ilikai partners. It is in the title for the Ilikai apartments and the M Honolulu. Next page, 1963 Agreement, section 8 says the intent is to provide easy, safe and aesthetically beautiful access to the beach and the Ala Wai Harbor to the public. The intent is not in favor to any of the 3 development parties and the easement is in favor of the public. He read subsection 8.b. There are two easements – the Hobron overpass runs from the garage in the Ilikai Marina over to the Modern Honolulu property and the garage property in the Ilikai Marina was owned by Chin Ho. The elevated walkway is a completely separate right and there is no connection between the two because no connection was needed looking at the original plan. The problem arises when you only build half the plan there is no way for the public to get from the beach to the Ilikai Marina.

Mr. Brittin related the history of who sold and bought the property that would become the Modern Honolulu. The M Waikiki undertook a complete renovation of the hotel and the access ways were changed. They wanted to continue using the space that was used since 1982 for restaurant and dining purposes where they asked DLNR for another RP. They entered into discussions with their neighbors and have been unsuccessful in reaching a resolution with them resulting in their objection as to our plan. As to the law suit, essentially was a claim to our client saying there is no connection between the Hobron Overpass and the elevated walkway - there is no legal access across the property that they are two separate things. Land Court properties are when people walk back and forth on the path doesn't give the right to continue walking. They counter claimed against us. They filed a motion to dismiss on that case because they think this Board has authority to enter into these agreements and have sole exclusive jurisdiction enforcement if any violations in the 1963 agreement as they alleged. If the deal is presented and is accepted that it will essentially weed out the law suit. The claims will terminate and they will be able to have a resolution. The Solution (referring to diagram) is a realignment of the public access way which M Waikiki is going to grant to the State in a perpetual easement shown in blue over its pool deck along with permission to use the elevators for people with disabilities. M Waikiki has rights over the Hobron Overpass it's going to grant the rights it has to the State so a public access way is created across there and is consistent with the 1963 agreement. In exchange the State would grant an easement for the right to use the portions in green for pool deck and outdoor dining purposes and would retain the portions in yellow for the public to walk through the property and get over there. At the end of the day we have created the maximum possible the public access easement to go on the beach over to the Ilikai Marina property even though it's not what it was originally designed this is still a pretty good deal. It is something that is at no cost to the State and in fact M Waikiki will be purchasing the right to use those easements for 55 years. We are giving up quite a bit more than what they are getting for perpetual easements in exchange for easements that will expire. They believe this is an appropriate resolution and he knows there is a lot of talk about permissible uses on the elevated walkway referring to the 1974 B&W photo

showing a putting green, planters, pool chairs on the Modern Honolulu side of the property. Second B&W photo where the Morimoto Restaurant is shows a planter blocking the area to create a private use area. Both the Ilikai and Modern Honolulu properties have used this area for non-pedestrian uses for years. After the putting green was taken out the Ilikai completely blocked the easement by placing a planter, chairs, umbrellas and the public access was completely blocked off. There was no way to use the elevated walkway other than clearly use for their guests and owners in that corner. As far as they know there was never any request by the Ilikai to occupy the elevated walkway, no RP was issued; no payment was made by them and used the area for their own use. The planter was removed by their request. The Fire Department told M Waikiki to remove the fire egress off the property and that the elevated walkway was the place to do it.

Member Gon asked the planter has been removed then. Mr. Brittin said the planter was removed in 2010 by the Ilikai. Since August 2010 the Ilikai sent a letter to DLNR requesting that no RP be issued and there was an October letter from DLNR to M Waikiki saying they could not issue an RP and we wrote back saying we would like to present more information. We've been in contact with DLNR the whole time working closely with them and we believe this represents a win for everybody. The public will have access across the property including members of the Ilikai who said our intent is to cut access, but our intent is the complete opposite that they intend to provide access across the property to the maximum extent possible given affect to the 1963 agreement and at the same time we would like to continue using that area that has continuously been used for outdoor dining and pool deck purposes and they are willing to pay the going rate for it.

Member Gon asked if he could speak to the realization or lack thereof the intent of the 1963 agreement section 8 to provide easy, safe and beautiful access to the beach and Ala Wai Boat Harbor. Mr. Brittin said clearly the intent was to build a nice public access way which is what Mr. Ho was supposed to provide and he did what he wanted. He convinced the State to build this access way and why he didn't complete it, probably cost that he doesn't think they will ever know. He never saw any record on what happened. The State did approve the plans as built, but what happened initially was the Ilikai apartment building was built first with the elevated walkway then the Modern Honolulu building then the Ilikai Marina and built the overpass, but they never pressed on. Don't know whether there was push back from the State probably not. They may have felt it was cheaper not to do it. I never saw any documents on it.

Member Goode asked essentially your taking where it ends and meander through the hotel to get to Hobron Overpass and to the Ilikai Marina to be finished with the elevated walkway. Per the agreement you wouldn't need this meandering through the hotel. Mr. Brittin says they will give up their perpetual easement and will exist in perpetuity unless circumstances change. He believes the Ilikai Marina has the right to construct it if it would like to and get permission to, but he hasn't heard if they were interested in that.

Bryson Chow representing the Association of Apartment Owners (AOAO) of the Ilikai Apartment Building and AOAO of the Ilikai Marina and intended to focus on the Association's written request for a contested case hearing and that the Board should not make a ruling today because they requested a contested case hearing, but really disputed the successors and interests

that Mr. Brittin has presented some dispute on the topic. The two Associations and its members are the successors and interests in the 1963 agreement since they have property rights in that agreement constitutionally they are entitled to a contested case hearing on this application as it affects that agreement. The Deputy AG said in her testimony that they are not intending to alter that agreement just the easement which is created by that very agreement, but doesn't make sense. They are trying to alter a contract with all the parties consent and that is why they were meeting with all the parties, but when they couldn't reach a resolution Mr. Brittin apparently called the AG's Office and said AOA is not willing to negotiate. Now the Deputy AG is correct it is a mess, but you cannot just ignore the other parties of the contract and try to back door a lot to the 1963 agreement and say don't change the obligations on the agreement and allow M Waikiki to reduce that 33+ foot public access way and have it meander through its hotel and not have people go out in the open air go through their hotel and catch their elevator. People are not able to meander through their hotel to access the Hobron Bridge because when the M Waikiki was built despite the Association's objections M Waikiki or its predecessor built a door and blocked it off and they have people standing there to not allow the public walk through their hotel and to reach the Hobron Bridge and that is part of the counter point in this civil action right now. And correct, the State is not a party.

Mr. Chow said there has been so much misinformation given to the Board I have to correct all these things instead of why they shouldn't make a ruling today and instead wait for the contested case hearing. Because of this misinformation I have to set the record straight. At the beginning, yes, there were encroachments by all the parties on the public easement area. Once the Association learned about it they said to M Waikiki make sure you have the public easement from the walkway to the Hobron Bridge. What M Waikiki did was put up a door and leased the space to Morimoto's blocking off that entire area and extending onto the 33 foot public easement area. Has there been restaurant use in the past? Yes there has open air use with umbrellas. Now it's completely blocked off and closed off to the public and leased out to private parties. The Association says that is a violation and how are they doing that and to find out they are getting revocable leases. An objection letter goes to DOBOR saying hey these guys are applying for another revocable license and they can't have it because of the 1963 agreement and this was August of 2010. In September, M Waikiki getting wind of the objection sends us a letter and says that planter on the Association property is also blocking the easement. They voluntarily removed it, but M Waikiki wanted them to remove it faster and they were going to seek damages if they didn't remove it fast enough. They did remove it from the easement, but Morimoto's is still there serve alcohol on the public easement area. The public access easement is being used for commercial purposes which is improper. That is the reason why this came up after so many years. Although there are encroachments by all the parties with seating and outdoor delivery of drinks and what not, when M Waikiki leased the space to Morimoto's they completely shut that area off. Now we have a dispute and now the public nor do the Associations members have free flowing access across the 3 properties via the Hobron Bridge. Now there is litigation in State Court. Mr. Brittin is correct that they have filed a motion that the Board has exclusive jurisdiction, but he finds it funny that they don't mention that in their motion it also says if you want to continue in this case we also have to sue the State. They are going to bring the State into this and no one mentions that to you. He is trying to pull the wool over your eyes. They cannot modify the 1963 written agreement or the easements created without the consent of all the parties. They tried to get the consent and the parties could not work it out. Now they tried to

back door this agreement by saying we are just going to move the easement that we are not changing the agreement that created the easement, described the easement or placed the easement. We are just going to change where it goes and how big it is. From 33+ feet down to a little corridor hallway, enclosed, not open air space through M Waikiki's property and they can catch their elevator. The public is going to lose out on this. It will be a breach of the 1963 agreement on the part of the State, on the part of M Waikiki and that leads to why they are entitled to a contested case hearing that under Hawaii law if you have a property interest you have constitutional due right to a contested case hearing as both successors and interest both the AOA Ilikai and AOA Ilikai Marina and their owners, our successors, the original owners requested in writing yesterday for a contested case hearing reiterating that request today pursuant to HRS 13, 1-27F the Board is authorized to rule on a declaratory order if that rule is hypothetical or speculative as a contested case hearing is clearly required in this matter. Not to mention if there are issues as to jurisdiction here or in Circuit Court a ruling would be speculative or hypothetical without the consent of all the parties which they (M Waikiki, DOBOR) initially sought. Without that consent there can be no alteration of the 1963 agreement or easements created from it and is the reason why to refuse the declaratory order and allow this to get into a contested case hearing.

Member Gon asked what is the extent of public use of this walkway at present, close to zero. Mr. Chow said he didn't think so. Often a lot of the public go there to watch the fireworks. With respect to the tenant agreement the intent was solely for public access alone and no one else benefits, but the public. If we look at how this works in a practical matter the intent of the agreement with the owners constructed this large walkway to provide more space for their guests and members to get down to the beaches and also to provide the public a nice way to walk through their properties and do business with their concessions, restaurants, snack bars, etc. It was initially described as a wall of sorts. The intent was to also provide public access was to also benefit each of the 3 parcels by bringing in higher foot traffic.

Member Gon asked it's interesting that the specific wording in the portion presented earlier was that the structure specified in the sub-paragraph about it shall be used only for pedestrian traffic and shall be forever open to use by the public. It doesn't say anything about hotel use or majority of the walkway to be used for hotel guests. It is only for pedestrian traffic and opened for public use. Mr. Chow confirmed that is correct which is why DOBOR in October 2010 said they had sent a letter to M Waikiki and said they had consulted with the Deputy AG and we can only use that public access area for public access only and related structures. The encroachments that were on their before and the Deputy AG indicted in this letter that planters and things that consisted for beautification was part of the intent of the 1963 agreement of that public access were acceptable, but anything else that encroached upon that area was not acceptable. The only other thing encroaching and completely shutting off public access is M Waikiki's use and their lease to Morimoto's restaurant making money off of this commercial use. There is no public access about it.

Member Gon asked the section of the walkway that was constructed adjacent to the Modern Honolulu has continuity and seems to run by one corner of the Ilikai. Is there a direct pathway between the Ilikai and this walkway? Mr. Chow said yes, right in front of the Ilikai. There are large platforms there. Member Gon asked whether the Ilikai make use of any portion of the deck

for its guests or the like. Mr. Chow said anything now existing after the planter was removed ...and when the planter was there the Association provided another 30 foot area within which the public could make its way around, but they realized they needed to take the planter out and that is why they did voluntarily removed not by the request of M Waikiki.

Member Goode asked you represent 2 of the 3 private parties and are your clients prepared to finish building what was supposed to be built. Mr. Chow confirmed representing 2 of the 3 and said he wasn't sure and would have to check with them. The question is who is going to contribute as initially both the 2 owners were responsible for constructing what was originally planned. As Mr. Britton said what has been built did receive State approval and he wasn't sure by what the Deputy AG represented there would be any breach of contract with what was supposed to be built and wouldn't know if the Association would have a problem. Member Goode asked you are relying heavily on the 1963 agreement and Mr. Chow confirmed that. Member Goode said and you can't have it both ways. If that were to happen then we would want to keep the easement we currently have with the Modern. Mr. Chow said he assumed that.

Member Goode asked in the submittal they are realigning is what you are objecting to, but if we were to keep that easement as it currently exists and add additional easement that goes through the hotel that would at least provide the opportunity if the rest is built it would benefit the public that it is still there. Do you guys object to that? Mr. Chow said honestly he can't answer that. It's never been raised as an option and would be consistent with the agreement, but he wasn't sure if it would be consistent with subsequent approvals of all parties as to what was built. As the 1963 agreement alone a continued pathway would be consistent with that agreement.

Ms. Matsukawa clarified the State's intent. When they met with all the parties we were working with M Waikiki perhaps they could do a universal settlement to include the Ilikai as well. But, we were not talking about amending the 1963 agreement. We were looking at some universal settlement that would satisfy both hotels as well as accommodate the public in terms of access. She wanted to clarify we didn't say "yes" to have a meeting to agree to amend the 1963 agreement - "no." We approached everybody to say we are willing to be the facilitator and that's all it was.

Chair Aila said the other alternative before us is to enforce the 1963 agreement and require everything to be built and that is another universal idea and Ms. Matsukawa agreed that is a good idea.

Mr. Brittin said that Mr. Chow was incorrect with the facts in the plan that they had sent a letter May 18, 2010 to the Board of the Ilikai requesting that they remove the planter and they offered to pay for the removal and the relocation that Mr. Chow's statement that it was done voluntarily and not at our request was completely incorrect. There were multiple opportunities to remove it and it wasn't suddenly one day they said oh wait were in violation and should go ahead and remove this. It was our insistence that they remove it. It's very unusual for someone who completely disregarded the State's interest in the elevated walkway built first the putting green the planter blocked the elevated walkway for 20-25 years and then to come and say these guys are doing something bad. In affect the RP showed that the property had been used for outdoor dining and pool deck purposes and if you are talking about things like servitudes once you allow

the uses that are in contradiction of a servitude agreement those servitude starts to lose their affect. We have 40 plus years of non-compliant use and maybe longer - maybe the entire use of the hotels. Suddenly they want to come in and enforce those terms on one party and clearly if this would be adjudicated would have issue with unclean hands that they've done everything they can to just take the property without paying the State and without requesting permission. They've also sat on their hands and acknowledged in their pleadings that they were aware of the non-pedestrian uses and chose not to pursue them that all these years later they are suddenly raising an objection. The intent of the agreement is the public had access and it was never stated that they were to provide additional foot traffic for the Ilikai business operations. If that is a benefit then that's a benefit. The public easement over the elevated walkway is not in favor in their property. It is in favor of the public. They don't own that and only by the State is there an easement in favor of the public and administered by the State. This Board has the authority to make these positions and has the authority to modify contracts. HAR 171-63 gives the Board the expressed right to modify agreements including agreements of sales and deeds both of which are contracts. We are not changing the central terms of the 1963 agreement we are saying let's do the best we can to give the State and the public the access they were promised and they believe this is the best deal to accomplish that.

Member Goode asked whether this is a realignment, are we banning the easement we currently have. Mr. Brittin said that we are not that the easement is in place that you own it so you can make a disposition of that easement and you are gaining an easement that you don't have. There is no right to cross in the 1963 agreement to the M Waikiki properties. Member Goode asked is this submittal banning that easement. Mr. Brittin said not at all. You are keeping it. You are expressly retaining it referring to the map and you are selling to use that pool deck and other dining uses solely for 55 years and all those rights go away. The State retains ownership control and this Board will always have the authority over that area.

Member Goode asked and if the rest of the walkway is built. Mr. Brittin said if the event the rest of the walkway is built it will be for the State and the State will own it. It will be public accessed easement across it all the way and at which point we could address a perpetual easement across M Waikiki's property would still be appropriate. It's no longer needed and you can realign it back. He finds it unlikely anyone will step up and build the remainder and it's not sure whether the State wants it at this point. I think the plan in 1963 is different from what's there now wouldn't be necessary something the State wants. That is for you guys to decide. This deal allows people to have public access. People talk about walking to the corner of Hobron and Holomoana, how likely is that? Not very. I also take issue that they've enclosed the pool area and preventing people from walking across the access. People walk across that access way every day. They don't even walk across the area they request them to. They walk across to the pool bar through the center of the hotel and people walk all over the place and no one is ever cited or arrested. No one is ever stopped from crossing. At Morimoto's Restaurant you have to go through the front door of the restaurant and there is a liquor control issue. You have to have some boundaries of where you are going to be sitting to retain service space for the restaurant. It's outdoor, clearly the whole area is outdoor. Previously, in fact, the walkway was under an overpass. We believe it's a good deal for the State.

Member Gon asked to reiterate the statement he just made that the realignment is entirely outdoors. Mr. Brittin said the area through the elevator walkway is completely outdoor. The realignment is referring to that exhibit right along the pool is all outdoor and that last part you walk under the breeze way by Morimoto's and past the retail shop to the Hobron Overpass. You don't have to take the elevator down. You could go across the Hobron Overpass like everyone has and that piece is not changing at all. It is not ADA compliant that it has issues that need to be addressed, but that is not going to happen. There is very little change that is going to happen here.

Member Gon asked to clarify whether Morimoto's is on the easement walkway. Mr. Brittin said the restaurant itself is not that a portion that they put a canopy over it for outdoor shade where you can sit indoors or outdoors. The portion indoors is not on the elevated walkway. Member Gon asked whether the portion outdoors obstructs the pedestrian walk through. Mr. Brittin said it does. There is a planter right there. You have the restaurant and then you have the walkway outside of it. There is nothing to access except the end of the walkway that you don't go anywhere. As to what the 1963 agreement was to provide you were supposed to continue the walk down from that area to either the Ilikai Marina property or overpass down to the Boat Harbor. What is constructed is essentially a walkway to nowhere. To how much the public uses it, people walk through, but tend to be Ilikai guests or M Honolulu guests. The public doesn't have a great excitement of walking up and going nowhere. Some people come up and take a look around and go down to the pool bar or go to Morimoto's, but in providing access with design so you wouldn't have to cross the street to walk to the Boat Harbor since it doesn't provide that kind of access no true public access was ever provided.

Nancy Mueting, a resident at the Ilikai full time testified that she overlooks the whole public right-of-way every day and see the activities that go on having been there for 12 years. In negotiations between the Ilikai and Modern she thinks they came up with a good compromise and the Modern doesn't want to cooperate as you know. The assertion that Modern's property is private and they are going to allow access across their property for this so called re-alignment she didn't know if that is exactly true because in the 1963 agreement states that access rights affecting Lot 1A and Lot 1B are conveyed to the State. To me that means the public can walk across your courtyard and we noticed that the Ilikai we don't have private property here or there so the need to create a new alignment are already in the deed that that public can cross and in fact anywhere because its across their whole lot. The Ilikai has had a lot of hotel control over the years and that is why they were able to push us around on the public right-of-way and DOBOR is interested in getting some money out of it. They've complied and created a lot of other uses. The Modern's attorney was saying that the Board has the right to change the easement according to the law make new uses that they could do what they want with it. If you look at the situation the property or easement has been leased and the law states if a property has been abandoned then the State could make another use. In this case DOBOR jumped in from the very beginning and been a willing participant in the misuse of the public right-of-way and you can't claim it's not used. People have been using it and if it was open you would have a nicer long walk. The Ilikai is also interested that the public right-of-way be reduced in width and doesn't need to be quite that big, but still allow it and allow a straight path to parking garage in front of the ballrooms. They are claiming this is an implied easement because it's been in use since day one where the Ilikai can go straight to the garage if they allow people from the Ilikai to punch

through the wall they built and open to street like it used to the garage it would give more privacy to their special guests who are now bombarded by all the public and handicapped people and other people who might be a nuisance to their guests. I do see that the public bothers the ladies propositioning them in their bathing suits. I think they need more privacy. If that implied easement could get them through then their pool would have more privacy. The planter was removed after a meeting with DLNR in June 2010. Bob Romo and I went to the DLNR explaining the situation and it sounded like Modern was building all kinds of things on the public right-of-way and we are responsible according to the deed what they do there and what structures they put on there to obstruct. A DLNR representative came out and took pictures and said you can't have this planter there and she has the letter to Mr. Romo to please remove the planter to facilitate the public right-of-way. Unfortunately, this meeting was very short notice and her testimony is hand written and her exhibits are very rough. There is another opportunity that she would like this to work out for everyone that she has a background in landscape architecture and she knows there is a workable solution.

Member Gon asked whether she is suggesting they do not approve the proposed realignment that they have before us. Ms. Mueting said no. If you read page 2 of the agreement where it says where the public access was conveyed to the State of Hawaii across Lot 1A and Lot 1B where Lot 1B is the Modern property and she displayed an illustration showing that Lot 1A is the Ilikai and Lot 1B is the Modern. There is public access across these properties and they don't need to realign it that it is not a dead end. People walk along the right-of-way and according to the agreement they cross the right-of-way and you have public access across any parts of the Ilikai and the Modern and they might wander over to the bridge and finish going down the stairs which could be changed to allow the public on that bridge because right now it's for the owners of the 3 properties and their guests. There has never been any signs posted – the public not permitted. This area you need to control it, but it could be re-written in the deed.

Bob Romo testified that he has been with this thing since the beginning when they met with a representative from M Waikiki and what he said is they don't want you on their property and we want to put a wall all the way up to the rail. They don't want to have anything to do with you people and that was a quick 15 minute meeting. When they started researching that the 33 feet 8 inches from the rail was State property and they were already putting flooring in and planters which were fine. We brought to their attention that they couldn't have both ends of the stick and couldn't use that which was used in the past and closed the 30 feet that used to go past the ballrooms, but they made the decision that they can have both of those things. Even if the easement comes to a dead end it still overlooks the Yacht Harbor, the ocean and a great place to watch the sun go down and so on. The public is having that taken away from them. It will be turned into a commercial space. They tried to negotiate to half to what they used to have for a straight shot to go to the bridge that ties to the Marina to the other 2 buildings and warned them ahead of time before they put these little bathrooms in that, in fact, they couldn't have both of those things. They (M Waikiki) were the ones to break off the negotiations and they were the ones that went to the State DLNR and they were removed from the equation from that particular point. We've been trying to negotiate. We've been trying to get something that we had before to cross over to the Marina Building and then work out a deal with them the 33 feet 8 inches of prime property for the rest of our use and whatever else they want to do. As far as the planter goes when we realized that our planter was blocking also something done by the owners of both

buildings at one time. We as an Association realized we were blocking it with the planter Bill Andrews brought it to my attention personally, we were the ones at fault at that, and we were the ones that did it. There was no threat by the other side. They threatened us when it was closed to their opening and we hadn't finished putting the tiles back in, but we did everything we need to do to open that area back up again. If you saw the area that our easement sits on there is not a chair out there. We keep all our chairs back from the 33 feet 8 inches on our side of the property.

Chair Aila asked what his solution was. Mr. Romo said he would like to have the half of what they used to have pass through by the ballrooms where there was 30 feet of open space and a straight shot to the bridge tying all 3 buildings in nicely. When they have special events they have private parties there they put guards at that entrance on the easement and he watched them turn people away. I forced the issue myself and went through. When they approached me I told them this is a State easement and I'm entitled to come here and then they backed away. But, for the most part when they have a private party they close that entrance down. If you don't know any better they will close it down and turn you around.

John Popavits, General Manager of the Ilikai AOA testified that he has been there for 3-1/2 years, but was affiliated with the Ilikai for 15 years. It was unfortunate in 2006 when the developers split the property when it was never been split. Bob was right, for the longest time it was E Realty and then it was M Waikiki, nobody wanted to talk to the homeowners association. The first representative that came in said they were going to block this off and they told him they couldn't do that and they said watch me. They came in with plans showing what they wanted to do. They told them to keep the access the way it was and they didn't want to listen. Their attorney did threaten them with a planter when it got close to the opening of the addition back then. Everything was in place. Mr. Romo is a director on the Board and he instructed Mr. Popavits to do some things and they did it. A lot of things they are telling you are misleading. There were no complaints about the easement back in the 1970s.

Board member Gon made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Goode seconded it. All voted in favor.

10:23 AM EXECUTIVE SESSION

10:55 AM RECONVENED

Member Goode said he would like to make a motion. After listening to everything and conferring with their Deputy AG he feels that the public is getting screwed here because parties are bickering, but he thinks in general what's been proposed makes sense to the public with the exception based on the testimonies that we've heard is for the ability for the public to enjoy that makai view along the edge of the walkway. He would like to move that the staff submittal be accepted and that part of that submittal say that other terms and conditions as prescribed by the Chair to the best interest of the State and shall be applicable to two conditions he would like to see are that the public access along the makai edge of the walkway be preserved as appropriate

and should for any reason the balance of the walkway be built (it was never built) than any 55 year easement that is granted to the Modern would have some kind of clause to address any future walkway being built. Member Edlao seconded that. All voted in favor.

The Board:

Amended staff's recommendation by adding the following conditions after recommendation #8. That other terms and conditions as prescribed by the Chairperson to serve the best interests of the State shall be applicable to the following:

- 1) That the public access along the makai edge of the walkway be preserved as appropriate and**
- 2) Should the balance of the walkway be built then any 55 year easement granted to the Modern would have some kind of clause to address any future walkway being built.**

Otherwise, staff's submittal was approved as submitted.

Unanimously approved as amended (Goode, Edlao)

Item D-4 Resubmittal: Approve the Withdrawal of Approximately 3 Acres from General Lease No. S-5320, Peter H. Jose and Richard A.J. Jose, Lessees; Authorize Amendment of General Lease No. S-5320, Peter H. Jose and Richard A.J. Jose, Lessees, to Reflect the Withdrawal, Decrease the Acreage of the Premises, Reduce the Rent, and Clarify that There is No Improved Legal Access to the Lease Premises from a Public Highway; Laupahoehoe, Hawaii, TMK: 3rd/ 3-6-6: portion of 46.

Kevin Moore, Assistant Administrator for Land Division reported that items D-4, D-5 and D-6 are related pertaining to land in Laupahoehoe that the U.S. Department of Agriculture (USDA) Forest Service is requesting a 65 year lease on a 3 acre parcel as part of their experimental tropical forest in the area. The 3 acres is permitted pasture lease. At the Board's meeting of January 2012, the Board approved the issuance of this lease subject to conditions and staff is ready to go ahead with the final approvals of this lease. This withdraws the 3 acres from Jose's pasture lease and make some related amendments to that lease which reduces their acreage and will decrease their rent which is a simple prorata down because there is a rental reopening for the Jose's in June 2013. Staff is including an acknowledgement in the Jose lease that they don't have approved access, but they do have an access road and they would have to approve that. He referred to pages 2 & 3 on the USDA's withdrawal that the USDA would have to fence in this 3 acre portion to keep the livestock from escaping. USDA is going to pay the Jose's \$1560.00 to reimburse them for costs. Staff's recommendation is to approve the withdrawal of the 3 acres from the Jose lease with those conditions.

Item D-5 Resubmittal: Amend Prior Board Action of January 27, 2012, Item D-2, and Prior Board Action of April 25, 2008, Item D-9, Regarding Issuance of Direct Lease to United States of America, Department of Agriculture (USDA), for Research and Educational Purposes, Laupahoehoe, North Hilo, Hawaii, TMK: (3) 3-6-6: portion of 46. The Purpose of the Amendment is to Clarify

that There is No Legal Access to the Proposed Lease Premises from a Public Highway, Include Requirements in the Proposed Lease that USDA Fence the West, North and East Sides of the Lease Premises and Reimburse Lessees under General Lease No. S-5320, Peter H. Jose and Richard A.J. Jose, \$1,560.00 for Their Costs Incurred in Clearing and Planting the Proposed Lease Premises in Grass, and Include a Board Finding that a Lease to USDA for its Research and Educational Center Will Be of Greater Benefit to the State than Mining Activity on the Land.

Mr. Moore explained that item D-5 goes back to amend the Board's prior actions to clarify that the USDA acknowledges there is no approved legal access to this lease access and will be responsible for taking care of access. There is a requirement for the installation of the fence - the withdrawn 3 acres, there is the requirement of reimbursement to Jose's after 90 days after the State and USDA sign the lease. At the request of the AG's that the Board find the USDA for research and education purposes is a greater benefit to the State than mining activity on the land because they have a slightly modified reservation mineral rights to this lease. The recommendation is to amend the Board's prior proposals and approval to the USDA at to those respects.

Item D-6 Resubmittal: Grant of Term, Non-Exclusive Easement to the United States of America, Department of Agriculture, for Access and Utility Purposes, Laupahoehoe, North Hilo, Hawaii, TMK: (3) 3-6-6: portion of 46.

Mr. Moore conveyed that although the USDA doesn't have legal access what staff can do is grant an easement over an existing road on the Jose lease.

Unanimously approved as submitted (Gon, Goode)

Item C-6 Rescind Approval in Principle of Direct Lease to United States Department of Agriculture Forest Service for Research, Education, Office and Housing Facility Purposes at the Puu Waawaa Unit of the Hawaii Experimental Tropical Forest, Puu Waawaa Forest Reserve, North Kona, Hawaii, Tax Map Keys: (3) 7-1-001:Portions of 004 & 006 and Request Approval in Principle of Direct Lease for New Location Within Puu Waawaa Forest Reserve, North Kona, Hawai'i, Tax Map Keys: (3) 7-1-001:Portion of 006

Dave Smith, Acting Administrator for Division of Forestry and Wildlife (DOFAW) informed the Board that item C-6 is similar and what staff is asking is to rescind approval in principle of the direct lease to the Forest Service and to lease another parcel. The issue was they found an underground storage tank on the original parcel where both the State and Federal attorneys didn't want to take responsibility for and backed out from that particular lease. The Forest Service found another parcel down the road which is part of an old runway which would be the education and administration for Pu'u Wa'awa'a Forest Reserve.

Unanimously approved as submitted (Gon, Edlao)

Chair Aila announced that agenda item E-2 for Hawaii Pack and Paddle is going to be withdrawn at their request.

Item C-5 Request for Approval of the 'Āhihi-Kina'u Natural Area Reserve Management Plan

Mr. Smith distributed a handout to the Board members and said that summarizes everything in the presentation. Staff is requesting approval for the "Āhihi-Kina'u Natural Area Reserve Management Plan which has been going on for a number of years. He referred to the Acknowledgements section listing the community members who put this together – the Advisory Group and Working Group that put together the plan.

Member Gon disclosed that among those advisors and planning group also includes some staff from The Nature Conservancy of Hawaii, but he has no involvement with their plan and doesn't believe he needs to recuse from this item. Deputy Attorney General Cindy Young acknowledged that is correct.

Mr. Smith said they also had staff from the U.S. Fish and Wildlife that Matt Ramsey was here and worked on it for a number of years. He did a terrific job and had to leave. Emily Fielding is here and David Quisenberry from the NARS program is here if you need additional information.

Member Gon related how please he was with this that it is an attentive and detailed plan that pays close attention to important resources in the area. High public exposure and is a challenge to come up with a management plan. He likes the specific approach that this plan takes.

Chair Aila asked whether the Army Corp of Engineers finished their unexploded ordinance activity there. Randy Kennedy (DOFAW/NARS Program staff) said that they are still waiting for the report from the Army Corp of Engineers. They had a couple delays in getting the report to us. The 2 year closure was due to the survey and will keep the Chair abreast on that.

Emily Fielding testified thanking the Board and that it is a privilege to work with the State DLNR on the "Āhihi-Kina'u Natural Area Reserve Plan and initiated the planning process bringing capacity to the site that it was a complex site. There were 7 major resources natural, cultural and wilderness resources were identified. There were 32 major threat categories condensed down to 4. A complex, rich, well-loved site, but not well cared for and brought capacity into the planning aspect. It took 2 years of planning and 2 years of approvals. The first time it went to the NARS Commission they asked for detailed implementation plan which was the 12 priority actions which is in the plan.

Dave Quisenberry testified that he reiterated what Emily said that he is the new reserve manager there. The implementation plan is what they are focusing on which is on page 6 of the Overview – 11 points there. They recently hired a new volunteer coordinator who is a huge asset to the program and they are actively recruiting other volunteers to be eyes and ears on the ground in the Reserve and have also been working on an interpretive program where volunteers will provide education and outreach to residents and visitors. They are also improving and maintaining the

Reserve's on-site facilities. They recently got power to the office trailer at Haena and will soon have phone and internet capabilities and hope to be fully operational at the end of the month. He asked the Board's approval.

Unanimously approved as submitted (Edlao, Gon)

Item D-7 Amend Prior Board Action of July 13, 2012, Item D-14: Withdrawal from Governor's Executive Order No. 3867 to the Department of Agriculture for the Kahuku Agricultural Park, Approval, In Principle, of the Issuance of a Direct Lease to West Wind Works, LLC, for a Commercial Renewable Wind Energy Generation Facility; and Issuance of a Right-of-Entry Permit, Kahuku-Malaekahana, Koolauloa, Oahu, TMK: (1)5-5-08:6 and

Amendment: In Summary, the Recommended Action Will Delete the Assignment of Lease, Replace West Wind Works, LLC, with Na Pua Makani Power Partners, LLC, as the Applicant; and Extend the Applicant's Right-of-Entry Permit Expiration Date.

Mr. Moore related some history on item D-7 and the AG's office suggested substituting the Assignee as the approved on this proposal. What the agreement does is instead of assigning in principle the Lessee wants to extend its right-of-entry permit.

Keith Avery, President of West Wind Works testified that this assignment was already done and that this is a technical change. He gave an update on the project itself that they received PUC approval to work with Hawaiian Electric on the 2008 RFP and is allowed to get a power purchase agreement. This will bring revenue on these lands and is an opportunity for the State to pursue these renewable energy projects.

Unanimously approved as submitted (Edlao, Gon)

Item D-3 Rescind Prior Board Action of August 24, 2012, Item D-4, Forfeiture of General Lease No. S-4312, Gary J. Rubio and Karen L. Rubio, Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-058:026.

Mr. Moore conveyed background on item D-3 that after the Board approved the Forfeiture the Rubios came in the paid up their bond amount and brought their rent current. Also, normally staff would send the board submittal to the Lessee by certified mail and that wasn't done in this case otherwise the Lessee would've come here, but they are here today. Staff's recommendation is to rescind and reinstate this.

Gary Rubio, the Lessee testified that they normally get certified mail and would not let this go knowing that the August deadline was do or die. The economy is bad and he would've explained himself. Also, the certified mail went to the wrong address and he didn't know until staff called him. He described what improvements he had done to the building and property and that he was working on getting his bond together. Mr. Rubio always pays his rent with a cashier's check and wants to continue the lease.

Unanimously approved as submitted (Edlao, Gon)

Item D-1 Withdrawal from Governor's Executive Order No. 2380 to the Department of Accounting and General Services and Reset Aside to County of Kauai, Department of Public Works for Sidewalk and Parking Modifications, por. of Lihue Town, Lihue, Kauai, Tax Map Key: (4) 3-6-005:011.

Mr. Moore conveyed that item D-1 relates to the State office building on Kauai and gave some background. Staff recommends approval.

Unanimously approved as submitted (Goode, Edlao)

Item D-2 Issuance of Revocable Permit to Jack and Margaret Phillips for Parking and Maintenance Purposes, Por. Kapaa Rice and Kula Lots, Kawaihau, Kapaa, Kauai, Tax Map Key: (4) 4-5-004:por. of 2.

Mr. Moore said that item D-2 is to give a RP to the applicant for landscaping purposes and puts the burden on the applicant to maintain.

Unanimously approved as submitted (Gon, Goode)

Item E-2 Reconsideration of the Board's September 14, 2012, Decision to Terminate Revocable Permit No. SP0064 Issued to Hawai'i Pack and Paddle, LLC, Kealakekua Bay State Historical Park, South Kona, Hawai'i, Tax Map Key: (3) 8-1-011: 001, 006, 010, 011, por.

Chair Aila noted that item E-2 has been withdrawn.

WITHDRAWN

Item E-1 Forfeiture of General Lease No. SP0129, Jill Hanna Neerings, Lessee, Lot 83, Waimea Canyon State Park, Waimea (Kona), Kaua'i, Tax Map Key: (4) 1-4-002:081

Stephen Soares representing State Parks related some background on item E-1 regarding lack of payment and staff went to the cabin on Monday and it looked abandoned. On Tuesday staff went there to take photos and was met by a lady who said she was the Lessee and intended to pay and staff did not take the pictures. On Wednesday, staff went back and posted a copy of the default notice about the meeting and the submittal to the door. Fiscal has not received any payment as of this morning and staff recommends proceeding with the forfeiture. Staff sent certified mail, but was unclaimed. On October 4th, staff did send via regular mail a copy of the Board submittal, the letter and the default notice.

Unanimously approved as submitted (Goode, Edlao)

- Item C-1 Request to Write-Off the Following Uncollectible Accounts on the Islands of Oahu and Kauai:**
- a. Robert S. DeRego, Jr. (amount owing: \$1545.87)**
 - b. Mark Connely (amount owing: \$699.77)**

Mr. Smith reported that it's a statewide problem will people are overpaid and they referred this to a collection agency to get the money back. Staff is implementing internal controls to prevent this, but at some point they will have to cut their loses. It would cost more to pursue it.

Unanimously approved as submitted (Gon, Goode)

- Item C-2 Request Approval for Selection of the Competitive Sealed Proposal Process and Authorize the Chairperson to Award, Execute, and Extend Contract(s) for Implementing the Kahikinui Watershed Restoration Project, Phase 2, TMKs: (2) 1-9-01:03 and (2) 1-9-01:07, Maui**

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for This Action

Mr. Smith spoke on the background for item C-2 that it is for native forest restoration.

Member Gon said he loved the plans for thousands of acres.

Unanimously approved as submitted (Edlao, Gon)

- Item C-3 Request for Authorization to Negotiate and Sign a Contract(s) to Furnish Helicopter Transportation Services for Department of Land and Natural Resources Division of Forestry and Wildlife, Kauai; and**

Request for Authorization to Negotiate and Sign a Contract(s) to Furnish and Deliver Fence Materials for Department of Land and Natural Resources Division of Forestry and Wildlife, Statewide; and

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for These Actions

Mr. Smith conveyed item C-3 that this is in support of our watershed initiatives that is going on now and gearing up to buy fencing materials to transport up into the mountains.

Unanimously approved as submitted (Gon, Edlao)

- Item C-4 Request to Conduct a Public Hearing Regarding a Set Aside of Approximately 376 Acres as the Kaluanui Natural Area Reserve, Withdrawn from Sacred Falls (Kaluanui) State Park, TMK: (1) 5-3-011:009 portion, Kaluanui, Oahu; and**

**Request Approval of Declaration of Exemption from Chapter 343, HRS,
Environmental Assessment Requirements of this Action**

Mr. Smith noted that the TMK in the agenda is correct, but not in the submittal which left out the (1) and asked to amend the submittal throughout where the TMK appears. Kaluanui is part of a bigger north Ko'olaus planning effort that staff has going. It's part of the Ko'olau Watershed Partnership, there is a whole bunch of lands up there – DLNR, Kamehameha Schools, the Army and others that work in that area to protect a whole series of areas when it was Poamoho. As you know Sacred Falls State Parks has been closed due to safety concerns from the rock fall accident and there is no way to make it safe and are struggling on how to provide access. The upper area of Kaluanui is an extremely rich watershed and native forest area. The stream is unique that it is the only stream on Oahu that runs uninterrupted from the head waters down to the ocean. It's got a number of rare and endangered species. They had people on the ground giving assessments and this area is one of the real gems. The State Parks is really glad to give it to us. The proposal is to take 376 acres out of the State Parks and add it to the Natural Area Reserve System, but at this point they are asking for public hearings regarding the set aside.

Member Gon asked what the lower road or trail is. Mr. Kennedy said that is Castle Trail and it is open.

Member Gon and Mr. Smith commented that trail is a grind and that is a tough place to manage. There some discussions about helicopter work and continuation of the trail to the summit trail.

Mr. Smith said staff is asking permission to go out to public hearings to gather any issues or concerns if they were to create this to be a more protected area.

Member Gon said it seems there will be public hiking access via Castle Trail and Mr. Smith confirmed that members of Hawaiian Trail and Mountain Club or any hard core hiker will use it and has potential for recreational access. Having staff in there will be a plus and they will pay more attention to it since State Parks hasn't done anything and concerns with the liability issues. Forestry would be managing it more for natural area protection and will manage the trail more for people on the extreme side of hiking and staff would work with them to keep access open. Because of the safety issues there is a whole series of waterfalls, rock fall issues and you can't open up that lower area which he wasn't sure if there was a plan for that area, but will keep it for now.

Member Gon said up to now the 3 NARS on Oahu are all Waianae Mountains and would be neat to have some representation on the Ko'olau forest. Mr. Smith said they will be moving in to the Ko'olaus. They had the Northern Ko'olau planning unit and the Governor's office and Chair's office came in with the watershed and it fit perfectly with what they already had going which was seamless. They are ahead of planning and are staging.

Member Gon commented that it's a nice milestone for the whole "Rain Follows the Forest." Mr. Smith agreed that they are staging Poamoho and would like to get to the next stepping stone as the area is approved and compliance completed to protect the native forest.

The Board:

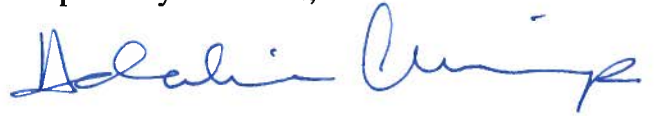
Amended the Tax Map Key (TMK) number throughout the submittal to match the agenda TMK number (1) 5-3-011:009. Otherwise, staff's submittal was approved as submitted.

Unanimously approved as amended (Gon, Goode)

Adjourned

There being no further business, Chairperson Aila adjourned the meeting at 11:40 a.m. Recording(s) of the meeting and all written testimonies 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