

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

DATE: FRIDAY, DECEMBER 14, 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 9:07 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
David Goode
Jerry Edlao

Rob Pacheco
Dr. Sam Gon
John Morgan

STAFF

Paul Conry/DOFAW
Russell Tsuji/LAND
Dan Quinn/PARKS
Maria Carnavaele/DAR

Sam Lemmo/OCCL
Lloyd Haraguchi/PLDC
Curt Cottrell/PARKS

OTHER

Linda Chow, Deputy Attorney General
Richard Hoeflinger, C-1
Glennon Gingo, C-1
Robert Harris, D-19
Robert Petricci, D-19
Jocelyn Doane, D-19
David Frankel, D-19
James Thompson: D-13, D-14, D-16
Stanford Carr, D-10
Ted Myers, E-1
Iwa Kalua, E-2
Carl Tom, D-5
Leslie Hill, D-5
Tiffany Johansson, K-2

Ross Smith: M-1, M-2
Bob Masuda, C-1
Greg Kugle, K-3
Shannon Wood, D-19
Barbara Gittan, D-19
Michelle Matson, D-19
Cindy Rezentes, D-19
Greg Barbar, D-6
Joan Cash, E-1
Alan Whiting, D-4
Geoff Hand, E-2
Charles Umamoto, D-5
Jim Mei, D-12

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

Item A-1 November 9, 2012 Minutes

Approved as submitted (Pacheco, Gon)

Item A-2 November 30, 2012 Minutes

Agenda item A-2 was not ready.

Item M-1 Amendment No. 2 to State Lease No. DOT-A-06-0008 Approval for Additional Space by U.S. General Services Administration on Behalf of U.S. Department of Agriculture, Honolulu International Airport, Honolulu, Oahu, TMK: (1) 1-1-03:portion of 1

Item M-2 Issuance of a Hangar Facility Lease, State Lease No. DOT-A-12-0014 to Steven J. Notman, Molokai Airport, Island of Molokai, State of Hawaii, TMK: (2) 5-2-04:portion of 8

Ross Smith, Department of Transportation (DOT) – Airports Division, Property Manager said that there were no changes to the submittals and conveyed some background on items M-1 and M-2.

Unanimously approved as submitted (Gon, Edlao)

Item C-1 Approval to Enter into a Curatorship Agreement with On Target, Inc. for Planning, Development, Operation, Management, and Revenue Generation of the Hawai'i Public Shooting Range at Pu'u Anahulu, Pu'u Anahulu Game Management Area, Hawai'i

Written testimony from Richard Hoeflinger was distributed to the Board members.

Paul Conry representing Division of Forestry and Wildlife (DOFAW) briefed the Board on item C-1. As advised by the Deputy Attorney General (AG) he has an amendment that components of the MOA (Memorandum of Agreement) would only allow staff to initiate actions after the environmental assessment (EA) is completed at the Shooting Range. Staff is asking the Board to continue an MOA with On Target, Inc. just for technical assistance on planning and design. He distributed copies of the amended recommendations for the Board to consider. After Member Pacheco's inquiry, Mr. Conry said that the curatorship will change and staff will ask the Board to delegate to the Chairperson... reading from the amended recommendation which is scaled down to just planning and design. Member Pacheco asked then after the environmental review is done staff comes back with a more extensive agreement and Mr. Conry confirmed that and at that point they will have who will operate it. Member Goode asked whether any mitigation measures identified by the EA will be incorporated into the MOA and Mr. Conry acknowledged that where

he related some background and the work done by On Target and staff recommends amending the recommendation that this moves forward delegating to the Chair to negotiate the agreement.

Member Pacheco asked when he talked to the AG on this whether there was any discussion on other avenues ...that they could put a condition on the original recommendation that none of the activities in the MOU can be initiated until the 343 process is completed or is...Mr. Conry said after discussions with the AG yes, that is some of the recent court cases would be authorizing approval because at this point you don't know if there will be a shooting range through this process.

Richard Hoeflinger, President of On Target, Inc. testified relating some history in working on this project and referred to his written testimony. The EA will be completed by April 2013. The meetings are completely transparent.

Member Gon asked whether Mr. Hoeflinger was ok with staff's amended recommendations and he said he was.

Member Pacheco asked where the funding was coming from and Mr. Hoeflinger said funding for the EA and the design is from the Robertson fund under the Federal Wildlife Act which is a self-imposed tax by hunters and shooters who pay 10% income tax and divvied up to the states. The design effort is about \$330,000. A \$12,000 grant was issued for more educational work.

Bob Masuda testified that he supports this relating that while he was DLNR deputy they were able to set aside land by the landfill. He serves on the Board for On Target and Hawaii County law enforcement is involved along with educators, environmental groups to create a world class shooting range. Mr. Masuda related how the Waikoloa hotel was involved with the sound testing.

Mr. Hoeflinger mentioned the potential for incoming revenue noting the increase in target shooting in U.S.

Mr. Masuda said he and the (On Target) Board members are certified or will become certified by top experts for all shooting equipment. It's our responsibility to provide proper shooting and safety that is taught and practiced by the Big Island hunters and shooters that they should do it right.

Glenn Gingo representing On Target, Inc. testified being a fire arms instructor for years and his role is to involve the under 60 crowd and we have a responsibility to have a safe place to handle fire arms. It is a great private-public partnership and is in full support.

Member Pacheco asked we are delegating to the Chair and will the rest of the MOA come back to the Board. Mr. Conry acknowledged it will. After the environmental compliance staff will come back for the Board to act on accepting the documents and for the curatorship to move forward. And, if there are any other partners or any more designing will be done at that time.

Unanimously approved as amended (Pacheco, Edlao)

Item K-3 Appointment and Selection of a Hearing Officer to Conduct All Hearings for a Contested Case Regarding Enforcement Action OA-13-07 Regarding an Alleged Unauthorized Shoreline Erosion Control Structure by 4615 Kahala Avenue Corporation, Honolulu District, Island of Oahu, Tax Map Key: (1) 3-5-005:015.

Sam Lemmo representing the Office of Conservation and Coastal Lands (OCCL) explained that staff seeks your approval to allow staff to select a hearings officer and delegate the authority to the Chair. The hearing officer will serve in the Kahala Corp. case where staff asked the homeowner to remove the revetment, but they didn't agree and filed for a contested case hearing.

Greg Kugle representing the landowner testified in agreement with Mr. Lemmo and supports the contested case hearing and action before the Board. He showed some photos of the coconut trees about to fall into the ocean.

Unanimously approved as submitted (Morgan, Gon)

Item D-19 Presentation by the Public Land Development Corporation (PLDC) regarding the Land Optimization Plan and a Request for the Board to Adopt a Policy Restricting the Transfer of Certain Lands to the PLDC in Fee Simple, within the Conservation District, or within Kokee State Park

Written testimonies from David Kimo Frankel, Councilmember Gary Hooser, Mary Lu Kelley and OHA was distributed to the Board.

Russell Tsuji representing Land Division informed the Board that staff was asked to place this item on the agenda as it relates to any future dispositions to the Public Land Development Corporation (PLDC). Mr. Haraguchi is here to do the presentation on an optimization plan. On our submittal we had a few recommended conditions that they are seeking the Board to adopt as a policy about not transferring certain type of lands to the PLDC. Any future dispositions of land the Board will be privy to determine whether this disposition is appropriate and if so what any additional conditions further and above what is bought on this general policy.

Lloyd Haraguchi, Executive Director for the Public Land Development Corporation (PLDC) reported that they come before you after some public hearings that they had on the neighbor islands and on Oahu and meetings with groups who have shown concerns for the way that PLDC have been moving forward. Staff has been listening to all of the comments and felt at this point in time they are scheduling some meetings with the stakeholders to talk about the concerns that they've had. The issue of conservation land, the transferring of land in fee simple and to build a hotel in Koke'e is part of a plan to give relief to the people that are concerned. He distributed his PowerPoint presentation and went over it on the video monitor.

On the Optimization Plan that people questioned. The PLDC staff and PLDC Board had approved the Strategic Plan and that set the guidelines for us for the future which is part of the Optimization Plan where there was some confusion that the Strategic Plan does go over the goals and objectives which is part of any Optimization Plan.

A. PLDC Public Land Optimization Plan

1. Statutory Requirements

2. PLDC Strategic Plan

a. Goals and Objectives

1. The goals are to identify any potential projects to encourage partnership between communities.
2. To detail the process of agency involvement and approvals required for a project.
3. To work with departments in pursuing new initiatives that increases the public benefit. To assist departments in helping with projects.
4. To help communities attract partners for community reinvestment projects that support community needs this is important to PLDC. One of their goals is assist with kupuna and non-profits with moving their projects forward.

b. Guidelines

1. Are our vision in our Strategic Plan to assist the counties like their Parks building.
2. Projects in moving forward. Work with agencies to establish new programs and initiatives like schools or other types of businesses and opportunities that they will be looking at.
3. PLDC assists state and county agencies in achieving their core missions and increases their department's revenues.
4. To create jobs and partnerships which PLDC would be a conduit to help with.

3. Policies

PLDC supports staff's recommendation that the Board will not transfer lands

- a. in fee simple,
- b. the lands in the conservation district, or
- c. within the Koke'e State Park.

Member Gon asked what the time frame was for the Optimization Plan. Mr. Haraguchi explained that the Optimization Plan is scheduled by the time the Legislature goes around because there is a report to the Legislature 20 days prior which is part of the Optimization Plan. The inventory portion is not done and they will ask for a deferment, but they will submit to the Legislature. What is before you is important to have in the plan itself the Land Board is here to protect the land and this does it answering some of the questions the public has. In answer to Member Gon's question about when before the Legislature Mr. Haraguchi said January 16th.

Member Gon asked whether the Strategic Plan was available for public scrutiny and Mr. Haraguchi confirmed that it is on-line and was approved by the Board a couple months ago.

Member Pacheco said that there were concerns about restrictions and one for conservation district lands and what benefit would be to the general public asking to give some scenarios in conservation land. Mr. Haraguchi said that some benefits to the public would be improving parks, beaches, harbors which are issues that they will be looking at. Harbors are separate from this, but beaches and parks are and are things they will be looking at to improve for the greater community. Chair Aila said in trying to address public concerns about conservation lands the idea of having an exception in there that we don't know all the possibilities that might come up.

There might be a useful project zoned conservation lands that we do not want an expressed prohibition against considering. This exception is out there in case something pops up that provides a true opportunity for public lands in partnering with some entity then we should be able to consider it and that is the whole reason for that. People who mistrust or are interrupting saying there is some secret project and there is none. It is to reserve if something should pop up that requires us to take a look at it for whatever reason they should be able to take a look at it. The Board will always have the ability in this case we are talking about lands that are under the jurisdiction of the Board is the granting entity to always have the ability to add additional conditions based on public input. Member Pacheco pointed out that the Board would have final say. Chair Aila said in the case of DOE they would have the same jurisdiction.

Member Gon pointed out that this Board does have the discretion to entertain those projects within the conservation district that would otherwise qualify for a conservation district use permit (CDUP) and he thinks that clause might be unnecessary. What it does is generates the appearance of a loophole and suggested replacing that with a proposed project intended to protect natural resources or otherwise would qualify for a CDUP” because that would make it fall strictly within the realm of law that this Board must adhere to and that was the testimony provided by the Native Hawaiian Legal Corporation that listed all the conditions under which the conservation district use might be given. We recognize that this Board must adhere to law and has the ability to establish policy. Since the law already qualifies certain uses that fall within that CDUP and application process, all that second clause does is muddy the waters in terms of our statement and that is the point he wanted to make.

Member Pacheco asked whether he wanted the top complete paragraph above the recommendations to be incorporated down in B. Member Gon said not necessarily. Just strike that “great benefit to the general public” since that is one of the CDUP clauses in the law and just say qualifies for a CDUP. That way it falls strictly within adherence to the law in conservation district and makes clear what our policy is for these kinds of transactions.

Member Goode asked whether the PLDC Board reviewed these proposed guidelines and are in support of them. Mr. Haraguchi replied in the affirmative that staff sent it out and no one objected to these conditions. Member Goode said they are in support then and asked if this Board didn’t act at all the PLDC Board could still act on it. Mr. Haraguchi said yes, we could, but they look at the entire process again and said many times that the various title holders to the land whether it’s the State or the County that they are truly the drivers and you can add conditions to the transfer rights to us and this provides you an opportunity to do this. We feel something like this is helpful and will answer some of the public concerns. He thinks it’s a positive move forward and that you (BLNR) are the overseers of the land as a Board. Member Goode agreed and said that he wanted to know how this all works together that they only had that one meeting on PLDC several months ago which was our sole interaction and we will have more. Mr. Haraguchi said any kind of requests will be coming before the Board (BLNR) on numerous occasions to have discussions in regards to our interests to some of the lands that you have.

Chair Aila noted there will be testimonies to repeal, but this body does not have jurisdiction over repeal and that is the purvey of the Legislature. Say it, but get to the concerns before the Board.

Robert Harris, Director of the Sierra Club – Hawaii Chapter testified wanting to reiterate the concerns of the Native Hawaiian Legal Corp. and appreciated PLDC's efforts recognizing the concerns of development on conservation land that we all share that concern that all conservation land is reserved for what it was intended including protecting watersheds, recreation, conservation and simply preservation. Here the concern is pushing forward a policy that says development on conservation land unless the exception is the public interest becomes problematic just in that. It is a subjective standard and the Native Hawaiian Legal Corp. articulated some specific examples citing the example of a hotel on the Kaiwi coastline which could bring in a great deal of revenue and could fund a lot of programs, but it doesn't comply with the intent of preserving that entire area and leave decades of controversy and final resolution to preservation as conservation land entrusted to the State for protection. Our concern with this policy with exceptions does create potential problems in the future. Adopt a policy saying we are not going to use the PLDC for conservation land because conservation land is intended to be protected and intended to have heightened scrutiny for development projects going forward and that is why development projects come to the Board for approval. It would be unusual for this Board to say we're going to keep those regulations in place when we have the oversight rather than transferring the oversight to the PLDC. Otherwise, in affirmation of the 8 criteria that you have which include ensuring that you use is in conformance with the intent of the conservation area. Member Gon's suggestion is good, but Mr. Harris recommended referencing the specific administrative rule that is subject to these 8 criteria. This Board is one of the few boards that has the entire big picture that you have to see it in conservation and as well as the need for occasional development projects citing homes on Tantalus which is conservation land which is ok. The PLDC intent has a much narrow range of activity and by Statute their primary purpose is to look profit generation. The concern of transferring a conservation project to PLDC is the big picture is no longer there that they may have good intent or good people there. Their criteria are very narrow and very limited. He encourages keeping conservation projects under the BLNR.

Member Pacheco pointed out that what Mr. Harris is asking for is exactly in the submittal which he read (page 2, 2nd paragraph, 2nd sentence). He doesn't see where they would be giving their rights away with the conservation district. Mr. Harris read item b. of staff's recommendation. The "...or to create a great benefit for the public" is subjective in that it's a great benefit as a financial resource generating more revenue. Member Pacheco said not looking at the recommendations and in the full submittal which is what the Board policy is based on at the top paragraph it lists those 8 criteria and they have to qualify for a CDUP. On a case by case basis this Board will approve that transfer and that case. Mr. Harris said he is still looking at the specific recommendation which is adopting the policy where there is a lot of funding included. Here that line "a great benefit for the general public" is problematic. That language would have to be clarified as to the criteria. If you already have those administrative rules that accomplish that then what does this policy do? In general what does this policy do regardless? You normally have rules and guidance. Policy is not necessarily bond to the Board. Perhaps this would have to be looked at as a revision to your rules to include this or ask the PLDC to put it in their rules which is still outstanding. Chair Aila said or make it a condition. Mr. Harris said you could, but from a legal perspective he wasn't sure if that would have any significance related and could be an attempt to these members as perspective members come on it doesn't oblige them or be an obligation. The Chair pointed out it is specific project by project you could make

that a condition of that project or that they comply with. The Section is 13-5-30 that the Board has the ability to make that project a requirement as part of that condition. Mr. Harris agreed and reiterated what he said that it would have to be statute so that the Board could never change it about or by rules and go through the rule making process to change it. Chair Aila said you are referencing to do it on a broad scale to do every project that comes forward and his reference is the Board can project by project. Mr. Harris confirmed that but he the policy ensures the public that we are not going to develop Koke'e Park or conservation lands in these particular subzones and there is not much weight unless there is some legal significance. He thinks they have to get the language right on the first part and the second part, make it truly meaningful. As said earlier look at the language in the PLDC's rules which would be an easier way to do it. Member Goode said other than the PLDC it is his understanding that they are not safe from 343 and asked is that correct. Mr. Harris said that they have said they are under 343 and nobody contested that. He thinks there is some legal uncertainty that there is a Deputy AG opinion that they have to follow it. Nobody has been inclined to say otherwise. Member Goode asked what about conservation district laws. Do they have to follow that or can this Board say we can transfer this piece to you folks, but you don't have to follow it. Mr. Harris said they would be exempt from all land use which includes conservation designations, which includes building codes permits, height restrictions, setbacks, Coastal Zone Management Act. Member Goode said in this they have to follow the 8 points, but it doesn't say to follow the CDUP process which is very rigorous. Mr. Harris said they do not have to follow that. If you transfer the development rights to them this Board would no longer have any oversight. Member Goode said a qualified transfer. Mr. Harris said correct you could go through a contested case and how do you shake that. His suggestion is this body keep control of its projects and this body could make the policy direction if we are going to expedite in the public interest and move projects along rather than to PLDC where the regulatory oversight is no longer there.

Shannon Wood representing the Windward Ahupua'a Alliance testified that she has been working with the Stadium for 3 years and noted she is not affiliated with them. She and her husband are strong supporters of the University of Hawaii (UH) Athletic Programs. Ms. Wood related researching facilities and learned that DLNR assigned a contract with the Department of the Interior in 1968 and the history regarding that. Act 282-20-12 was to turn over the Stadium lands to PLDC, but nothing has happened. She supports what the PLDC wants to do with the protection of conservation lands. Member Gon asked what her stance was with the recommendation before us today. Ms. Wood said her main issue is it be clarified and be put in writing about protection of conservation lands. That she doesn't want the entire Bill cancelled.

Robert Petricci testified he is from the Big Island and conveyed Hawaii County's disappointment and frustration in the process giving them a disadvantage in participating in the process that they need a voice and a way to participate which doesn't seem to be available for the outer islands and have to fly here. The one time that Mr. Haraguchi came out to the Big Island there was 300 in Hilo and plenty in Kona that they were under the impression he was going to come back with the rules and that didn't happen. What constitutes a great benefit for the general public? Does the language of Senate Resolution 25 that urges the PLDC and the DLNR to develop and implement geothermal projects on the islands of Hawaii and Maui refer to projects to create projects as a great benefit to the general public such as BLNR allows on conservation lands. Senate Resolution 25 ties in with Act 55 and Act 97 is one big thing and hard to separate out. They see

using these lands as a great public benefit as a threat to our conservation lands. Act 97 allows them to do geothermal anywhere. They want a voice on what is going to happen on our islands. He represents the Puna Pono Alliance and believes geothermal as a heavy industry is contrary to the Resolution to be considered appropriate use for conservation lands. Chair Aila asked whether his recommendation would be to drop that language. Mr. Petricci said they recommend repeal. Yes, they don't think PLDC should be exempt from projects because of Act 97 and Resolution 25 we think it will include geothermal projects. Our past has led to public mistrust of the government and they don't think it can be fixed.

Barbara Gittan testified she is from the Big Island representing the Puna Pono Alliance supporting Mr. Petricci's testimony. She is not in favor of the Act and is against the Constitution of the United States that it should start over from scratch. Would like public input without things hurried through relating their concerns with geothermal. She asked not to pass this proposal. Chair Aila noted this should not occur we will still have to go through rule making process and Ms. Gittan said she understands that, but was concern with the conservation easement taken out and going forward like that. It's not good policy or Act. The Chair said the Board can't make that decision and just so she understands we are required to do the administrative rules making process after the Legislature passes the Bill to look at implementing rules. We are doing what we are required to do. He wants to make people understand the consequences should it not be repealed this process continues to go forward as an opportunity to talk about this process going forward.

Jocelyn Doane, Senior Public Policy Advocate at the Office of Hawaiian Affairs (OHA) testified that the staff indication of lands that shouldn't be considered eligible for PLDC projects is an important part of the Board's management responsibilities and so they commend staff for introducing a proposed policy. They suggest amendments to the proposed policy and drafted it out and summarized that they recognize that this is a good first step, but the Board should consider a more formal and legally enforceable way to declare PLDC related land policies to DLNR rule making. Also, the exception to the proposed restriction which has been discussed already to create a great benefit to the general public, they agree is ambiguous and open to interpretation and arguably any project could create a great benefit to the general public which could render the restriction meaningless if it's interpreted broadly and she feels the Chair wants some flexibility that if there is a good project you want to leave room in order for the Board to do that. The policy is related only to the protected and limited resource subzones and all conservation lands contain important natural conservation and cultural resources, particularly to our beneficiaries.

Ms. Doane said our suggestions briefly are #1 would be the same. "#2. The Board will not transfer development rights to PLDC for lands within the conservation district. A waiver may be considered on a case-by-case basis by the Board if the PLDC has successfully gone through the DLNR conservation district use application permitting process and the project meets all requirements for the issuance of a conservation district use permit;" Which is in line with what Member Gon had said. "#3. The Board will not transfer development rights to the PLDC for agricultural lands eligible for designation as important agricultural lands for purposes other than agriculture; and" We believe that is consistent with PLDC's approved Strategic Plan. Lastly, they left the provision in regards to Koke'e.

Chair Aila asked with regards to agriculture what if the plan for the agriculture and the business plan for it is to put up a small wind farm to generate its' own power. Ms. Doane said it depends what your interpretation is on what is allowed on ag land. The Chair said as he sits on the Board of Agriculture there are farmers coming forward that would like that ability to either put up a photovoltaic or some wind power to reduce our costs. Ms. Doane said there has been amendments over the past few years to do the land use on what is allowable on ag lands and supposed to the extent that is allowable that would be consistent with this statement. She would have to look at the actual current language.

Member Goode pointed out that bringing ag into this discussion without being noticed is something to be looked at, but we are overstepping our boundaries.

Michelle Matson representing the Oahu Island Parks Conservancy testified that she agreed to most of the testifiers except for Ms. Woods. What hasn't been done according to the Statute and hoping PLDC would do is define "culturally sensitive" and maybe this Board could honor that term by defining it so people will know what PLDC is required to protect. We still have development and development needs as a priority of the PLDC. She understands this is not about ag lands, but that was one of her comments. If you are considering conservation lands you also need to consider ag lands because they are part of our ultimate sustainability. Not just ag lands, but A, B, C and D quantification that you want to create a public benefit like constructing wind farms or solar farms you need to consider the B lands and not the A lands. Restricting conservation lands to particular zones is restrictive having many historic sites that this is still wide open. She appreciates a little effort to put some control on this way out of control law of the PLDC. We must rely on the BLNR for the protection of our public assets and for the public interest.

David Frankel representing the Native Hawaiian Legal Corporation testified that it is not true that the PLDC adopted this policy before you by the PLDC that Lloyd Haraguchi told you it's the PLDC's policy. They never have done so at least not during an open meeting. We've never seen this discussed. So for him to say to you that the PLDC has adopted this policy is not accurate. Chair Aila said he said they've considered it. Mr. Frankel said they've never considered this as laid out. The Chair said if you listen to what he said his members independently, not at a Board meeting have considered it. Mr. Frankel said it's a violation of the Sunshine Law where Chair Aila said not with each other, independently. Mr. Frankel said you cannot serially communicate to get him an informal approval of the policy like that. That is completely contrary to the law. Chair Aila said that is not what we did. This is what the Board is taking up and you can talk to them individually, but we take your point. Mr. Frankel said this is not PLDC's policy and you should not treat it as such. It is not adopted at an open meeting of the PLDC. This is an independent production. I also think it is bad faith, Mr. Aila, for you to organize a meeting of folks concerned with Hawaiian and environmental interests next Monday when you are discussing this today. You should postpone consideration of this policy until you talk to the people you want to get input from.

Mr. Frankel said PLDC doesn't have to talk about the rules now. In 2008, the Legislature enacted a law requiring the Department of Health to adopt rules regulating greenhouse gas emissions. It is 2012 and those rules have not been adopted. Similarly, the Legislature enacted a law regarding important ag lands that gave the Land Use Commission authority to adopt rules.

Those rules have never been adopted, haven't even been drafted, there is no schedule for public hearings. For you to assert that PLDC must adopt rules – yes it must, but it doesn't have to do so now and let them sit. With this issue, you and the members of the PLDC have asserted that the PLDC is not except from environmental laws. That is not true and this is a classic example. You have 8 criteria for use within the conservation district. These are important, rigorous rules – they are rules you guys applied correctly in denying Hawaiian Electric's proposal to build a 138 kW towers atop Wa'ahila Ridge. They are rules you used to prevent Hawaiian Electric from building a dam at Honoali'i which would've ruined the only good surf spot on the Hilo side of the Big Island. You cannot replace these 8 with one saying as long as it's a benefit to the general public which is not protection of conservation district lands. With all deference to Mr. Pacheco simply because there is some prefatory language in the earlier section of your policy and what is key is what you adopt. What is the motion and the motion is the 3 elements there. You would be formally adopting a policy in which you abandon these 8 rigorous criteria to be applied to any project in the conservation district and that is completely inappropriate. It allows these real possibilities as suggested in their testimony. It allows for somebody to come forward saying we are going to build hotels at Ka Iwi/Queen's Beach which was a real proposal that the community fought against. We fought to get those lands for the public and we fought to place those lands in the conservation district. When you guys aren't here it allows someone in 5 years, 10 years to say State Parks needs revenue – we'll start with a Starbucks and then a hotel for a little revenue because we all know DLNR needs money. Honolulu is so urbanized we can accommodate a Starbucks and just a small hotel. Andy Anderson is proposing a small hotel on City owned land. So the protection in the law is abandoned by the creation of PLDC and further exacerbated by adopting a policy like this. Instead what you need to do is either say you are not going to let any conservation district lands be transferred to the PLDC or adopt the wording the OHA presented to you. But it's deceptive to suggest that what is before you today address or accommodates the public comments articulated. What it is a fundamental misunderstanding of the law and an attempt to placate inappropriately.

Cindy Rezentes representing the Waianae District testified instead of reiterating what everyone has said regarding some of the concerns we all need to step back and say what does greater public benefit mean? In prior PLDC public hearings regarding the rules that was her frustration – what are the criteria, what are the things you are going to critique that will allow you to make a decision that leads you to something that says “yes” that is for the greater public good. What is to prevent a landfill from being thrown into a conservation area? You are not putting up buildings necessarily, but it could be argued as the City has that certain areas in utilizing certain lands that were not approved with the initial inception of the project is for the greater good. What does that mean? What are the types of projects that you want to give because it is our public lands for these greater public good. If we can't provide criteria for what that means what are you passing through? Are you giving carte blanche investigative powers for what that greater public good and benefit to someone else? Or will you really have the final say once that responsibility has been transmitted to another board? Everyone keeps saying as the title agency you will have the final approval, but as with other projects in this State once momentum gets going it's very difficult to say “no”. And we've seen it time and again when you get enough people riled up emotionally regarding certain things whether it's the right thing, wrong thing, marginal – it's very difficult to say “no” and that is my concern. What does that mean, specifically? To you and the entire process regarding the decision making process when you are

the caretakers for us for these lands? And that is her concern with everything that she has heard this morning and that caveat in there which can be extremely subjective and could be counter to what we individually or collectively as a State or as a County believe is for the greater benefit for the public. We should think about it and not be passed over as easily as yes, we'll that in there and we'll always have the greater public good in mind. The question is what is that? What is that definition? And if we have no criteria then anything I damn will please as long as I can get people to believe it's for the greater benefit or a certain select organization or a select people to believe it's for the greater benefit whether or not the larger population necessarily believes that. Which is what you are trying to decide today – what does that mean and how does that translate to project that some people may feel very offended at potentially considered a greater public benefit in a conservation area. She would consider some of the things she heard this morning either put caveats on that or at least not allowing that portion to go through with this policy until you yourselves are satisfied that you understand what you intend and can communicate that clearly to the public. Because I will tell you if you ask 50 people across the State depending on their background is and where they are coming from you are going to get a different interpretation of what they consider greater benefit to the public and at that point you have completely lost it and you lost control and you potentially could lose credibility as being those stewards and that is the most important thing you need to consider this morning is what does that mean. Not just you as a board in trying to get things done, but what does that mean from the larger perspective out there. I ask that serious consideration be given during your deliberation.

Chair Aila asked whether she had anything on non-fee simple transfers. Ms. Rezentes said again, for me, it's a matter of where that property is and what it can be used for and is it in concert with that County or that community envisions for that land. You are tossing it into a bucket that allows consideration to be given for things that may or may not be counter to what that County or community envisions for that land. We have gone through this many times in our district that our community has testified a 100% against projects and it doesn't matter in cases where we've been overridden by the City Council and it's not turned out to be positive projects and now it's in our backyard. It depends on how you do it which is what I am trying to articulate for the rules that have been heard for the PLDC. You have to provide some criteria and guidelines because if you don't you are all over the map and there is nobody to help guide you in how to best marry with the local community or County with what they envision is good business practices for their lands. Again, if the State wants to take the position of being the czar of everything that is one perspective, but I think you need to have partnerships and can't go run roughshod over everybody. As far as fee simple lands are concerned in my mind it depends on where and what their concerns with.

Chair Aila said to clarify the first recommendation is the Board will not transfer lands in fee to the PLDC and that was to address the sale of ceded lands. Ms. Rezentes said as long as there is notch for it then I'm fine because it leaves it here for public decision making and hopefully partnerships.

Member Gon asked given the testimonies so far and he had mentioned the suggested revision to the recommendation that we scratch the clause about creating a greater benefit to the general public and replacing that with consistent with the conservation district use rules, HAR 13-5-30(c), in order to get specific items into this policy. Would that be ok with you? Mr. Haraguchi

said yes, it would be. Member Gon said he also heard the general concern that rather than singling out specific subzones of the conservation district that this Board's policy is not to transfer lands within the conservation district except with express waiver by the Board consistent with those 8 rules. Would that be alright? Mr. Haraguchi said he believes that still leaves flexibility because if it comes back to you at the end of the day whether it's 3, 4 or all he is ok with including all of that.

Member Gon said OHA's language is pretty much that except for the ag lands. It is an important issue, but not one we could address. It changes it from the 3 clauses into 4 sentences and he read it. #2 does not mention subzones. #3 cannot because of Sunshine Law. #4 for Koke's stays the same.

Member Goode said looking at OHA's recommendation #2 what is key for him is that any proposed project goes through the CDUP process and that is mentioned here in this language "that the waiver can be considered if PLDC has successfully gone through the DLNR conservation district use application (CDUA) permitting process" and he wanted to add one word – through the complete process. All our processes here which is...where we've had projects that have not gone through because of the lack of a CDUP and others have, and correct me, approved in a general subzone Kekaha Land Fill where there is very little testimonies against it, but it went through the whole process and that process helped identify that public good. We got a good process for that if you get through that whole process and get that CDUP that to me is key and we really worked to identify that public process. Member Gon asked you successfully gone completely through the DLNR CDUA. Member Pacheco said if you are saying to go through the complete process that we don't have a partial process. Member Goode said yes to make it clear.

Member Pacheco said it's frustrating for him in this discussion because there is this larger picture that seems to be ...It's my understanding that the Statute for the PLDC to do anything has to have approval from the landowner and for the State lands that's this Board. Is that correct? Mr. Tsuji said that is correct. Member Pacheco said the idea that we are giving up decisions over our lands that is frustrating for me. Secondly, in relation to Mr. Frankel's testimonies that above language which has nothing to do with the recommendation is not correct that in many cases our recommendations reference the discussion that is in the submittal as in this one, that consistent with the above discussion the Board adopt the policy. I'm fine with having this stuff in here, but the stuff we are talking about in the most part in this discussion already. What we are doing is clarifying the language and putting it in a recommendation which is fine. I just want to state for the record what b. is saying in relation consistent to the above discussion is that in order to transfer something in the conservation district is going through the process and determining that it meets all the requirements of the CDUP. It's in the submittal and he is fine with that and he is fine that we are not restricting it to the restricted limited subzones also.

Member Gon said he echoes his frustration and my rephrasing of what we are considering here just deal with explicitly what was stated because what was stated has some ambiguity to it in the eyes of the public.

Member Pacheco 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 Edlao seconded that. All voted in favor.

10:44 AM EXECUTIVE SESSION

10:54 AM RECONVENED

Member Gon said based on discussions and testimonies made so far he made a motion to amend staff's recommendation: "That, consistent with the above discussion, the Board adopt a policy position regarding transfer of land or development rights to the Public Land Development Corporation (PLDC) as follows:

1. The Board will not transfer lands in fee to the PLDC.
2. The Board will not transfer development rights to the PLDC for lands within the conservation district. Waivers may be considered on a case-by-case basis by the Board if the PLDC has successfully gone through the conservation district use application (CDUA) permitting process and the project meets all requirements for the issuance of a conservation district use permit (CDUP) per HAR 13-5-30(c).
3. The Board will not transfer development rights to the PLDC for lands within Koke'e State Park for the purpose of developing a hotel."

Member Morgan seconded that. All voted in favor.

The Board:

Approved as amended. The recommendation section was deleted and replaced with:

Recommendation: That, consistent with the above discussion, the Board adopt a policy position regarding the transfer of land or development rights to the Public Land Development Corporation as follows:

1. *The Board will not transfer lands in fee to the PLDC.*
2. *The Board will not transfer development rights to the PLDC for lands within the conservation district. Waivers may be considered on a case-by-case basis by the Board if the PLDC has successfully gone through the DLNR conservation district use application permitting process and the project meets all requirements for the issuance of a conservation district use permit pursuant to HAR 13-5-30(c).*
3. *The Board will not transfer development rights to the PLDC for lands within Koke'e State Park for the purpose of developing a hotel.*

Unanimously approved as amended (Gon, Morgan)

- Item D-13** Grant of Term, Non-Exclusive Easement to Bernice K.Y. Bailey, Frederick K. Bailey, Jr., and Susan Koehler for Pier Purposes; Impose Fine of \$500 and Assess Administrative Costs of \$200, Heeia, Koolaupoko, Oahu, Tax Map Key: (1) 4-6-001:seaward of 014.
- Item D-14** Grant of Term, Non-Exclusive Easement to David A. Knox and Beverly J. Hoversland for Landscaping Area, Concrete Wall, and Footing Purposes; Assess Administrative Costs of \$200, Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-019:078 and seaward.
- Item D-16** Grant of Term, Non-Exclusive Easement to Christine Fuss for Seawall and Step Purposes; Impose Fine of \$500 and Assess Administrative Costs of \$200, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-8-004:seaward of 014.

Mr. Tsuji requested to take items D-13, D-14 and D-16 together since they are all similar having to deal with encroachments on shorelines. Items D-13 and D-16 are based on Board policy that anything more than a 100 foot encroachment is fined. Item D-14 is a very small encroachment less than 100 feet.

James Thompson testified he is here representing the applicants. On item D-13, he gave some background history about the pier existing there from around 1949 or 1959, but staff cannot find any permits for it. When the owners bought the property back in 1959 they didn't consider whether the pier was legal or not that they thought things were legal at that time. Mrs. Bailey was given amnesty on the pier and asked to be relieved of the \$500.00.

Member Pacheco asked about the administrative fee which Mr. Thompson said they were fine with it.

Member Morgan made a motion to amend staff's recommendation on item D-13 by eliminating the \$500.00 fine and approved items D-14 and D-16. Member Pacheco seconded that. All voted in favor except for Member Edlao who opposed (item D-13).

The Board:

Approved as amended on item D-13. The Board amended recommendation no. 2 by eliminating the \$500 fine. With the exception of the above, all other aspects of the staff submittal and recommendations were approved.

Approved as amended (Morgan, Pacheco)

Items D-14 and D-16:

Unanimously approved as submitted (Morgan, Pacheco)

- Item D-6** Consent to Assign Portion of Sublease K-27 of General Lease No. S-5619, Troutlodge Marine Farms Kona, LLC, Assignor, to Shrimp Improvement

Systems Hawaii LLC, Assignee, Kalaoa 1st-4th, Ooma 1st, North Kona, Hawaii, Tax Map Key: (3) 7-3-043:099 & 100.

Mr. Tsuji reported on item D-6 that he had no changes.

Greg Barbar representing NELHA testified in support of staff's recommendation.

Unanimously approved as submitted (Pacheco, Gon)

Item D-10 Issuance of Right-of-Entry for Site Access, Staging and Storage Area Purposes to Halekauwila Partners, LLC, Kakaako. Honolulu, Oahu, Tax Map Key: (1) 2-1-51:portion of 41.

Mr. Tsuji conveyed item D-10 is access for a staging area to build an affordable rental project and noted that this came before the Board previously and approved a CDUA. A MOA was done to outline what Tony Ching intends to do. It is available and staff has no objection to his request.

Member Pacheco asked how come it's gratis. Mr. Tsuji said that Mr. Carr has an affordable rental project as part of his financing package relies on tax credits

Standford Carr representing Halekauwila Partners testified that this is what they worked out in the CDUA with respect to the staging area for the construction of Halekauwila Place.

Member Morgan made a motion to approve as submitted and was seconded by Member Edlao, but Member Pacheco opposed. Everyone else voted in favor.

Approved as submitted (Morgan, Edlao)

Item E-1 Subject: Request for Approval to Continue Twenty-Four (24) 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 Na'auao o Hawai'i Nei, Hawai'i United Methodist, Kaua'i Christian Fellowship, Camp Hale Koa Association, (Waimea Canyon State Park non-profit recreation-residence/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 residential use), Curtis K. Hong (Diamond Head State Monument food and beverage vending), Pepsi Bottling Group (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), Mary Teves/Roy Teves, Joan Cash, Wesley Cash, (Kawainui Marsh State Park Reserve, Breeding and Raising of Horses and Cattle), Sand Island Off-Highway Vehicle Association, Inc., (Sand Island State Recreation Area, Off-Road Vehicle 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)

Dan Quinn representing Division of State Parks conveyed item E-1 which is to request approval to continue 24 revocable permits (RP) which will run through the calendar year. The Board has approved to go out to bid for a more permanent concession agreement, but in the meantime staff is requesting it be continued as RPs. Also there was some discussion at the last meeting to continue a RP at Kawainui Marsh and our recommendation for that would be approval to issue a RP for 6 months and delegate to the Chair conditions that would include benchmarks in relocating the property and the structures that are there and other improvements for eventual use as park purposes. For the rest of the permits listed here staff recommends considering the same conditions except unless they be prescribed by the Chairperson if it is any different. Also, the Board declares that renewal of these is exempt from Chapter 343.

Joan Cash (Kawainui Marsh RP) testified that they originally asked for 6 months, but they don't believe they can get it done within that time because buildings have to be taken down and things need to be fixed that they need to get out of there. It takes money to do it which they have some that within a year they would be able to do it gracefully. If they do it sooner they will let us know that 6 months is a long time, but it really isn't since 6 months has gone by already. It's the holiday season and she and her friends have been working a lot and they have to rely on their friends. They ask for more time.

Member Goode asked a year is enough and Mrs. Cash acknowledged that reiterating her situation.

Member Gon said another option is to keep it at 6 months, but allow negotiation with the Chair's office for any extensions and he would be more inclined to put the pressure on because if I was given a year I am going to wait to the last 6 months of that year. Member Morgan asked on recommendation #3 delegate to the Chair to negotiate a possible extension and Member Gon acknowledged that. Member Pacheco said he would support that. He wouldn't support a year that we have responsibilities for the use of that land. Ms. Cash said she understands that and suggested staying there to work things out with the other interested groups who had plans for the property the way it was.

Member Pacheco asked whether they were living on the property which was never part of the permit. Mrs. Cash confirmed that they are looking for a place to live now and they were living there to make sure their horses were not ridden, their cattle weren't stolen and equipment wasn't stolen.

Ted Myers representing Captain Zodiac on Kaua'i said he was okay with staff's recommendations.

Member Gon made a motion to go with staff's recommendations with the amendment of item 3 to add "any possible extensions after the Chair/authority negotiates conditions and possible extensions on said RP. Member Morgan seconded that. All voted in favor.

Unanimously approved as amended (Gon, Morgan)

Item D-4 Consent to Sublease General Lease No. 3265, Hilo Bay Hotel, Inc., Lessee, to Banyan Drive Cafe LLC, Sublessee, Waiakea, South Hilo, Hawaii, Tax Map Key:3rd/2-1-05:33.

Mr. Tsuji described item D-4 that the operation for the restaurant and bar is \$36,000 where staff came up with the sub-lease rent participation of \$8,000 noting that Hilo Bay relies on the restaurant and bar significantly for its revenues. The Lessee is not in support of staff's recommendation.

Aaron Whiting distributed his written testimonies and testified some background to his family's business. The restaurant was closed in November 2010 and was a vital part of their business, but they don't rely on its income for the hotel. He related the difficulty of finding a tenant because of the short lease time to March 2015. They leased to Banyan Tree Café since May and charged \$3,000 a month for rent, but they have been waived for 2 months because they can't make it. Also, they want consent from the Board so that their tenant can get a liquor license. And all they need is consent from the Board to sublease and there is no information on their lease about rent participation. Mr. Whiting asked to consent to sublease and waive item #1 of staff's recommendation on the additional rent.

After Member Pacheco's inquiry about when they stopped operating the restaurant Mr. Whiting said since November 2010 and related how there was no business in the restaurant and that a liquor license would help the current tenant.

Member Pacheco asked whether the \$3,000 rent they are charging is more than the lease. Mr. Whiting said with all 4 leases combined it would be almost the same amount.

Member Pacheco asked that they don't rely on the restaurant for income and why the high rent. Mr. Whiting said that is a little less than the going rate in Hilo for rental space and they felt it was a fair figure to attract someone to use the space otherwise the space would be empty. Member Pacheco asked than you since you are being covered by the rent for all 4 of your lease rent you don't feel that is fair for the State to get a piece of that and Mr. Whiting said no. I don't feel it is fair that there is no language in our lease. They don't change contracts midway with their clients and they feel it isn't fair for the State to change their lease noting they have paid on time since 1965.

Member Morgan asked whether the tenants have paid yet since they are being waived for 2 months and Mr. Whiting said they have not paid for November and December. He doesn't think they will, but if a liquor license will help noting that the tenant has a temporary liquor license granted by the County. Member Gon asked whether the liquor license has helped. Mr. Whiting

said he isn't in their business and is the landlord. When he was in the business maybe 10% was from liquor that his view is a liquor license would help keep the doors open.

Member Pacheco asked why he didn't come in to get permission for the sublease before making the deal. Mr. Whiting said with their lease information all it required was permission from the Board and they went in after-the-fact trying to get consent and they didn't think it was a problem.

Chair Aila asked whether there is no language in the lease. Mr. Tsuji said some older leases say all you need is to get the Board's consent. Mr. Whiting said that they have the original lease from 1948.

Member Pacheco 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 Gon seconded that. All voted in favor.

11:21 AM EXECUTIVE SESSION

11:26 AM RECONVENED

Member Pacheco said in light of our conversation with our attorney and the fact there is only 3 years left on the lease he made a motion to accept staff's recommendation by striking #1. Member Gon seconded that. All voted in favor.

The Board:

Approved as amended. The Board amended the recommendation section by deleting recommendation no. 1 on increasing the annual rent by \$8,427.00.¹

Unanimously approved as amended (Pacheco, Gon)

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

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea 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.

Maria Carnavaele representing Division of Aquatic Resources (DAR) conveyed items F-1 and F-2 are ships that sail to the Northwest Hawaiian Islands and serve as platforms for activities that

¹ Board member Pacheco made the motion to amend staffs' recommendation based on the discussion with the Deputy Attorney General in executive session, and in light of the lease only having a very short term remaining before it expires.

will be reviewed and permitted separately. These have been before the Board before and there is no changes.

Unanimously approved as submitted (Gon, Morgan)

Item E-2 Request for Approval to Continue and Modify Revocable Permits Issued to Kona Boys, Inc., Iwa Kalua and Adventures In Paradise, LLC for Commercial Kayak Tour Purposes, Under Terms and Conditions to be Determined by the Chairperson, Kaawaloa, Kealakekua Bay State Historical Park, Kealakekua, Hawaii

Mr. Quinn informed the Board that item E-2 is a topic discussed at the last meeting regarding kayak permits at Kealakekua Bay on the Big Island. It was mentioned to the Board that they come back and recommend approval of these permits with some changes. As discussed, staff will be having a stand down or moratorium on boating activities at Kealakekua Bay until we can regain some more effective management enforcement there. The request we have before you is approve these permits, but delegate to the Chair the actual resumption date or a notice to proceed of activities back on the Bay. There will be changes to the permit beyond what they had in the pass because 1) the Board approved placing the entire bay under State Parks jurisdiction therefore they need to address the launching and landing back at Napo'opo'o. Currently, they only address Ka'awaloa Flats. We have both Napo'opo'o where they launch and return to the waters of the Bay and also Ka'awaloa Flats. And what also is going to be some management of the area potentially adjusting the fee rate and scrutinizing the scheduling and timing of the landings over at Ka'awaloa as well as if other management issues come up during the closure to address the permits, staff would like that also delegated to the Chair. That is the request before you.

Member Goode asked at the last meeting we discussed the stand down timing at most 90 days. Mr. Quinn said that's our hope. Member Goode asked in the submittal delegated to the Chair when that timing does occur he thought perhaps the Board could get an update by the Department let's say the last meeting in March which is around the 90 day time. Chair Aila suggested monthly, an update in January or February and Member Goode suggested the second meeting of each month. The rest of the Board members agreed to that. Member Pacheco asked that would be an agenda item and Deputy Attorney General Linda Chow said it would have to be agenda item. Mr. Quinn agreed it would that there will be much discussion in the submittal and would be up to the Board, but generally to further discussion the progress of the stand down. Chair Aila said that would be good that they may have to come back for some adaptive management.

Iwa Kalua representing Adventures in Paradise testified that the closure period is a big issue that they are small businesses, but are ready to step aside for 30 days. During the second month they will be seeing a pinch in their savings and livelihood. They would like to come back to the Board every month and hope to get some clarification on what the status is at the January meeting and the opportunity to ask to start doing one tour a month in February which is half of what their permit allows. By then DLNR will have a gripe on enforcing the area knowing who the key players are permitted and who aren't and have them start regulating along with

DOCARE which we will have to do to test the waters by allowing them to come in on a part-time basis.

Member Pacheco asked whether the permit is in his own name and Mr. Kalua confirmed that.

Geoff Hand representing Adventures in Paradise testified that there were 4 permits issued back in 2005 and they would see 3 permits instead of issuing another permit and suggested dividing those members between the 4. Limiting the numbers of people out there is also something that would be one less player to have to manage. One of the issues he has with this is 30 new rental permits that right now there is 10 rental permits given each day. State Parks is talking about 30 that keeping that number down would be a plus and also keeping the number of kayak tour down is also a plus both in terms of DOCARE's ability to enforce it and just in terms of quality of experience. Having the closure shorter or longer is a huge difference in terms of our sustainability in our getting through this enforcement problem. They support that idea and 30 days is something they highly recommend and are in full support. After that they appreciate looking at it on a monthly basis is a big help.

Member Pacheco asked the illegal kayakers are stopped and State Parks allow 30 permits there won't that be a decrease in the number of people going there on average and Mr. Hand said it will be. Probably a large decrease in numbers that the issue for him is those 30 people without the guided treks is the source of the problem and that was identified in 2005. The problem at Kealakekua Bay is these unsupervised rentals were the people responsible for 98% of the degradation of the resource, stepping on coral, swimming with dolphins and all the things people had problems with hence the reason to go with guided activities. In retrospect, the 10 that was set in the past by the State is a good number because the 10 they are issuing now is about what is needed. If you put out 30 he wouldn't doubt they will be used. It doesn't seem to be a huge demand above 10. The more rentals there are the less viable a guided tour becomes. If you can buy something for \$2.00 why spend \$10.00 for it. It's either you push people to guided tours or to the cheaper which is good for the consumer, but not so good for the resources from what we've seen. In 2005, they bought into tours from rentals because that was the future.

Mr. Kalua acknowledged what Mr. Hand said confirming that they as permit holders fear a 4th new entity would jeopardize them and would rather absorb the 4th permit's numbers and take that on since they have proven themselves and the officers know them.

Mr. Hand testified that once the 30 days or 90 days or whatever amount of days to make the closure work his concern is the closure won't work that there is a strong motivation for these guys (illegals) to come back and continue operating down there. He would like to advocate a gatekeeper down there and could be incorporated into their revocable permits. If you specify between the 3 kayak companies they would man that area for X days a week and we could do that and we would do that. Without that gatekeeper down there to open and close the gate for everybody every day I think is a strong motivation for the same thing to happen to exist or not. It may take a few years before it develops, but I see it as a continuing issue and this might be a way to address it by putting the cost on to the kayak company. We are talking about adding extra fees because of the extra part of an area we are covering. Or maybe not doing the fees, but having us actually man the gate for you.

Member Pacheco made a motion to approve staff's recommendation by amending recommendation #3 that the staff will update the Board members monthly until the permits are investigated or a final decision is made. Member Gon seconded that. All voted in favor.

Unanimously approved as amended (Pacheco, Gon)

Item E-3 Requesting Approval for the Department of the Land and Natural Resources Division of State Parks to Enter into a Memorandum of Agreement (MOA) with Pacific Hawaii Parks, and to Authorize the Chairperson to Negotiate and Approve a Three Year Lease for a Pilot Project for the Operation of an Interpretive and Merchandising Kiosk in Diamond Head State Monument, Oahu

Mr. Quinn said to withdraw item E-3.

WITHDRAWN

Item D-5 Resubmittal-Deny Request for Extension of Lease Term Made Pursuant to Act 207, Session Laws of Hawaii 2011, General Lease No. S-3621 Crescent City Properties, Inc., Lessee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-49:06.

Mr. Tsuji briefed the Board on item D-5. The Act was passed allowing the Board the discretion to grant or deny a request of an extension up to a maximum of 65 years. Currently the lease is a 55 year term and staff's analysis and recommendation goes into why they shouldn't extend. As far as the improvements being proposed, it's primarily for replacement of the \$50,000 or so and is quite significant referring to an earlier item on Hilo Hawaiian Hotel. The Lessee and counsel are here to argue for an extension. Staff appraised it as an option to the Board since it is the Board's discretion to grant or deny and he didn't see it here as a requirement. It's a statutory requirement any time there is an extension and there is a re-opening of the appraised land.

Member Pacheco asked what are these other contiguous parcels (referring to the map) where Mr. Tsuji said the ones in yellow are expiring. The status of the ones that are not Mr. Tsuji wasn't sure if they are even their Lessees.

Carl Tom, attorney introduced Charles Umamoto, Chief Executive Officer of Crescent City Properties, Inc. Mr. Tom testified that Crescent City received a letter in 2011 inviting them to an extension within 10 years pursuant to Act 207. Pursuant to that an application was filed. One of the requirements of Act 207 is that substantial improvements be made to the property that the aggregate extension doesn't exceed 65 years and payments are made by the Lessee and not from an institutional lender. The improvements commenced in July 2012 have all been completed and paid for with funds from Crescent City. In the roughly 12 years that Crescent City occupied this lot 32, they performed a number of improvements, alterations, renovations to the property that the older structure dated from 1961 and required a lot of work. If the extension is granted, Crescent City will make more renovations which could be in the best interest of the State when

the lease closes at the end of the 65 years. The State invited Crescent City to apply and they did, they did the work and this applicant falls squarely with all the requirements of Act 207. The letter postdates the Act by 5 months. The Governor created the Act for this type of applicant. Mr. Tom distributed some enlarged tax maps and went over the parcels that are not owned by the State. This is an unusual configuration and he knows the State wants to reconfigure these lots to larger 2 plus acres lots and from this configuration the most you could get out of it would be 2 lots.

Member Pacheco asked whether Mr. Tom has that correspondence with staff and Mr. Tom showed it to him. Mr. Tsuji said when the Act passed staff sent out letters informing Lessees that it passed.

Member Morgan asked whether the State was looking for revenue through larger operations and what goes on in parcel #10. Mr. Umamoto described what was on the property and related some background on Crescent City as a subsidiary of SMU that Hilo Fish is one of them and is the largest seafood business in Hawaii. When their lease was going to end, they were told to change the law and they changed it, then this happens which is unbelievable. There are a lot of small businesses that will be hurt.

Member Goode said that you must be familiar with the light industrial in the area and that it was his understanding that you had to move. Mr. Umamoto acknowledged that and there is a lot of State land right next to the airport. At one point it was thought of opening State owned lands to light industrial some years ago.

Chair Aila said in 10 years the current law doesn't allow anyone to be extended beyond that and asked what you think is going to happen to all the small businesses. Mr. Umamoto said he thinks that they have to work harder to get the State to open more lands. Member Pacheco pointed out you would have to bid for it and you take a risk. Mr. Umamoto agreed, but nobody is maintaining the buildings there which are one of the requirements they put in the law that improvements are made and through these improvements they are creating jobs back in Hilo which is why he made the improvements. The neighbors across is not doing anything because they don't know what will happen.

Chair Aila asked why other tenants aren't applying. Mr. Umamoto said typically people think they have a lot of time, but when the neighbors found out about this today 15 people were in his office trying to find out what is going on that they only have 2 more years and they need to know whether they need to go someplace else.

Member Pacheco asked what part of the application process allows you an extension. Mr. Tom said that they received a letter dated November 1 and attached was the November 9 staff report which was deferred at that meeting. In answer to the Chair's question what are they going to do after the 10 years is up, if you get a good enough advance warning you can start planning. This thing came up when folks didn't expect it and Act 207 passed. Also, referring to Mr. Tsuji's comment about the rent situation, they are aware that we have a renegotiation from February 2011 that takes them through February 2016 so they are set there. They are paying \$30,000 a year for the rent. They understand an appraisal need to be conducted for the final 10 year period

from 2016 to 2026. We would pay for that appraisal and whatever fair market rental value is the term as a result of our appraisal would be a rent that Crescent City will pay as well. They are not asking for any special compensation. They just want to take advantage of Act 207 which is the final 10 year extension and the Chair is correct that some decision will have to be made at that point and that is what they will do, but they want to at least have the ability to go out to 2026.

Member Goode asked more on the commercial property that staff understands that 2 or 3 acre parcels are more in demand and perhaps a higher value to the State, but we have some work and asked whether he was familiar with the lay of the land there. Everyone wants more money? Mr. Umamoto said they spoke to the land agent in Hilo and he said he didn't receive any applications or inquires of the sort so he doesn't know where it came up from. Member Goode said he took a look on Google Maps and he saw some nice views and some not so nice and it's a solid group and asked how would you consolidate some of these parcels to make a 2 acre parcel that would make sense for someone. A lot of large buildings would have to demo and he doesn't see penciling out the State subject to a report to question the numbers you see is difficult. Mr. Tom said your observation is right on the mark that you have all these individual improvements and structures on the property and if you consolidate and subdivide somebody will have to go in there and have to raze these buildings to haul it away and is a very large expense and that would be on top of what the State hopes to get from leasing the 2 acre parcels. He leaves that to better minds.

Member Morgan pointed out in the submittal at the end of the lease the improvements revert to the State which is a quantum leap in value there looking at ground rent or \$30,000 a year, but is a completely different animal with a turnkey storage space or industrial space. It appears what the State is going after it is one thing for the consolidation issue and another thing renting a much more valuable piece of property. Mr. Umamoto said the reason the law was enacted was probably to save some of the businesses in Hilo during these hard economic times. To go against that...Member Morgan said he doesn't dispute that, but are 2 separate issues. Mr. Umamoto said he can see after the 10 years to have this for rent on a month-to-month basis, I did the renovations and you are going to charge me more? The State acquires the buildings and leases them back to us. I think the fair market rent is something that needs to be addressed, the ground lease because probably the tenants in each individual property owns the warehouses.

Chair Aila said that is a question the Legislature has to determine because we are getting closed to the end of this period where all of these leases statewide will be up and that the Legislature needs to give them some guidance.

Member Gon asked for recommendation 2 in either or of term of conditions and you looked at those and are ok with them. Mr. Tom said yes referring to page 4 and Member Gon confirmed that.

Mr. Tsuji said there is an extension on the Statute that says upon extending the lease there is an immediate re-opening. The Chair said we'll take a 5 minute recess and someone will go look that up and we'll come back.

12:10 PM RECESS

12:19 PM RECONVENED

Ms. Chow said it appears that rental reopening would occur upon the normal 10 year period that was set in the original lease. Chair Aila said this confirms what was testified earlier. Mr. Tom said that is correct and we appreciate you going to executive session to confirm that.

Leslie Hill representing Paradise Plants Home and Garden Center testified that they are a sublessee for 2 parcels and gave some background history regarding her business. She has been in business for 35 years doing hardwood furniture and needs the big warehouse. Rent has increased. She referred to an earlier sublessee's submittal that was approved and to improve the area. If you decided not to extend their leases it would kill their business and she would not be able to find another location similar to this in Hilo. The sublessees don't want to make improvements because of the uncertainty. She would like the Board to take action that they support small business in Hilo. The people who are there deserve to stay there.

Mr. Tsuji said the current Lessee indicated they made repairs and asked whether the plans were reviewed and approved by the staff and the Chairperson with the understanding you wouldn't be guaranteed an extension. Mr. Tom said on that letter it says it must be done by January 2013. Mr. Umamoto explained he called Gordon Heit saying that he was planning to make renovations to the roof and based the new law Mr. Heit said he thought that qualified. Do I need something in writing? Mr. Tsuji said typically the lease does require review and approved by the Chairperson. Which is why he was concerned and maybe it was an R&M (repair and maintenance) kind of situation which doesn't require any approval. Chair Aila said it may depend on how you asked the question. Mr. Tsuji said if it's characterized as an R&M you have a duty to it. Mr. Tom said there is a paragraph in the lease #17 that says Lessee shall repair and maintain all buildings and improvements on the premises in good order, condition and repair that he wasn't sure whether that language would require a submission of certain plans, performance bond, etc. Mr. Tsuji said that is what he just said R&M is not required.

Member Pacheco asked whether R&M covers the statute requirements. Mr. Tsuji said for the improvements they look towards capital improvements and they did replace the roof, arguably that it's not just patching the roof, but the amount is \$50,000 for a 10 year extension. Just to comment it's much easier for our staff to have these applications submitted and go ahead approval. It's harder and took a lot more time analysis to look at this area. The income team visited and this area is being thoroughly studied for future potential income. The lease have a term where most of these leases have been turned over or sold over the years and the current Lessees came in 12 years ago, but the lease started in February 1961 and is a very old lease which is why the Legislature put a limit on these leases that its more than sufficient time for a lease to run its course with whatever investment was put in because the Lessees kept selling and selling. The Legislation that passed for additional 10 year period only passed a year or two ago and staff knew that was the maximum term set. By Statute it comes back to the State whether consolidation or reissue and continue with a 5 year lease. Staff believes the policy behind capping the lease term was to allow others an opportunity to bid at these auctions. Assets can be acquired by bid or can be assigned to the Board approval, but is not a direct assignment as opposed to opening it up to the public that you may not have a lease. Staff is not anti-business, but one of the goals and missions we have is some industrial/commercial type zoned lands are rented out back to the State to hopefully support our programs here at DLNR. It takes more

effort to come up with this kind of presentation that it's demoralizing to staff trying to follow that mission. We are not rubber stamping a consent without analyzing it before.

Chair Aila said he appreciates what Mr. Tsuji is doing in trying to find every nickel for the Department that what he is saying is the Legislature added the additional 10 years and that is what is before the Board. Mr. Tsuji said it is a discretionary decision of the Board. Unfortunately, some thought it was a mandatory extension or guarantee. Staff would never accept any guarantee without going before the Board. Chair Aila said from some of the testimonies about the impacts...

Member Morgan said he appreciates staff doing their job in maximizing the value and completely sympathizes with every owner out there to do what they can for their own business and are entitled to get fair value for their property. His concern is the 2011 letter and the new Act. Mr. Tsuji said that letter is showing that staff is complying with the Act. The Chair said and that is what staff is supposed to do. It is staff's desire to provide additional revenue to the Department being contrary to their (Lessees') desires which is understandable, but you put forward 2 recommendations and that is what we'll consider.

Member Pacheco asked staff looked at this place and there is some contention and where are you at in any kind of plans. Has there been any performance done or getting any hard numbers or any plans like that? Mr. Tsuji said no that they did take Lloyd Haraguchi to the area, but no plans have come forward yet. In part, these leases don't all expire in 2016 which is the first increment. Some are in 2026 and are all around this spot. Consolidation is one idea and the reason staff mentioned that is seeing the neighboring parcels with DHHL have success attracting some big tenants – shopping centers, Safeway, etc. The best thing is to continue leasing out, but what it does is allow others an opportunity to bid as well as the existing Lessee. This industrial area is not the only one – there is Shipman, but is further away from the harbor. No definitive plans yet and kind of looking at what is going to happen with PLDC.

Member Pacheco said let's say if we support you in denial and the strategy of taking over all these leases we look at the whole parcel and if we are going to do that it would make sense to do it when we got all our pieces in place. Mr. Tsuji said and that is sort of like the idea of these extensions. Member Pacheco said because we would end up with some real short leases if we wanted to do that so why not extend now and those other ones we can't do anything with those going out further. Do these extensions and line everything up with the later ones. Mr. Tsuji said the need is now to save money and he understands. Yes, 10 years from now is 2026 for this particular one, but staff noted others in the yellow expiring in 2016 and would not be coming forward or even apply for an extension. He thought a lot of people would be applying, but the improvement clause makes it hard. Member Pacheco said it does make it hard for people to borrow money and run a business at the same time. Mr. Tsuji said you do have to have the financial capacity to do it as well.

Member Pacheco said with apologizes to our Land Division administrator he moved to accept recommendation #2 and was seconded by Member Edlao. All voted in favor.

It was commented by a Board member that the Land agents aren't bad guys that they are just doing their job.

The Board:

Approved as amended.² The Board decided to grant the extension request and choose recommendation no. 2 and deleted no. 1.³

Unanimously approved as amended (Pacheco, Edlao)

Item D-12 Authorize Posting of Performance Bond for the Removal of Remaining Structures of Pier; Waikalua Development LLC, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-005:059 seaward.

Mr. Tsuji explained there is encroachment in the submerged lands area in the water. Typically, either you get an easement or you move it. There is a developer who wants to develop certain lots out in Kaneohe Bay and he didn't want either of them at least for now. The developer asked the encroachment remain until whoever acquires the property decide whether to remove it or apply for the easement. Nothing prevents removal now and they can apply later for a pier that this submittal was written with the desires of the applicant. Instead of an easement and a removal at this time staff is asking is approval of posting of a performance bond for the removal in the event that nobody removes it and it is still there in the bay.

Jim Mei testified that he is counsel for the applicant and described the cluster home development since the 1990s. They have all their permits, but when they went to DPP (Department of Planning and Permitting) for analysis they said they have to get a certified shoreline. The issue with the pier came up when they went for the certified shoreline. They are looking for a marine engineer and what they should do and what will it cost to pull out. They are not opposed to staff's recommendation and glad staff can afford some flexibility. Their concern is recommendation 1d. which he read regarding performance bond and cash bond. He suggested instead of making that a requirement to post a cash bond that when they talk to the marine engineer they will get a performance bond that will go on for a period and give satisfaction to the Department. The performance bond will happen after the first house is sold, but will be structured so it happens within a certain amount of time. Mr. Mei suggested if condition 1d. could be modified by some language that would say "Unless adequate assurance is provided to the Chairperson that the performance bond will continue to cover the demolition cost and associated permit fees" That would give them more flexibility in going forward with this. Once the marine engineer comes on board they will be developing the plans and they will come back to staff with what they will do and hope they come to an agreement.

Member Morgan asked whether Mr. Tsuji was ok with that and Mr. Tsuji asked Mr. Mei was ok with staff's language on the transfer and Mr. Mei said he was. Still need to talk to the engineer.

Deputy AG Linda Chow asked these provisions, what form are they supposed to be taken under 1c. which she read. They are posting a performance bond without an agreement how is that

² Although staff had received a request for a deferral from the lessee earlier in the week, the lessee and counsel appeared at the Board meeting to say they wished to proceed on the item as had been scheduled.

³ On the issue of a reopening, the Deputy Attorney General commented that her quick read of the statute was that the reopening applied to the ensuing period and in this case meant the extended period following February 23, 2016.

provision. Mr. Tsuji said it would be indemnity. Ms. Chow said maybe that agreement should be subject to Deputy AG approval. Mr. Tsuji added that to item 1c. and read it.

Chair Aila asked is they were ok with that and Mr. Mei said we are. Mr. Tsuji said typically, if you had an easement it would require an indemnity and insurance which sort of what we are doing here, but not in the form of an easement because of the request. We want to make sure someone removes it. The shoreline certification can consider the encroachment under the rules to process this application. Mr. Mei said he wasn't sure what permit requirements might be triggered and might have to go to court.

Member Morgan made a motion to approve staff's recommendation with an amendment to recommendation 1c and d as discussed. Member Goode seconded it.

All voted in favor.

The Board:

Approved as amended. The Board amended recommendation 1c and 1d to read as follows:

1c. Applicant shall indemnify and hold harmless the State pursuant to an Agreement that is approved by the Department of the Attorney General.

1d. Unless adequate assurance is provided to the Chairperson that the performance bond will continue to cover demolition costs and associated permitting fees the performance bond shall be replaced in its entirety by a cash bond or certificate of deposit in the same amount before any fee transfer of Parcel 59 or portions thereof.

With the exception of the above, all other aspects of the staff submittal and recommendations were approved.

Unanimously approved as amended (Edlao, Gon)

Item K-2 Alleged Unauthorized Construction of a Masonry Rock Wall along the Shoreline by Michael and Nancy Carlson Located in Waialua District, Island of Oahu, Tax Map Key: (1) 6-8-010:010.

Mr. Lemmo referred to the pictures in the submittal and conveyed item K-2 is an enforcement case relating some background. The land and home are in the urban land use district and the reason for enforcement is because portions of the wall lie below the shoreline which is the public right-of-way within the conservation district. There was a complaint that a wall was built without any permits, staff issued a notice of violation and followed up with a staff report to the Carlsons. Staff considers this a major violation looking at the penalty guidelines between \$10,000 to \$15,000 and they recommend a \$10,000 fine and a \$500 in administrative costs. The structure is removed. The reason for \$10,000 is the erosion situation at their parcel. It seems the Carlsons reacted to a bad situation and was not the correct reaction. This area is subject to

severe erosion that the area to the west is heavily armored with seawalls and revetments. The erosion is transferred to the unarmored properties becomes more severe – flanking problem. This property and the next neighbor down are experiencing it. The reason staff is seeking removal is because we have a law no tolerance policy and staff is following that in case somebody builds a wall recently, the resolution means to ask them to remove the structure. Staff is seeking a \$10,500 fine and remediation removal of the structure and he is willing to discuss the issue with you.

Member Gon asked whether there is any practical mitigation against the erosion that can occur on this property. Mr. Lemmo said no and related this property and the neighbor's property to the east – the Mirikitani's who has a request in for emergency protection. For the short term, emergency shore protection and in the long term some sort of permanent shore protection. These are the last 2 properties most vulnerable.

Member Morgan asked it looks like the house is protected by the big cement wall and naupaka. There were some discussions between the Board and Mr. Lemmo about the erosion and affects to the house and the Mirikitani's house next door.

Member Pacheco asked whether the homes on the west are nonconforming. Mr. Lemmo said most part they are permitted or in various stages of getting after-the-fact permits from the City and possibly getting easements from us for outstanding encroachments. Staff will be bringing more cases like these before you and people can't unilaterally put rocks on the shoreline.

Member Gon asked the appropriate procedure would be to request an emergency shoreline protection or pursue permitting and Mr. Lemmo said yes.

Tiffany Johansson testified that she represents her parents and that her mother did not open the notice until Tuesday and her father wasn't able to come, but Ms. Johansson is part of the process and stayed at the home witnessing the erosion taking place. This is serious and not a home beautification where she displayed some photos. Ms. Johansson related losing 5-1/2 feet of sand since purchasing their home due to the vertical walls to the west and there is no beach there and those walls weren't required to be taken down. She described the shoreline in front of homes that have no wall and how the waves are undercutting their home fearing their lanai would collapse. Their family put their life savings into this home to retire and they don't want it condemned. They understand the fines and penalties and want the permit because this is not going to go away. If they have to tear down the wall they put a lot of money into it and would just have to turn around and put it back up. There is no other option to protect the home pointing out that the wall only protects that unprotected corner that if they remove it they will lose their home. The Board member Morgan had some discussion with Ms. Johansson about the concrete under the house shown in the photos where she described the property. They ask for a reduction in the fee and to keep that wall there.

Chair Aila asked what the considerations of the house next door. Mr. Lemmo said they plan to put in a sand bag erosion control structure. Member Gon asked that is for the short term, but what about the long term where Mr. Lemmo replied probably apply for a permit for a sea wall.

Member Morgan asked if they had to remove the wall and the erosion came under the house and they come back asking to put up a wall to match the wall on the other house is that the process they would go through. If the house fell in the water if the erosion continued can they get permits? Mr. Lemmo acknowledged that they can that if they get the temporary erosion protection that would support a more permanent solution. They would have to either get a permit from the City & County or from OCCL or get a conservation easement. If they have a lot of space they could go to the City to build a shoreline structure and wouldn't have to come to the us, but in this case there isn't a lot of space and the family would have to get a conservation district use permit (CDUP) to build a shoreline structure and get an easement. Member Morgan said he understands where he is coming from and asked if this was removed could they apply for a temporary structure to replace what is here now. Mr. Lemmo explained they could simultaneously remove the structure and install a temporary system.

Member Pacheco asked whether the wall that is up now be part of the process. Mr. Lemmo said it is not engineered properly. Ms. Johansson said this is the same guy who engineered the walls down the entire beach that he had photos of the process from how far down he dug, height specifications following the curvature of the land and not going out further and they have documentation of how the wall was constructed. Mr. Lemmo said this is the guy who is telling people that they have a right to armor their property. If he knows so much about coastal armoring he would have advised you and others to seek proper authorization. Ms. Johansson reiterated their dire situation.

Member Morgan asked about what the length of time is for the process to get sandbags in. Mr. Lemmo said if they give staff a reasonable plan they could put it in the same day where Ms. Johansson said their neighbors have been talking since January and nothing has happened for them. Chair Aila pointed out it's the plan. Mr. Lemmo said he talked to the Mirikitani and will give them authorization if they give a plan, but can't get a hold of them to get that.

Chair Aila asked about the walls that are up. Mr. Lemmo explained they are long standing structures built decades ago under the City and have to go through the City to get an after-the-fact shoreline setback variance and was not built in the conservation area.

Ms. Johansson related concern with the paying taxes on a bigger property than now. Member Morgan said he understands her frustration, but it's clear the law is the highest reach of the waves. Mr. Lemmo said in shoreline law the State claims ownership all shoreline land defined as the area below the shoreline which is the highest wash of the waves – the highest tide of the year. Wherever the waves wash anything seaward of that the State owns.

It was reiterated between Ms. Johansson and Mr. Lemmo about getting a permit to put a wall in by providing a plan. Remove the wall, put in a temporary erosion structure simultaneously.

Member Morgan queried whether they have 180 days and whether they have to go through the intermediate step or could they just apply for the seawall to protect under the house or save the coconut tree. Mr. Lemmo said that is the Board's discretion to do that. You could give a deadline to remove the structure and if they don't do it you'll be arguing the case again with additional fines.

Ms. Johansson suggested having someone look at their wall to see if it is to code and described another shoreline situation on the Big Island and the owner waiting 2 years to get their wall patched.

Member Edlao suggested doing a simultaneous temporary application, leave the wall, but come back in so many days with a plan to modify the wall to make it structurally approved as a seawall. Mr. Lemmo explained as the coastal guy he can't support it because he is the guy responsible for the beach conservation program. He can't agree to it because if anybody sees this they will go out and build a wall and staff will initiate an enforcement action and staff will bring it before you and they will say you have to treat me like you treated them. Instead of taking the wall out consider an after-the-fact approval which is how it was 20 years ago and we moved away from that because it was causing people to go out and harden the shoreline and the beaches. The Board got hard on it and said you build a wall you have to take it down.

Member Morgan said he understands that, but they don't want to be complicit and the house falls in the water that he is looking for a process that could referring to removal in 180 days, but they did it without getting authorization. The right thing is to protect the house with the authorization and can that be done in the same time frame. Mr. Lemmo said no you can't. You have to get a regular permit, CDUP which requires an environmental assessment and a review process. Member Morgan said you are saying you have to do the temporary which is provided in our rules per Mr. Lemmo.

Chair Aila asked whether someone can engineer the sandbags within 180 days and Mr. Lemmo said absolutely, if it's engineered properly.

Member Goode said that is key here. Getting knowledgeable, reputable professional to do it and not the neighborhood wall builder. Because there is a lot of people doing things to the shoreline on all islands with the same problem and owners need to be knowledgeable and deal with it proactively. Getting the right people is key.

Ms. Johansson and Member Goode discussed about other walls which is a City issue. Her family brought sandbags in and it didn't work explaining that they did it with large sandbags, but wasn't completely engineered. Mr. Lemmo explained that in the past they allowed people to install geofiber bags which are the 2 ton synthetic sandbags and if placed properly will serve its purpose of protecting the property that staff would consider those as an interim measure until something long term can be worked out. He would tell the neighbor to do that than what their contractor is proposing. Staff is not concerned with the money, the penalty – it's the policy which is to protect beaches.

Member Pacheco said that the Board has dealt with these before and the process is the process. When building a wall it's finding a reputable person who knows what they are doing. You have a dilemma and we have a dilemma. We have laws, rules and policies that deal with this serious problem statewide that has to do with the loss of our beaches. Ms. Johansson said they are one of 3 owners that don't have a wall and everyone else does and they can't do any more harm than what already has happened. It's a matter of saving those 3 homes.

There were more discussions about the precedent, the problems of doing it. Chair Aila said to do the 180 day for the emergency solution to protect the house and there is a much longer solution and how do you comply with existing law for longer protection of the house because the issue before us now is a violation. During the 180 day period engineer something to replace it to protect the house temporarily and resolve a longer term issue. Mr. Lemmo said within the 180 days they will be here to talk about a temporary structure to swap in for the illegal structure and given the situation staff will help them as well as the Mirikitani's for a temporary solution.

There was a question why the Mirikitani's are taking so long and she got some pretty high quotes and is settling down with working on a plan. That she may be talking to the same people who built the Carlsons wall.

Member Pacheco said within 6 months get a plan for an emergency setback and at the same time find somebody to engineer, plan and begin the permitting process. Get the temporary structure in place. Mr. Lemmo pointed out there are other contractors out there that can do this that people do come to staff asking for resources.

Member Goode said he would rather see the \$10,000 fine go to hire a professional to have it done right and work on a temporary solution and look for a permanent solution.

Member Morgan said he was looking at something similar and this is a very expensive mistake that the solution was always available. There was some discussion about the penalties with Mr. Lemmo who said if the wall is still there after the 180 days he will be back here with a \$15,000 fine that you could extend. Member Morgan agreed that the Department couldn't allow something like this to happen.

Chair Aila summarized the first part is the wall has to come down. Second, we try to find a way to protect your house in compliance with the existing law. In the 180 day period, obtain the permits for the protection of the house that is acceptable engineering wise. The number one violation is the wall and has to come down first. Use that money more wisely by hiring someone more reputable and he encouraged the Carlsons to do that.

Member Pacheco made a motion to approve staff's recommendation amending it by striking item #1, item #3 to \$500 and item #5 add \$15,000 fine if they don't remove the wall so that OCCL doesn't have to come back to the Board to ask for it. He explained that if the wall is not removed within 180 days then it's a \$15,000 fine and at this point you have only the \$500 administrative fee. Member Morgan seconded that. All voted in favor.

Chair Aila asked whether Ms. Johansson understood and she said it will have to be. Member Pacheco suggested she and her parents work with staff to get someone who is really qualified to get this work done.

Unanimously approved as amended (Pacheco, Morgan)

Item K-1 Alleged Unauthorized Conversion of a Storage Shed into a Single Family Residence by John W. Grace Located in North Hilo District, Island of Hawaii, Tax Map Key: (3) 3-6-002:012.

Mr. Lemmo reported that item K-1 is another violation in the limited subzone in the conservation district, Laupahoehoe. An anonymous caller reported a sale and a resident on the property where staff found that there was no authorization for a single family residence. Only a storage shed since 1992 referring to the chronology and why staff recommends the fine, gut it and return to being a storage shed. It is consider a major violation given the circumstances considering the willfulness of the action staff recommends a fine of \$10,000 and return the home to its former use as a storage shed. He went over the conditions reading #4.

John Grace distributed some photographs and testified that he was guilty of not following the Board's requirements when he applied for the storage building. He appreciates that the Board does consider everything and the human factor as part of doing their job. Mr. Grace related how he got the property knowing that it was in the conservation district and applied in 1986 and again in 1991 for a non-conforming permit when there was a public hearing. He could get a conditional use permit if his land was on a FEMA Flood Zone which is what his attorney related to him referring to Exhibit 10 and his entire property is a flood zone. Staff explained to him at that time why his permit was turned down and they said he could get an agricultural permit for a storage shed which is what he did. Mr. Grace intended to store an RV in there and come in on vacations, but he still wants to build a house there and started putting in drywall. He'll take out the refrigerator, stove and make an application which is his plan. Referring to his exhibit L-2 described the subzones, the highway, the neighbors and related some history of the area showing some photos. A limited subzone shouldn't fit in a situation like this – it's not a seashore or pristine natural area. He didn't follow up with it and did another application in 1996. Mr. Grace described his property and what he has done with it that he was fully aware that he violated the law and if he didn't fix this it would cost him and should have cleared it out before he put it up for sale, but he didn't. He didn't see staff's letter about the violation, he had his friends take everything out and then the County took a look at his property and found no violation. There is a gray area with your Department, but there is no doubt that he crossed over the line and won't deny it. He did take everything out and apologized that he has agricultural land that can't be farmed that plants have to be in pots. Mr. Lemmo asked who said that because he can do agriculture because he is approved for that.

Mr. Grace said that the fine staff is recommending is more than his annual income and wouldn't be able to pay it, but if someone has any suggestions for the property he would like to hear that because if the Board can't tell him what to do with this property he will walk away from it. It's not worth the tax money on it. He really screwed up on this that the government could turn it into a park and it's not clear to property owners what they can do.

Board member Gon commented about the shed that it doesn't look like it's for agriculture and things have been removed to reverse the situation and the fact that Mr. Grace recognized the situation.

Member Pacheco pointed out the value of vacant land like with coffee shacks for \$50,000 the value doesn't make sense because why is it so cheap. There was some discussion on that maybe

his neighbor might. Member Pacheco said you can get your subzone changed and asked whether it was the slope and Mr. Lemmo confirmed that there is blanket zoning where not everything is the same within it and explained how the neighbors got their zoning changed. Mr. Grace described the steepness of the land.

It was asked by Member Gon whether the footprint of the shed changed and Mr. Grace said not at all.

Member Pacheco asked about the Exhibit 7 letter which Mr. Lemmo explained how before 1992 the law was written where people with a protected subzone could build a single family residence because they have a right under the non-conforming use clause where are requirements – paying taxes on it and was a certain acreage and that is how people could change a restricted zone which was changed in 1992. People could no longer use the non-conforming use provision. In this situation, the only way to build a house in a restricted zone is if it's a kuleana use and show that there was a house on the lot at one time and qualifies as a land commission award and set aside as part of the Mahele. Back in 1990 they couldn't show it was a non-conforming lot that qualifies as a house and currently, we don't allow single family residences unless you are in a flood zone. I don't know whether it's gone through the full analysis of a flood zone or not. Our report doesn't say you can't build a house. It just says he built a house without a permit and we are fining him for that. Member Pacheco pointed out that he tried and Mr. Lemmo said that was a long time ago. Conditions change. It's a dynamic process.

Chair Aila asked whether a tsunami is considered a flood. Mr. Lemmo said there was a case on Maui and staff recommended disapproval of a single family residence. It went to court and the judge overturned their decision they because a tsunami constitutes a flood. The house has been a complete disaster and this was 10 years ago and people were willing to live there. There are other options for this parcel and a future buyer could pursue the boundary.

There were more discussions about the flood zone and having to follow the FEMA Flood Map and not the phone book. The real flood maps are kept in the Department's Engineering Division and to get in touch with them. The residents are aware of a flood that washed the previous house and owners care into the ocean, but there is no documentation.

Member Gon pointed out that the footprint wasn't expanded that he wouldn't agree to a major violation of natural resource damage because it was essentially the same and suggested going from major to moderate - \$2,000 to consider and the administrative fee.

Member Pacheco asked about the septic there and Mr. Grace said he spoke with the neighbor on the mainland and thought it was going to be a septic tank, but found out later it was a cesspool and he let the contractor do it. The toilet is gone and he is going over to tear out the bath tub. Everything else is gone. Member Pacheco said this is a tough one for him.

Member Goode said he is inclined to go with Member Gon's suggestion.

Member Gon made a motion to reduce the fine to \$2,000, have the \$500 administrative fee with the assurance to remove all residential improvements and approve staff's submittal. Member Morgan seconded that. All voted in favor.

Chair Aila told Mr. Grace to go up to Engineering Division and ask to see the flood maps for that particular area.

Approved as amended (Gon, Morgan)

Item D-7 Consent to Assign General Lease No. S-5231, Moanikeala Kaupiko, Assignor, to Malia Wainuhea Wheeler, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014:057.

Mr. Tsuji asked to withdraw item D-7 at the request of the applicant.

WITHDRAWN

Item D-18 Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu.

Mr. Tsuji conveyed that staff is asking for and are trying to develop income for the coming year that sometimes vacant land takes a little longer. Here we have existing revocable permits (RPs) and we are asking for renewal. We intend in the coming year retain an appraiser(s) to go through this in assisting staff in evaluating whether they are charging too low on the rent. Historically, the way staff did things there was a use paragraph which is restrictive on the zone that the zoning maybe industrial or commercial giving a parking rate and it may not be the highest or best use for those lands giving a Kauai example – RP for parking for a hotel. Also evaluate the highest and best use for the property. Even if we have industrial zone property, but someone may want a permit for storage and the appraiser says can't because it is zoned for something else and staff would like to look at that. There are a quite a few industrial RPs and wouldn't qualify for a long term lease because it is not part of the larger parcel, but is using for industrial purposes. Other than that he has no changes to the submittals.

Item D-1 Amendment of General Lease No. S-4436, Tenrikyo Taiheiyo Kyokai, a non-profit corporation, Lessee, to Change the Performance Bond Requirement under the Lease to Two Times the Annual Rent, and Update the Liability Insurance and other Insurance Provisions, Lots 2 and 3, Block S, Kapaa Town Lots, First Series, Kapaa, Kawaihau, Kauai, Hawaii, Tax Map Key: (4) 4-5-08:008.

Item D-2 Sale of Remnant to Kimberly and Kealoha Estrella, Kapaa Homesteads, 1st Series, Kawaihau, Kauai; TMK (4) 4-6-04:por 028.

Item D-3 Consent to Assign General Lease No. S-4698, Puna Baptist Church, Assignor, to Hilo Baptist Church, Assignee, Keonepoko-Iki, Puna, Hawaii, Tax Map Key: 3rd/1-5-117:024.

- Item D-8** Cancel Revocable Permit No. S-7368 and Reissuance of Revocable Permit to Alexander & Baldwin, Inc., Pulehunui, Wailuku, Maui, Tax Map Key:(2) 3-8-08:1,8,35 and 38.
- Item D-9** Amend Prior Board Action of October 26, 2012, Item D-10 by Elaborating the Character of Use, Revising the Lease Term, and Fixing the Rent for the First Thirty Years; Sale of Lease at Public Auction for Industrial Purposes, Moanalua, Honolulu, Oahu, Tax Map Key: (1) 1-1-064: 006.
- Item D-11** Amend Prior Board Action of March 23, 2007, Item D-4, Request Approval to Enter into a Use and Occupancy Agreement with the City and County of Honolulu for Retaining Wall, Including Drainage and Erosion Control Improvements Purposes and Authorize the Issuance of Construction and Management Right-of-Entry by Revising the Project Area, Honolulu, Oahu, Tax Map Key:(1) 2-5-012:portions of 004 and 014, and (1) 2-5-019:portions of 005 and 009.
- Item D-15** Amend Prior Board Action of June 13, 2008, Item D-10; Grant of Perpetual, Non-Exclusive Easement to Myrna Anne Pualehua Kai for Access and Utility Purposes; Extinguishment of Two (2) Rights of Access by Removing Utility Easement from the Request and Changing the Applicant to Sanford Ujimori, in his capacity as the Commissioner of Foreclosure Proceeding, Civil No. 10-1-2553-11; Waialea, Koolauloa, Oahu, TMK: (1) 5-8-001:015 and Road.
- Item D-17** Grant of a Perpetual, Non-Exclusive Water Meter Easement to the Board of Water Supply, Waianae-Kai, Waianae, Oahu, Tax Map Key (1) 8-5-002:012 portion.
- Item D-18** Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu.

There were no changes to the above items per Mr. Tsuji.

Unanimously approved as submitted (Morgan, Goode)

Adjourned (Gon, Morgan)

There being no further business, Chairperson Aila adjourned the meeting at 2:41 p.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