

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

DATE: FRIDAY, JANUARY 25, 2013
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 9:10 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Dr. Sam Gon
John Morgan

David Goode
Jerry Edlao
Rob Pacheco

STAFF

Russell Tsuji/LAND
Dan Quinn/PARKS
Randy Kennedy/DOFAW
Elia Herman/DAR

Sam Lemmo/OCCL
Curt Cottrell/PARKS
Bill Andrews/DOBOR
Malia Chow/NOAA

OTHER

Cindy Young, Deputy Attorney General
Dean Uchida: D-3
Jim Simmons: K-1
Christine Kam: D-11
Kapuailohia Van Dorpe: E-1
Frank Carpenter: E-1
Paul Shinkawa: D-13

Ross Smith: M-1
David Nakamura: D-5
Rodney King: D-11
Sterling Wong: D-11
Iwa Kalua: E-1
Brock Stratton: E-1
Gaylyn Nakatsuka: D-6

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

Item A-1 December 14, 2012 Minutes

Approved as submitted (Gon, Morgan)

Item A-2 January 11, 2013 Minutes

Agenda item A-2 was not ready.

Item M-1 Consent to Sublease Retail Concession Agreement No. DOT-A-11-0005, DFS Group L.P. to Maui Divers of Hawaii, LTD., Kahului Airport, Tax Map Key: (2) 3-8-001: 19 (portion)

Ross Smith, Department of Transportation (DOT) – Airports Division, Property Manager conveyed that item M-1 is a sublease to Maui Divers and staff is in favor of that where Member Goode noted they are already set-up. Mr. Smith apologized that the timing between construction and people moving in is not always coordinated.

Unanimously approved as submitted (Edlao, Goode)

Item D-3 Grant of Perpetual, Non-Exclusive Easement to Time Warner Cable Inc. for Underground Fiber Optic Utility Cable Purposes and Issuance of an Immediate Right-of-Entry for Construction Purposes, Ooma 1st & Kalaoa 1st – 4th, North Kona, Hawaii, Tax Map Key: (3) 7-3-043: portions of 042 & 091.

Russell Tsuji representing Land Division reported on item D-3 that NELHA is on leasehold that the State owns the fee interest and would be an easement attached to the leaseholder as well as the fee. The Natural Energy Lab executive director was here to answer questions.

Dean Uchida representing Time Warner thanked the Department for expediting this.

Unanimously approved as submitted (Pacheco, Gon)

Item D-5 Grant of Term, Non-Exclusive Easement to 3900 WA Associates, LLC, a Delaware limited liability company for Encroachments related to the Presetting of Chairs on the Beach Purposes, Honuaula, Maui, Tax Map Key: (2) 2-1-023: seaward of 007.

Mr. Tsuji noted that item D-5 deals with encroachments fronting the Maui Four Seasons that staff is allowing the pre-setting of chairs on the beach that the area is small compared to the total beach and would not impede public use of the beach. It would allow staff to control it during specific times during the day and if there are any vacant chairs by 8:00am the hotel staff will remove those chairs. It depends on the tide high water mark. The storing of equipment is an issue and staff will bring back later.

David Nakamura said he had no comment, but thanked the staff.

Unanimously approved as submitted (Edlao, Goode)

Item K-1 Conservation District Use Application (CDUA) OA-3636 regarding the proposed Landscaping, Land Management and Animal Husbandry by Sharon Geary, located in Ko'olaupoko District, Island of Oahu, Tax Map Key: (1) 4-5-032:001

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) conveyed some background on item K-1 and described the property that the applicant wants to do landscaping, utilities and animal husbandry on it. An environmental assessment (EA) was completed and accepted, but there was no public hearing, but she has a good management plan to manage the animal husbandry and all will be fenced in that the nearest fence line is 50 feet. Staff feels it represents a reasonable use of this property with some conservation elements. There is no house planned that the previous house burned in 2001. Staff recommends approval of the application plan with the management plan subject to a number of conditions. One of the divisions recommended that an archaeological inventory survey be done on the property.

Member Gon queried whether State Historic Preservation Division (SHPD) looked into whether the heiau was demolished or burned down surrounding this complex or adjacent to it. Mr. Lemmo acknowledged that was a possibility.

There were some discussions between the Board members and Mr. Lemmo regarding studying the whole parcel, but on the disturbed area and there is standard protocol to do an inventory survey without having to stop work. Even during the survey if you find something you have to stop and call SHPD and it's not unreasonable to ask for the survey.

Jim Simmons representing the applicant testified that it's a surprise about this recommendation for the survey because a previous archaeological survey was approved in 2006 and questioned whether that needs to be updated since his client purchased it. He asked what is standard for current archaeological survey and if they had known they would have done it. Chair Aila read the letter from SHPD that Mahealani Cypher conducted the cultural assessment and it appears it has been done.

There were some questions and discussion between the Board members and Mr. Simmons on whether an EA (environmental assessment) was done in 2006 and it was done by the previous owner. It was pointed out that an archaeological field investigation was done and Mr. Lemmo said staff didn't know the extent of it that Mr. Simmons would have to look at the previous CDUA. Board member Goode asked whether there were any discussions with SHPD and there were none. The Chair pointed out the reason staff is recommending this is because the adjacent property was surveyed in 2009 and historic sites were recorded.

It was asked by Member Goode whether there will be any ground altering activities and per Mr. Simmons other than planting, no that the planter boxes were there previously that they are replacing what is there.

Member Gon asked whether there will be any big foundations for the animal shelters and Mr. Simmons said no that they want to keep it simple.

Member Pacheco said he wouldn't support that recommendation from SHPD because it's not before them and suggested that SHPD look at the 2006 report and whether that will suffice. If not than require them to work with the Division. The Chair suggested the applicant and SHPD consider archaeological monitoring that there isn't a lot of earth being moved and to have an archaeological monitor be present when the applicant plants their trees. Member Gon said he liked that

Mr. Lemmo suggested they condition the permit such that the applicant shall coordinate with the landowner to determine the extent of the archaeological inventory that SHPD conducted prior to any construction be initiated. They need to talk with SHPD about what they've done in terms of the archaeological survey and come back if they need to do additional inventory work and allow SHPD to look at that data ask it comes in. We wouldn't clear anything until SHPD was satisfied with what's been provided. It might be expensive to have a monitor out there. One of the Board members said not less expensive than doing the survey that he likes the idea of working with the Division to satisfy SHPD and construction is not part of the plan. Mr. Lemmo said to just add it as a condition. Member Gon pointed out recommendation 6 about turning in any construction plans to the Chair. Mr. Simmons said he would be fine with that and that he understands the other conditions.

Board member Morgan moved to approve staff's recommendation with an additional condition that the applicant will work with the Department and SHPD to review any existing or previous archaeological work and address any concerns. Member Goode seconded that. All voted in favor.

The Board:

Approved staff's recommendations, but amended it by adding an additional condition that the applicant will work with the Department and State Historic Preservation Division (SHPD) to review any existing or previous archaeological work and address any concerns.

Unanimously approved as amended (Morgan, Goode)

Item D-11 Report and Request for Comments from the Land Board Regarding Concept of Land Exchange between the State of Hawaii and Sand Island Business Association ("SIBA") for State-Owned Land at Sand Island, Honolulu, Oahu, Tax Map Keys: (1) 1-5-41: Various, and Privately-Owned Property Yet to be Identified.

Written testimonies from OCCL, Engineering Division, CWRM and DOFAW were distributed to the Board members.

Mr. Tsuji related there is long history and some background on item D-11 that there was legislation regarding the Department consider the sale or exchange of public trust assets to the Lessee that this Board has statutory authority or discretion to authorize the sale of the State's property at fair market value. The significance is to support the Department and its many programs. He related fair market value on a personal property being appraised. If it came in at

\$500,000 he would decline, but if it was \$5 million then he would think about that. They are not in the situation of needing to raise cash at this time for the Department. What this 20 year long term lease does with a mortgage and the way this lease was structured where the area in the late 1980s was occupied by revocable permits (RP) the tenants were interested in long term leases. There was the organization Sand Island Business Association (SIBA) that sub-leases to other businesses and they borrowed money on the long term lease with infrastructure work. The mortgage was \$28 to \$40 million. In exchange, not only the long term lease, but also significant discounts in the market value. Based on evaluation we are currently into \$3 to \$4 million market and this number today is stepped up from earlier years and the amount of discount given on the lease then was significant. The way this lease was negotiated starting from 2017 back to the main term of the lease you get market value and we know the Lessees request is to determine the 2017 rent. Staff consulted with the Attorney General's office (AG) and got clearance. It is over \$8 million a year. The lease is structured for every 10 year period and in addition the fair market value in every 10 year period jumps up 22-1/2 percent and the logic is in exchange for the discount in the early years there will be a return to the State at the end. The Legislature asked the Board a couple years ago to consider a sale or exchange now, but with all due respect this asset is very valuable for the Department, for the financial health of this Department. For Land Division they not only financially support us, but they support a lot of other Divisions. This revenue even though its below market value is a big part of the revenues we generate annually which was more than 50%, but now is a little less than 50% of the annual revenues to the Division. It is still significant and is a steady source of income knowing the lease term for the next 45 years. We are always trying to generate revenue on other matters. Referring to the 2 letters from SIBA on the appraisal that was done that this would be the base market value and our appraisal came in at \$147 million and that is just the exchange value. It would have to be significantly more than what they've offered. We have nothing firm offered by the Lessees. On the written testimonies, the Divisions all came in strong support of our position, strongly opposing any sale of this asset. Referring to the Commission on Water Resource Management director's testimony was any sale or disposal of this property would be a breach of the public trust. This land was always marsh land or partially submerged and never has Mr. Tsuji brought before the Board a transaction of reclaimed lands. This land was previously submerged and filled. He has no problem leasing it, but he personally cannot fathom the idea of selling what were previously submerged lands which he confirmed with the abstractor.

Member Gon asked to elaborate why you have that policy. Mr. Tsuji said the Statute does give this Board the discretion to lease or sell it and if there were prior lease sales that are not a violation of that Statute, but he just has a hard time with selling previously submerged lands. You can't sell the beach or the ocean. What the Statute does is give this Board authority to do something like sell, exchange or lease – it doesn't have to. You meet certain conditions you are authorized to sell, lease than yes you have discretionary authority and that is the power of this Board and that is why your confirmation process is so thorough, but you don't have to. The conservation district issues are thorough that you have the power to fine, enforce and a lot of things.

Mr. Tsuji noted staff works with OHA (Office of Hawaiian Affairs) a lot and he has always told them that it is non-ceded although they believe it is and the reason for that is these lands used to be under the Federal Government. It got transferred to the State two days before Statehood and

if it didn't it would become ceded and 20% share to OHA. He spoke to some Deputy AGs and they confirmed it is not ceded lands and that is why every time Sand Island comes up, OHA is there. It is a significant source of revenue. There is always a short from the Federal on airports and Land Division takes up the slack for that. One of the letters from Sand Island wanted the Board to indicate the fee was available at market, but Mr. Tsuji would decline that.

Member Pacheco had issues with the transfer of the lands prior to admission to the State and asked to give some history on it and whether there were other lands treated similarly. Mr. Tsuji said generally these are public lands IE or commonly ceded and 20% to OHA which is over 90%. There are few that are not ceded and this one he knew of and didn't know of any others. If you look at how and when it got back to the State it stood out like a red flag like this one. The Federal government wanted it for some refinery and had to come back and if they had waited it would have been classified ceded, but the 20% to OHA happened much later.

Member Morgan noted this is a non-action item and appreciated the testimony and asked why are we looking at this. Mr. Tsuji explained the resolution was passed several years ago and asked the Department to consider such an exchange and he would like this to be addressed that we are not interested, but again this is the statutory authority of this Board.

Member Gon asked to summarize what the justification was. Mr. Tsuji said he didn't have the resolution and he guessed this Association sub-leases, roughly a hundred or so to individual businesses and they would like to continue perpetually on that land and he believes that was the genesis of it. But, this is a public trust to the State of Hawaii.

Member Pacheco read the Act that there is a report due. Mr. Tsuji confirmed that and staff has had meetings and discussions with SIBA before to determine a base line which is why the appraisal.

Member Pacheco said there is not a lot of "whereas" here, but the main purpose of the b=Bill was the arrangement where the Association sub-lease it and they put in millions of dollars of infrastructure in and this is to generate businesses get fee simple interest on the improvements they made. Mr. Tsuji said to keep in mind there is no option to purchase and someone coming now asking for an exchange. If it was non-producing asset and they have no use for it, yes, but this is a significant asset from a financial aspect as well as cultural and historical. It is just a resolution and not any type of law and may not be the sentiment of the current Legislature.

Rodney Kim, Executive Director of the Sand Island Business Association (SIBA) testified that they hold the master lease with the Land Board to the Sand Island Industrial Park where he gave some background history on the 1988 Industrial Park Act which was a business agreement with the State on a 55 year lease and the tenants put in \$40 million in infrastructure and another \$20 million in improvements. SIBA is a non-profit group and about 4 years ago looked at long term for their tenants that they wanted to get back a return on their investment where they looked at buying the fee and asked the Legislature for assistance. They are asking the Board's approval to achieve their goal. In return for their getting the fee, the Board will not lose any land. They will provide in exchange the same amount of land value, revenue value under State law. To find a comparable size of 2.5 million square feet of leasable area is substantial and difficult to do in a

single parcel and would have to find 3 or 4 parcels to come up with that amount. It could diversify the State's revenue stream, location since the Sand Island area is under water. Hit water at 5 feet, they are next to the sewage treatment plant and they are in the tsunami zone. Diversify your portfolio and minimize you risk. The ground rent that they were paying went into a trust fund to develop more industrial properties which is why they went in to amend the Act. They are asking approval to get started even though they may not achieve it and want the Land Board's assurance to do an exchange.

Member Pacheco said what the Act says and what is before them in the submittal is that we are a little bit ahead of ourselves and we have the Legislative mandate already to consider this, but for us to say yes this is a good idea and give some approval to go that way so you can go out to do your due diligence to find the deal he doesn't understand why you can't go and find that deal right now ahead of time and come back to us with something on the table to look at.

Christine Kam representing Avalon Development and are the advisors to the Association testified that the reason why is the Resolution for the DLNR to consider is that they need to come back to the Board to make sure they approve this action and they went through the process. The market value was established for 2017 rent which she described. The value has gone up 81% from 2011 to 2012, but the question is the premium which is significant. The first step is finding a market value that the Board would agree to exchange, identify those properties, Board agrees, the EIS process next and then the exchange. We are asking your consideration and acceptance that you would do this exchange. They understand that the Department's reliance on the revenue. She related the lease rent in 2017 and they want to try to find the properties to exchange to diversify reiterating Mr. Kim that they would like your consideration and the infrastructure improvements showing some photos.

Member Morgan pointed out that you are required to do the infrastructure because of the low lease rents. Ms. Kam said compared to other areas that are still in poor condition you wouldn't have this. The Association put in the value and you agreed not to increase the rent until all the mortgages are paid off. They created the opportunity for the State to enhance the revenue source. They will be back to this Board many times and they don't even know if they can achieve it.

Member Gon said because there is all this written testimony supporting Mr. Tsuji's opinion and there is no action for this item he suggested they contact these divisions and explore the basis of their opposition and whether you can convince them. Until the Board can get departmental buy in it is unlikely this Board will supersede the heads of these divisions. We have responsibility to the land and resources which we take strong guidance from the staff of this Department.

Member Pacheco disagreed with Member Gon on the Board's role to look down on this strategically regarding the submerged lands and the ocean rising and the way the Act is spelled out is this can only happen is if we get something of equal and greater value with a promise of a revenue stream, but it is difficult to have a known cash flow and a known resource to go to multiple parcels with different development easements and requirements and managing that asset and how difficult it is compared to what we have already. He understands where SIBA is coming from, but wasn't sure what they need from the Board because this is a non-action item

and wouldn't be able to make any motion or give you any in any direction based on Sunshine Law. Ms. Kam said they are looking for approval to go to the next step. She understands this is a non-action item that the recommendation was not an approval and more for information. But, this was an opportunity to hear your concerns and to get this to an agenda where you would approve the fee value from \$97 million to \$107 million over an 11th month period on evaluation which is the premium. If you agree to the \$107 million it would allow them to go to the next step in coming up with exchange properties for your consideration. Member Pacheco said and our Department is saying the \$107 million value is the value plus we want to look at the premium and you are saying that the premium should be included in the \$107 million. Ms. Kam said they believe when the property was appraised at \$97 million in 2011 and then appraised when they discuss fee exchange at \$175 million 11 months later we believe that is the premium that the Department has placed. Member Pacheco asked isn't there a big difference between leasehold land and fee simple. Ms. Kam said it was fee value and you own the fee and the lease rent is set based on the value of the fee property. The \$97 million was valued as the fee in which you set your rent. When they went into a fee purchase they went into a new appraisal which came up significantly higher.

There were some discussions about the methodology changing which Ms. Kam described the SIBA evaluation that there are individual parcels and evaluating the fee exchange.

Member Gon suggested looking in to the policies and the problems with the divisions and the economics and responsibilities that this Board has with regards to the lands and waters of this State. Voicing these is one step and you now have a clearer idea to find a viable solution to these reiterating contacting divisions.

Board member Pacheco was concerned with not having an entity like SIBA to manage these properties and Ms. Kam referred to an organization chart which she described guaranteeing the income stream. They will address what Member Gon said and would like an opportunity to come back for an action item. That they received notice of this meeting Tuesday and hadn't had an opportunity to evaluate the testimonies.

Member Gon noted that the Board is at a loss as well with the information that they need and the reason why they ask why is are we listening to this at all. Member Goode agreed to both Board members not having enough information and commented at the end of the lease term for the Department have other properties generating and not have the risk associated with that property. We need more work done to identify how that might be done and he would like to see that. What are we talking about? At \$175 million what is the rate of return? Ms. Kam said it is more than what the market could generate.

There were more discussions that the owners are not open to that yet and how many of those sublessees are willing or are capable of buying to do EIS, etc. that might need a spread sheet. Not all are capable and SIBA would be the middleman. Maybe half might and the other half don't. Why SIBA is pushing this is because of the market and interest rates for long term mortgages.

Member Goode noted why the Department doesn't want to sell that the income stream from the General fund goes down every year and these are potentially ceded lands to OHA. If you can show there is potential...Ms. Kam said they did the list in 2011, but a lot are gone and could refresh it. Mr. Kim said that SIBA will be the purchaser and not all their tenants that they borrowed the money and assessed each tenant a monthly fee.

Sterling Wong, Public Policy Officer of the Office of Hawaiian Affairs (OHA) testified from their written testimony that they oppose any exchange of these lands. He then related some history on the ceded lands at Sand Island that the auditor put to rest that all submerged lands are ceded lands. That the Federal government held all submerged lands transferring to the State. These are ceded lands, but the dispute is how they came to the State where he gave the history about an oil refinery coming in and what happened related in the report. A lot of the 5B lands are ceded lands which OHA gets revenue from and they don't get revenue from Sand Island and they should. OHA agrees with staff's submittal to fulfill the Department's fiduciary duties to the State. This asset is vital to OHA's finances, too.

Dan Quinn, Administrator for State Parks testified that they share the concerns of the other Divisions of the Department. The Special Land Development Fund covers the cost of lifeguards at Keawaula State Park at Kaena Point and to keep parks open.

Mr. Tsuji said that on the rent reopening leased it to one tenant for the whole area. Any appraisal can tell you smaller lots draw a significant amount of value versus one big lot. The purpose of reopening the rent is with the understanding of encumbered with the lease for a remainder of the term. To exchange or buy it you have to take fee simple value of the land which set the bar at \$175 million. He would still say no thank you. If they came in \$600 million to a billion dollars they might look at it.

Member Pacheco asked whether the Department looked at what the premium would be on top of this \$175 million. If we did get a deal to diversify a land equal or greater value with diversified assets...Mr. Tsuji said equal value the answer is no. There were more discussions about the premium, the appraisal, who the firm was, what the deal is, OHA and the issue of the value. The asset, diversifying, increasing revenue, but this is significant revenue and gain opportunities when they can. More comments about exchanging, that the Board members have too many unanswered questions and SIBA needs to come back with more information and its loss of revenue with the Division. There were some discussions about the premium that SIBA has to do the work. Mr. Tsuji related another case involving exchange of land.

Item E-1 Update on the Status of Management and Enforcement Action Taken at Kealakekua Bay State Historical Park, Ka'awaloa, Kealakekua, Hawaii.

Written testimonies from Karen and Ron Repan, Kona Boys, Aloha Kayaks and Adventures in Paradise were distributed to the Board.

Dan Quinn representing Division of State Parks introduced Curt Cottrell, Assistant Administrator who reported that we are in 24 days of the moratorium since initiating the restriction of kayaks and non-commercial vessels in Kealakekua Bay State Historic Park. He wants to brief the Board

even though this is a non-decision making item because staff will be coming back to the Board on what they've learned. Staff executed the Executive Order (EO) on the transfer, the Governor signed it and State Parks got title to both Napo'opo'o wharf and the waters in Kealakekua Bay triggering our Administrative Rules and authority to initiate the closure on January 2, 2013. Staff installed signs (he showed some photos) at all key points of egress and ingress with assistance from DOBOR (Division of Boating and Ocean Recreation). A dive team installed a line of buoys across the Bay for enforcement purposes demark where the EO set asides State Park boundary in the water.

Member Pacheco asked whether this was permanent and Mr. Cottrell said as long as they can be, yes. Also, Member Pacheco asked whether one of the old signs was one ripped down or was it an old post which might have been an old post per Mr. Cottrell.

Mr. Cottrell said that based on the AG (Attorney General's office) discussion on our ability to regulate coastal trade, maritime commerce, initially, staff were to issue drift in permits to Coast Guard documented vessels, but we are pretty step on the learning curve in trying to determine State Park's Coast Guard documented inspected versus HA passenger vehicles. In a discussion with the Chair we did a policy call – staff issued up to 74 special use permits to commercial vessels that have an interest in getting into Kealakekua Bay over a year or where their business plans require it. Some are dive boats, charter boats, fishing boats and typically we have 5 to 6 commercial vessels in there at any given time, but the total market interest for Kealakekua Bay is currently based on permits we've issued is 74 and they have a few more trickling in. That was a big learning curve for staff to understand how critical the Bay was to access for commercial vessels. We have a data base of e-mails, boat registration, business addresses whether or not they are zodiacs, charter boats, dive boats, etc. was created in a really short time with a brand new special use permit for these vessels and did it all by e-mail. On New Year's Eve staff issued 30 permits for charter boats. The conditions are tight that the charters can't launch auxiliary vessels from their permitted vessels. They can't use the wharf at Napo'opo'o. There is no landing or transporting of people at Ka'awaloa Flats. They are not to damage coral or tamper with marine life or marine mammals, but more importantly these conditions are subject to change. On the side of caution because we are still on the learning curve with this adaptive management to see what works - all of these permits expire in June (2013). In addition to the Fairwinds that has a special use permit now issued by State Parks instead of Boating since they have fiduciary, regulatory over their mooring their permit they also expires in June. We have a cushion to deal with the commercial vessels.

Mr. Cottrell reported that staff shut the gate at Napo'opo'o, signs and buoys are in place and based on conversations with DOCARE (Division of Conservation and Resources Enforcement) enforcement has been successful without any conflict. DOCARE issued 6 warnings and one report of 1 random kayak going in. DOCARE deployed 55 hours of labor with about 8 of that on water bourn patrols where they stepped it up hard at the beginning and now they are backing off. We are now in a monitoring situation which staff anticipated would happen. At Ka'awaloa Flats there has been an increase of overland hikers coming off the top going along Ka'awaloa Trail creating additional impacts at Ka'awaloa Flats primarily human waste which was always an issue, but less so based on other observations because most of the water bourn kayak tours will use our restrooms at Napo'opo'o and the comfort needs at Ka'awaloa was less. But, we did this

at the peak of the visitor period and the representatives from the kayak tours can attest to that. There has been an uptick in the number of commercial boats coming in as result of probably no kayak access and visitors trying to visit the monument and snorkel. Based on their District Supervisor that uptick has dropped to normal levels, but clearly the tourist will figure a different way down the trail and the charter boats are the only way so there is a slight increase. They have a new archaeologist that did an extensive survey. There are 4 significant archaeological sites that have all been abused and experiencing impacts of human waste as a result of no toilets. As they move into the next phase of getting visitors in and out of the park we have an increase issue at Ka'awaloa Flats.

Mr. Cottrell reminded the Board that staff told them (at a previous meeting) that they would be setting up a kayak website like their camping and lodging permits – Hawaii Information Consortium is developing a website that the public could use to visit the kayak shops to rent kayaks. He will come back to the Board for pricing, but they could deploy by March 1st which would be based on a day use permit deployed at Kalalau. How this would work is they would establish a maximum daily capacity of rental kayaks coming in between 20-30 tops maximum daily use. Staff will come to the Board for pricing probably next month which would roughly be \$20 per permit which represents a new revenue stream for us and the vendor making the website gets 10% and at the end of the day for kayaks - everybody needs some form of authorization to be there because based on previous discussion there is the long standing issue of solicitation and trade of unauthorized kayak vendors at Napo'opo'o hawking kayaks for a fee and engaging the tourists. We can cover the rental part of it via the website and most of the kayak providers have access to the internet, use a card, issue a permit and rent a kayak and will increase cost for the visitor, but that solves the kayak issue. The vendor making the website indicated it would be simple that it is similar to what staff did with the Na Ala Hele program years ago. With commercial vessels up to 75 it would be easy to contact them and this is warranted since it is a concern with staff has expressed. Prior to this we had phantoms of boats going in and out of the Bay. Nobody arrived all at one time. Now staff has knowledge of at least 74 commercial vessels and raises the concern what if all these vessels showed up at one time. In the future now with the data base on the commercial vessels staff can set up a system comparable to the trail program and set-up a commercial vessel capacity, set-up a pricing and commercial vessels go on-line to purchase a day's permit for vessels. He is holding that back although it represents income it is just in case they have a continued issue of commercial vessels and kayaks increase. They can get that going by March 1st.

Mr. Cottrell said he has been in consultation with DAR's (Division of Aquatic Resources) staff that they could piggy back on to the dolphin research and they've received good data looking at the average over the past 2 years of vessel usage, average kayak use and average swimming use that they were doing boat counts working with DAR. The maximum vessel patronage over the past 2 years at Kealakekua is about 5 boats on the average with about 15 kayaks based on DAR's counts, but their counts are on hourly basis so if 5 kayaks go in, then there is 9 and they count 10 at 11:00am those 5 might still be the first ones in. Staff is just collecting data. The issue that is troubling because it violates Board policy on how we deal with eco-tourism, but he had a lot of phone calls from residents who are watching the permitted commercial vessels yet, were not allowing stand-up paddle boards and non-commercial kayaks. There are 13 non-commercial vessel permits waiting for authorization and staff does not want to issue to non-commercial

vessels. Now that it is under our rules commercial is required to have a permit. There are 13 locals that want to use the Bay and he is going to recommend as they start rolling this back out that non-commercial vessels be non-permitted because that was never a problem for staff and that the problem was the proliferation of unauthorized kayaks. Our Board policy on eco-tourism is resource first, public second and commercial third and briefly on this moratorium they've flipped this a bit and he would like to bring it back to where it needs to be. The problem with allowing unpermitted people that say they are non-commercial we've opened the door again to the problem of who is commercial and who is non-commercial. Here I am with my stand-up paddle board and I have 10 more and we are all non-commercial that these are folks capitalizing on visitors who want to get in. For kayaks, we set-up a special use permit for locals, resident address that we manage ourselves that is for a 1 year duration. The hard part is establishing a reasonable maximum number of kayaks that an individual or a family can say we have 1 kayak, 2 or 5 or the folks that say I have 10 or 20 kayaks and I need an annual permit for those. Now we are opening the door for the illicit trade of kayaks and he doesn't have an answer to that one and that is why this is a work in progress. At this point staff does not know how long they will prohibit the use of kayaks. The enforcement effort has been very successful because right now it is only commercial vessels with permits going in and out and nothing else is legally allowed in there. Because of the uptick in commercial vessels and we have 3 commercial kayak vendors that have Board approved RPs (revocable permits), it's time to look at next month to allow the re-deployment of the 3 authorized RP kayak companies, but we have to amend their RP because it doesn't say launching from Napo'opo'o and provide them gate access giving them the keys to the secured gate. This is a big step in giving the 3 kayak companies exclusivity in utilizing this parking lot. The up side is they have permits, we are keeping track of them, they are reasonably compliant most of the time and staff wants to work with them on the management of the gate.

Mr. Cottrell summarized that staff is looking to re-deploy those 3 kayak companies, gives the Department an income stream and to get visitors in a safe way under a guided experience over to Ka'awaloa hoping that doing this adaptive management will reduce the visitor load and traffic issues created up topside. You either come in charter boats, hike or kayak. We only now denied the kayak access and alleviate the pressure and allow only the 3 permitted kayak companies to capture clients who were hiking and using the charter boats. Under their permit they are required to deal with human waste when they bring folks to Ka'awaloa Flats and they can ensure the safety of their patrons traversing back and forth across the Bay if there is a slight uptick in commercial vessel traffic due to the current lack of kayaks because we are still holding tight on that. Our permit staff has been turning away 30 permits a day when the rush hit. We made it easy and didn't charge, but now we have 75 new commercial vessels that have permits that have an interest in getting into Kealakekua Bay that staff didn't know existed before. That is good data for us and the dolphin folks with a better line of communication. But, how do we allow without messing up what is now clean and organized the non-commercial recreation of stand-ups and surfboards without opening doors to illegals coming in and capitalizing on non-commercial access to get back in there. We have an obligation to serve the general public and asked the public to be patient that they are working on this.

Mr. Cottrell said the second critical action is to establish a long term solution to the control of the gate. Staff could offer to a parking vendor at a nominal fee with 60 stalls at both places. Come to the Board get authorization to charge for parking, set a price but instead of going for income it

will be a value added service because the parking vendor would manage the gate and check for permits. It would be a service rendered in addition to a nominal rent. We would have to get some community comments about outsourcing. The second option is you could apply new income that we'd be generating at 30 permits a day at \$20.00 per permit and hire a company like Wackenhut or something. Another option was a concession – finding an entity, putting out to bid, setting up a model where the private sector runs Napo'opo'o Wharf. There is huge community resistance to that. The balance and protection of the resource, there are folks with cultural equity there and some use it for their commercial interest and staff understands that this is important to the North Kona Community in terms of the economic value.

The third big problem is management of human waste at Ka'awaloa. Staff is doing a master plan and EIS (environmental impact statement) that under health and safety staff could do a quick EA and establish a portable composter comparable to what DOFAW did at Manoa Falls while they do the long term master plan/EIS because that is a key management issue, cultural issue that is not going away. Ultimately, they either close Ka'awaloa Flats and push back from an enforcement standpoint and come up with a way to manage the human waste. He could talk to the kayak folks and find a way under the RP in exchange for gate access we set-up a system that they help staff deal with that. He learned a lot about boats and Coast Guard rules, etc. Staff is pleased and shocked that there are this many boats with a commercial interest. Some dive boats only use Kealakekua as a fall back. Some fishing charters only go in for half an hour to eat lunch and then go back out. Because staff made it so easy to go on-line all these people are submitting these permit requests. In 6 months, he has to re-issue these permits and hopefully in 6 months we'll have more than 4 special conditions like prop guards in terms of public safety. Or staff could come back with pricing that only 15 or 20 of you are allowed at one time and go on-line, find your slot and once it's full the Bay is full and there should be 3 kayak companies with their 20-30 rental kayaks and a capacity of 15-20 vessels.

Also, there is interest in the 4th kayak company slot staff revoked when Hawaii Pack & Paddle violated their permit that one entity has a strong interest and a couple casual interests. Right now, Mr. Cottrell wants to re-deploy and re-introduce vessels in a very controlled systematic basis and so he isn't in a hurry to fill that 4th slot that he wants to work with the current 3 kayak RPs with the commercial vessels as staff figures out how to re-deploy the rental boats first. Any 4th kayak company offering would come before the Board for disposition. Staff received about 25 letters questioning where several that don't support what staff is doing and several that don't support commercial interest and several letters in strong support because the Bay looks like how it did 10-15 years ago. Across the Board there is support with locals who want to get out, but understands what staff is doing. There is passionate interest in what staff comes up with.

Member Gon asked that you are considering re-opening with the 3 kayak companies within the coming month – is that February 1st or 15th. Mr. Cottrell said there is still the continuance of the RP to do that he thinks they could do it in mid-February and the Board already authorized the Chair to renegotiate the RP that there are some gate control and additional stewardship responsibilities at Ka'awaloa.

Member Pacheco pointed out that what he learned from the coconut wireless was DLNR is doing permits and to grab one now not knowing what will happen so all these people were grabbing permits and a couple businesses never go in there and it's not in their business model that it was

like a feeding frenzy. Mr. Cottrell said they fell into our trap and now we have all this data now and we didn't know these guys existed.

Member Pacheco said with Ka'awaloa and he didn't know if he ever did a river trip noting that all these boats have to be responsible for all their clients suggesting the use of wag bags or river toilets and he uses the pet stuff and is suitable because of how it's treated and are easy, good solutions for the interim until we find something long term. Also, he sees pressure and demands to access places and in his industry being involved in interpretation with other organizations like National Park Service and other places when there is demand on the resources it is difficult to shut that demand off. The best you can do is managing it in the best way possible and you are right. If you try to shut it off people will find a way to squeeze through and that creates a big issue. I want to encourage recognizing that this is a really compelling place and that is a State Park in total one of our historical, cultural and there is not another place in the State that is more important in natural resource and is a jewel. The fact that we can't staff managing that place, a State Park, we really need to find a way to fund State employees to manage this place day in and day out, 7 days a week and compared it to Diamond Head. All these ideas like a concession – he wouldn't support a concession, but what it comes down to we have to step up and the Legislature has to step up and the Department has to step up and find the money to manage the place. Nothing is going to go away and over time if we shut stuff down people will find a way because there is money on the table. Mr. Cottrell agreed that Kealakekua Bay is an icon to the visitors and we either privatize it or staff it up. In doing so we either get approval or funding or develop new sources of income which is what we are doing that this could generate money for the staffing, but we need the money first. DOCARE can't be down there every day and he implored to them to have at least the random checks in the morning and as often as they can. Right now it is a clean slate and staff doesn't want to lose control by going backwards. The next several months will be critical to how staff reintroduces people/visitors in various crafts into this water. Likely staff will be back to the Board in February with a pricing approval.

Chair Aila said we would like a report on how they implement the return of the 3 kayak companies. We were flabbergasted on January 2nd by the number of vessels that came in because the cruise ship was in. Normally there are 5 total vessels on any given day at Kealakekua. When they got there, there were 20 vessels of different sizes because the cruise ship came to town. Mr. Cottrell said they had just issued 30 or so permits and it has flattened out since then. The Chair said the other significant character of Kealakekua Bay is when the coastline is affected by high surf it is one of the few places that you can get away from the surf and that is the reason why everybody ends up there. It's a learning curve and they thought it was complex to begin with and it's more complex now that we understand. We have given the Board our plan - shut it down, but will open it up incrementally and measure the success and as people adopt our plan we will adopt to them and in the long term I think we will have something much better than what it used to occur there. Bear in mind you are speaking to the vantage point of those in the tourist industry. Every day I go out to places across the State of Hawaii and what he is hearing from residents is the tourist industry is out of control and is affecting our resources. The goal is to balance this. This is just a microcosm of what is occurring throughout the State. He is getting requests to close beaches and parks throughout the State.

Member Pacheco said he thinks the State should use privatization, but he doesn't think this is the place that deserves that. Mr. Cottrell acknowledged that a lot of people would agree. The commercial element at face value functionally works, but is different on an emotional level. Member Pacheco said he can handle the commercial activity, but as for the management of it...it's a difficult thing and that is why government does these different kinds of jobs because they are difficult understanding that being on the Board making these decisions.

Kapuailohia Van Dorpe, a Kona resident testified relating some family background information originating from Ka'awaloa and Napo'opo'o. That as an American citizen and a Native Hawaiian we must abide by this country's laws. Ms. Van Dorpe was grateful for the speed of this action that her kuleana is the land, the people and the ocean, but there are still the hikers and influx of boats. She appreciated the ability to testify and related that she was a partner to Iwa Kalua, owner of Aloha Kayak for the past 7 years and was a silent observer, but she is compelled to address this now because of a meeting for the Hui to come up with a management plan (per Iwa Kalua was held at the Princess's hale down at Napo'opo'o) where Gordon Leslie made racial slurs of haole, threats, that if things weren't made pono (right) by the Chair there will be protests in front of the gates and no one will be allowed in the village that Mr. Leslie didn't like the term illegal and that his family are renters of kayaks which is a contradiction to his 2005 position. Mr. Leslie said that the villagers should reap the financial rewards provided by this Bay and Ms. Van Dorpe does not agree that they were blamed for Tyler Maldoff's death. She described what happened that day. Police told the illegal kayakers from firing fireworks because of how traumatized everyone was. The 3 kayak owners are pono in all respects and are responsible taking care of the waste on their tours. They are law abiding, tax paying, insurance holding, etc. and asked to please set them as the precedence as always following the rules naming the Galapagos Islands as a model with commercial permits only for guided tours otherwise you can't step foot in Ka'awaloa unless you are with a trained guide. She does not agree with privatization and to staff it instead. This is too sacred a place for this fighting to continue. They live down there and are always angst with the situation and asked to find a way for the guided permitted tour to continue. The Chair said that he did say to re-instate the 3 kayak companies sometime in February and Ms. Van Dorpe appreciated that.

Member Pacheco asked whether these community meetings were endorsed by the Department. Ms. Van Dorpe said it's haphazard, postering. Chair Aila said the Department has not authorized any meetings. Ms. Van Dorpe agreed and she wasn't accusing that she was reporting what was being said and she wouldn't do that without asking first. There was talk of uprising, protest which is sad because this is such a spiritually, cultural and important place.

Iwa Kalua, owner of Aloha Kayaks testified that he is grateful to hear that the Department will open us up. That he has been attending Gordon Leslie's meetings and confirmed the threats that if they go in before any of the villagers there will be protests at the gate and not allow them through. Also, saying things offending half the group. The 3 of the kayak companies will come up with a management plan of their own, but the most comprehensible plan is the 2005 plan that was drafted. Mr. Leslie wants to use that plan, but asked that it be updated. The only difference from 2005 and 2013 is that Gordon Leslie has more relatives doing kayak rentals at the Bay than in 2005 and he wants those people addressed in this plan which he will present to the Board. The Board in 2005 set the cap at 4 companies and they are worried about a 4th company coming in.

That like Hawaii Pack & Paddle the new owner wasn't made aware of the rules and conditions and do something wrong and will affect the rest of the companies like it has now. Mr. Kalua asked for grandfathered rights that the 3 kayak companies set the ground work for the 2005 plan. How do they guarantee that if a 4th comes in they won't jeopardize all the hard work that went into it. He asked if they could get a date so they can set-up their marketing to promote that date to get reservations coming in. Chair Aila said he doesn't think we can give you that date today because we have some discussions at the AG's office, but as soon as they can give a date they will let you know. Mr. Kalua noted that he has flown over a lot and it's not free that none of the villagers are here because they expect things to be handed to them. They are not here pleading their case because they expect the Board to hand them what they want. We are here working for it.

Frank Carpenter testified that he is encouraged to be able to operate down there again appreciating staff's work. He has been going to the (Hui) meetings where some of the topics are comical where it was suggested the guides should be lifeguards. There was reference to voluntary standards set by the Coral Reef Alliance – we wrote those. It makes him feel like we are taking huge steps back in dealing with a group that is just coming to the table and taking advantage of all of the work they've done over the years. Mr. Carpenter thanked the Board and that the financial burden on their companies has been a lot. We will continue coming to these meetings until the problems at Kealakekua Bay is all resolved because it is the most important for their families and livelihood and we want to give good information to the people who expect that from our shops. He loves going to the Bay now without people hassling him and he wants to see it in a controlled atmosphere giving people good information.

Member Goode asked about the 4th permit that what he is hearing is the Department is slowly getting things up with management. If we didn't have a 4th company for awhile could your 3 companies handle the demand? Mr. Carpenter said he would think so. He would like a cap on the numbers regardless. If that cap was distributed between 3 instead of 4 he wouldn't think it would make any difference. He thinks there is more a demand than availability and the determining factor is how much rental is available because there was such a large rental demand in the past and how people access that. There are people who have been going there for years or are local who don't feel they need a tour guide to go and see it and that has a lot to do with the abuse of the resource. If you are going to have rentals and some people are allowed to land and some aren't there has to be a way to facilitate the people that don't land because with no mooring or a way to tie off and more drifting in it becomes a space issue of how many people can really use that area and be in the water at the same time. If the rentals are diminished and are put into the tours he doesn't see it as a problem for us to fill the tours.

Member Gon asked whether his idea was not to rush into filling a 4th (company). Member Goode said yes, staff explained where they are at and trying to deal with and in some ways this is a team effort to bounce ideas off. He is trying to get some information that the kayak companies can take and use. Mr. Carpenter said if somebody else comes in the process should be as it is for us that some of these people at these meetings don't even have a location or a business and are putting the permit before the business. It should be the other way around – you have a business plan and you have a physical location and willing to do it then you can come in and ask for the permit. If you are trying to build a business while trying to get a permit that is not the way to go

about it. Member Gon noted that until the Board hears the permit application there is no way they can assess and he agrees with Mr. Carpenter given the history and importance of it we want to manage it well and make sure if a 4th were to come forward it would be a well-qualified applicant. Mr. Cottrell explained these 3 kayak companies had to go through lot of hoops in 2005 with a lot of conditions that they had to meet in order to qualify and get awarded the permit. Staff is taking those conditions and his property manager is doing a check list sheet and if there is an applicant who wants to know what needs to be done they must follow that checklist just to get in the door. The process is they submit a letter to the Chair who will have the Division bring it before the Board. Staff is not in a hurry and the 3 can satisfy the demand. Our program manager counted 75 kayaks in the Bay during December at the peak. That is based on hourly counts at any given time - 75 from approximately 20 vessels from morning to evening. If the Department wants to provide that there will be stringent conditions. What Mr. Carpenter was talking about the people interested don't understand the level of complexity needed – insurance, the basics in order to get through the door. Mr. Carpenter said 75 kayak sounds like a lot that it might be 150 people if they are all doubles, but the Fairwind brings that in by one boat load. When talking numbers it's difficult whether you are talking the number of boats or people and how that breaks down and what's fair for drift ins, motorized vessels, kayaks or drift-ins. For him non-motorized vessels are better for the environment.

Brock Stratton testified in appreciation and glad to have this come back so soon and it has been a stressful time for them having put in 17years of work into this to create the market and demand for people to go enjoy Kealakekua Bay's history, cultural, environmental in a friendly way. He is hoping in about 2 weeks they can get back into business at the Bay and is grateful for that. Even though they are not Hawaiian they don't take their responsibilities lightly.

Mr. Kalua showed some pictures of toilet paper along the hiking trail and explained how they tell the visitors how to dispose of their waste before they leave the toilet area which the visitors use immediately before they leave. He was willing to paint a sign that says there is no toilet at the bottom of the trail. The Board agreed that his presentation is effective.

Chair Aila said there is no decision making.

12:09 PM RECESS

12: 31 PM RECONVENED

Item D-13 Second Resubmittal: Development Agreement Between State of Hawaii and West Wind Works, LLC for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001:

- (1) Status of Outstanding Delinquencies and Termination of the Development Agreement Between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001**

- (2) (a) **Termination of the Development Agreement between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001; or**
- (b) **Approval of a modified Development Agreement for a portion of the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:Portion 001**

Mr. Tsuji reminded the Board that the Board deferred this item where he gave some background information where a developer wanted to make a renewable energy park, couldn't make payments of roughly ½ a million in back fees and wanted to add another entity. They couldn't make the back payments and couldn't continue with the existing agreement. They are proposing to give up 93 or so acres and retain 17 acres for a biomass facility and how they plan to pay the back fees and going forward. At the last meeting the Board was interested in renewable energy and their proposal best offer was to reduce the size on what they believe they can make payments on and free up the 93 or so acres. They propose to pay the back rent of \$500,000 in installments and the triggers for those payments as well as future payments on the 17 acres site. He accepted their proposal except for his recommendation to the Board because they've had problems in meeting those deadlines require a bond if those conditions are met. It's not a bond to guarantee payment by a third party to ensure the Department gets paid. They are going to pay in installments. Mr. Tsuji said staff has an alternative site which is what the applicant is recommending under the current EA. Staff asked that an EA be done by August 20, 2013 and submit an application to the County by January 31, 2014 because it has to be sub-divided. If they don't meet those deadlines we are asking that the EA not be terminated, but the 17 frees up for the Department to entertain any offers. At the end of the day they get nothing execute any other offers in lieu of additional fines and penalties.

Counsel for West Wind Works, LLC testified that Enzo Tomata couldn't be here who is the principle and Mr. Avery and Mr. Shinkawa are here. Terminating the existing lease would have consequences because it was awarded as a lease that modifying it is appropriate or there would be legal problems. They did not have speak to staff about the proposals today, but they agree to all of the proposals. As to the downsizing that staff suggested, they are in agreement although they haven't fully investigated them that one of the sites is under Tesoro – they haven't discussed it yet. The other site is acceptable for them. They have an RFP coming up with Hawaiian Electric in the second quarter of this year that they need to respond to and come to some resolution with DLNR within the next 60 days or they miss the boat with the RFP. They can pick one of the 2 sites and they can approve what staff asked for and in anticipation of the financial requirements they have added financial partners where they have 2 instead of one. \$150,000 was agreed upon within the next 60 days. Their new financial partners will inherit that problem and they need to understand the milestones to make this work. They have money put into escrow in good faith on this. They have no opposition to a bond requirement as long as they have a permit within the next 60 days. The cost of the sub-division is acceptable to us, the EA and a lot of the points are acceptable to us. He suggested a lease modification as Mr. Tsuji had related and they would like to come to the Board with a document rather than what is before the

Board today and defer for 60 days that they will commit to the site inspection within the next 20 days and give staff a list of their concerns regarding the milestones.

Member Goode asked whether he will be involved and counsel confirmed that he was only involved a day or 2 before the last meeting and will be involved in the next 60 days. This project has changed from when they first signed up for the RFP. Member Goode wants to see something resolved and counsel agreed they will.

12:54 PM Board member Pacheco departed.

Member Morgan asked about the source material for the bio-mass facility. Paul Shinkawa, a member of the Hawaii Renewable Energy Park testified that they have an agreement with PDT Land to use their construction debris that they collect 1200 tons a day of construction debris. They have a 4 million legacy stock and maintained it that way for the last 8 to 9 years in anticipation that this debris would generate energy. Our needs would be 3 to 4 tons a day of that feed stock. Mr. Shinkawa described the system and collecting green waste or that which can't go into H-Power. They will sort various materials to meet Federal and State standards. It extends the life of the land fill and they are the only C&D landfill in the State. This waste can become an asset for the State.

There was mention of green waste project near the Grailbrath Estate and that is not related to this project.

Deferred for no more than 60 days. (Morgan, Goode)

Item D-6 Approval of Department of Education's Request: Approval of land use requests and Issuance of Construction and Management Right-of-Entry to Department of Education for a New High School Campus, Portion of Kula, Makawao, Maui, Tax Map Key: (2) 2-2-002: 081 and (2) 2-2-002: 083.

Mr. Tsuji conveyed that Department of Education (DOE) had a draft submittal that this has to do with the New Kihei High School that they've already acquired title. Just need to sign some documents to consolidate the 2 lots and submit some paperwork. The Chair is authorized to execute.

Gaylyn Nakatsuka, architect for DOE testified agreeing to what Mr. Tsuji said and this is the last action for them to complete to get the school built and running. They got an approval to do an EO and this is to identify those documents coming in.

Mr. Tsuji noted that they are handling acquisition and construction of the land.

Unanimously approved as submitted (Edlao, Gon)

Item D-8 Consent to Revocable Permit between the Department of Business, Economic Development and Tourism and CBS Corporation/Eye Productions Inc. over

Portions of Lands under Governor's Executive Order No. 4097, Honolulu, Oahu, Tax Map Key (1) 3-1-042:portion of 009.

Mr. Tsuji said that Donne was here and he had no changes.

Unanimously approved as submitted (Morgan, Gon)

Item D-10 Amend Prior Board Action of February 10, 2012, Item D-5, Consent to Mortgage and Extension of Lease Term, General Lease No. S-4298, Walter and Ann Liew, Lessees; by Extending the Time for the Lessee to Comply with the Requirements and Authorizing a Six-Month Holdover; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-010:003.

Mr. Tsuji said counsel was here, but fell sick and he had no changes noting this was a settlement of a law suit. Just adding some additional time 6 months total and to the Chair.

Unanimously approved as submitted (Morgan, Gon)

Item C-1 Request for Approval of Federal Funds Sub-grant to the Nature Conservancy for the Purchase of a Conservation Easement for 3,550 Acres of Land in East Maui, TMK: (2) 2-4-016-004

Member Gon disclosed he is an employee of The Nature Conservancy (TNC) and recused.

Randy Kennedy representing Division of Forestry and Wildlife (DOFAW) presented item C-1 noting they are EMI lands and staff recommends the Board delegate to the Chairperson to develop and execute the agreement to TNC and the Department which provides Federal ROA funds to TNC. Its conservation land with no access.

Unanimously approved as submitted (Edlao, Goode)

Item J-1 Request to Issue a Revocable Permit to Ocean Wings, Inc., For the Sale of Ocean Activity Photographs and Videos From a Vehicle at a Location Within Honokohau Small Boat Harbor, Kealakehe, Honokohau, North Kona, Hawaii, TMK: (3) 7-4-08:03 (por.)

Item J-2 Issuance of a Revocable Permit for a Mobile Food Concession to the Defries Lunch Wagon, LLC , Located at the Waikaea Boat Ramp, Island of Kauai, Kapaa, Hawaii, TMK No. (4) 4-5-6:01

Item J-3 Request Acceptance of the Final Environmental Assessment and Approval for the Issuance of a Finding of No Significant Impact (FONSI) for a New Administrative Office at Ke'ehi Small Boat Harbor, Honolulu, Oahu, Hawaii

Bill Andrews representing Division of Boating and Ocean Recreation (DOBOR) said he had no changes to items J-1, J-2 and J-3.

Unanimously approved as submitted (Gon, Edlao)

Item F-1 Presentation on Hawaiian Islands Humpback Whale National Marine Sanctuary Management Plan Review and joint HEPA/NEPA EIS process

Elia Herman representing Division of Aquatic Resources (DAR) and manages the Humpback Whale Sanctuary distributed some handouts and introduced Malia Chow who manages on the Federal side. Ms. Herman presented her Power Point presentation on the Hawaiian Islands Humpback Whale National Marine Sanctuary is co-managed by State of Hawaii, DLNR and the Federal government through NOAA.

Malia Chow presented some background history on what are National Marine Sanctuaries and the need for long term protection. These sanctuaries are for public use compatible with resource protection which they manage. They've been around for 40 years. Ms. Chow pointed out the sanctuaries in the Pacific Ocean that we're the only sanctuary that protects humpback whales.

- Sanctuary Designation 1992
 - Boundaries
 - Offices throughout the State
 - Management Plan Review
 - additional resources
 - Co-Management
 - through DLNR
 - Compact Agreement 1998
 - More than Whales: Growing State support
 - Purpose 1992 Legislation
 - 2002: Governor Cayetano
 - 2008: Governor Lingle
 - 2012: Governor Abercrombie
 - Governor Abercrombie Letter of Support
 - Sanctuary Advisory Council: Community Based Advisors
 - Island Community
 - various organizations
 - various government agencies
- All give direction to management.
- Extended Public Process – recommendations, cultural, etc.
 - Management Plan + EIS
 - DLNR is joint lead agency.
 - HEPA – current public comment period
 - Sanctuary MPR Timeline

Member Gon asked whether that draft will not come out for awhile yet. Ms. Herman said it has to go through the lawyers and by fall they hope to bring it to the public.

Member Gon wondered how staff is encouraging input and Ms. Herman said through a press release and there have been some articles in the newspapers and some through word of mouth.

Ms. Chow said that they would be happy to come back to the Board once the management plan is drafted

- Item D-1** Issuance of Right-of-Entry Permit to Keauhou Volleyball Association for Dinosaur Beach Volleyball Tournament at Kalapaki Beach, Lihue, Kauai, Tax Map Key: (4) 3-5-02: seaward of 2.
- Item D-2** Issuance of a Right-of-Entry Permit to Garden Island Canoe Racing Association (GICRA) on Unencumbered State Beach Land for Storage and Staging Areas, for the Hawaiian Canoe Racing Association Championships (HCRAC) and the NaPali Challenge at Hanalei Bay Beach, on August 2nd thru August 4th, 2013, Hanalei, Kauai, portion of TMKs (4) 5-5-001 thru (4) 5-5-005; seaward of 001 thru 005.

- Item D-4** Approval in Concept for a Grant of Term, Non-Exclusive Easement to Ramona Inez Provisor, Eli M Provisor, Erin Roxanne Provisor, Bruce Lee Provisor, and Tarra Dee Provisor, for Vehicular Access Purposes and the Issuance of an Immediate Right-of-Entry to conduct an Environmental Assessment, at Papa Homesteads, Papa 1st, South Kona, Hawaii, Tax Map Key: 3rd/8-8-04: portion of parcel 17.

- Item D-7** Issuance of Right-of-Entry Permit to Envisions Entertainment & Productions, Inc., Hawaii Representative for Pyro Spectaculars, Inc. for Aerial Fireworks Display Purposes at Honolulu, Lahaina, Maui, Tax Map Key:(2) 4-2-004: seaward of 015.

- Item D-12** Grant of Perpetual, Non-Exclusive Easement and Issuance of Immediate Construction and Management Right-of-Entry Permit to Hawaii Housing Finance and Development Corporation for Drainage and Flowage Purposes, Waimano, Ewa, Oahu, Tax Map Key: (1) 9-7-019:portion of 049.

Mr. Tsuji had no changes to the above Land Division items.

Board member Gon referring to item D-7 expressed his general dislike for allowing fireworks along conservation and coastal lands.

Unanimously approved as submitted (Morgan, Gon)

Adjourned (Gon, Edlao)

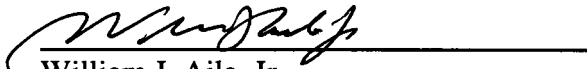
There being no further business, Chairperson Aila adjourned the meeting at 1:32 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate 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