

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

DATE: FRIDAY, APRIL 25, 2014
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 9:05 a.m. The following were in attendance:

MEMBERS

William J. Aila, Jr.
Dr. Sam Gon
Reed Kishinami

Robert Pacheco
David Goode
Thomas Oi

STAFF

Carty Chang-ENG
Randy Kennedy-DOFAW
Ed Underwood- DOBOR

Russell Tsuji-LAND
Sam Lemmo-OCCL

OTHER

Pamela Matsukawa/Deputy AG
Patti Miyashiro/ DOT-HAR
Randy Grune/ DOT-HAR
Calvert Chun/ DOT-HAR
Glenn Tsugawa/ D-11
Mitch Craig/ C-5
Lono Lyman/ D-3
Joseph Figueroa/ D-2
Jody Kaulukukui C-3
Oran Lee/ D-5
Mariana Hesse/ D-9
George Lindsey/ J-5
Sheila Lipton/ J-5
Cynthia Farias/ J-5
Ted Bush/ J-5
Jim Coon/ J-5
Bob Hampton/ J-5
Shane Griffin/ J-5

Ross Smith/ DOT-AIR
Ku'uhaku Park/ M-9
Jack Lar/ M-9
Karol Haraguchi/ L-1
Angel Amland/ C-5
Greg Barbour/ D-3
Dan Purcell/ D-3
Al Woods/ D-12
Stephanie Maka/ D-10
Applicant/ D-9
Kathleen Kravish/ D-9
George Parsons/ J-5
Mando Rillamas/ J-5
Chuck Krause/ J-5
Stacy Moniz/ J-5
DiDi Robello/ J-5
Mick Regul/J-5
Ka'eo Griffin/ J-5

Bryan Ho/ J-5
Tammy Moniz/ J-5
Mike Easton/ J-5
Dean Hanzawa/ K-1
Steve Wojtowicz/ K-1
Moke/ K-1

Tony Moniz/ J-5
Larry Akiyama/ J-5
Pat Henry/ J-5
Howard Hanzawa/ K-1
Bobby Titcomb/ K-1
Dennis Esaki/ K-1

Chairman Aila began the meeting by introducing and welcoming Thomas “Tommy” Oi as the new Kauai Land Board Member. Oi is a retired land agent for the DLNR.

- Item J-3 Waikamoi Preserve East Maui Irrigation (EMI) Addition: Request for Enrollment in the Natural Area Partnership Program, Approval of the Long-Range Management Plan for Fiscal Years 2015-2020, Authorization of Funding for Fiscal Years 2015-2020, TMK (2) 2-4:016:004, Por., Makawao, Maui**
And
Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for the Project.

Withdrawn

- Item A-1 Approval of February 28, 2014 Minutes**

Deferred

- Item A-2 Approval of March 14, 2014 Minutes**

Unanimously approved as submitted (Pacheco, Kishinami)

- Item M-1 Rescind Prior Board Action of April 8, 2011, Item M-2, and Issuance of Amendment of Grant of a Non-Exclusive Easement and Bill of Sale for Waterline Purposes to the Water Board of the County of Hawai‘i, Kona International Airport at Keāhole, Tax Map Key:(3) 7-3-43:03 (Portion).**

- Item M-2 Issuance of an Access Agreement to Perform Corrective Action Work on the Premises to Equilon Enterprises LLC dba Shell Oil Products US, 2805 Ualena Street, Honolulu International Airport, Tax Map Key: (1) 1-1-04-01 (Portion).**

- Item M-3 Issuance of a Revocable Permit to Mokulele Flight Service, Inc. (Commuter Terminal), for Ticket Counter, Office and Baggage Make-Up Spaces, Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.**

- Item M-4 Issuance of a Revocable Permit to Mokulele Flight Service, Inc., for Ticket Counter and Office Spaces, Kapalua Airport, Tax Map Key: (2) 4-3-01: Portion of 68.**
- Item M-5 Issuance of a Revocable Permit for Parking for Aircraft Tie-Down Purposes to Resource Mapping Hawai‘i, LLC, Hilo International Airport, Tax Map Key: (3) 2-1-12: Portion of 09.**
- Item M-6 Issuance of a Revocable Permit for Office Space to Alaska Airlines, Inc. Līhu‘e Airport, Tax Map Key: (4) 3-5-01: Portion of 8.**
- Item M-7 Issuance of a Revocable Permit for Construction Management Office for State Project No. AM1022-16R Purposes to SSFM International, Inc., Kahului Airport, Tax Map Key: (2) 3-8-01: Portion of 19.**
- Item M-8 Consent to Sublease for School Bus Parking, So Ono Food Products, LLC to Ground Transport, Inc., Honolulu International Airport, Tax Map Key: (1) 1-1-14-103 (Portion):114.**

Ross Smith representing the Department of Transportation- Airports Division (DOT-AIR) reviewed items M-1 through M-8 and had no changes.

Unanimously approved as submitted (Pacheco, Gon)

- Item M-9 Issuance of Revocable Permit to Horizon Lines, LLC, Sand Island, Honolulu, Island of O‘ahu, Tax Map Key: 1st/1-5-041:111 (Portion).**

Patti Miyashiro representing the Department of Transportation- Harbors Division (DOT-HAR) noted that supervisor Calvert Chun, Deputy Director Randy Grune and representatives from Horizon Lines were present in the audience. Miyashiro was present to answer any questions.

Ku‘uhaku Park representing Matson testified asking the Board to defer item M-9. Park explained that Matson’s lease with Harbors states Harbors needs to have Matson’s consent to lease this piece of land. Matson is in the middle of a negotiation process and they have not come to an agreement on the portion of land in question. Matson is negotiating with Horizon Lines, LLC as well as DOT- Harbors.

Member Goode asked Park if they had a rough time table including how long have they been in negotiations. Park said that they have been in negotiations for 2 to 3 months, and believes it can be wrapped up within the next 2 to 3 months.

Randy Grune, Deputy Director for DOT- HAR clarified that this is not a question about a lease that Matson has in the pier area, they do lease areas around pier from Harbor. However this

application is for a small exclusive area that Horizon would be leasing. What is in dispute is the cargo area and no one leases the cargo area. The cargo area is for general use on the piers. What is being disputed is the re-designation of cargo land, the application is for exclusive areas to process and support that cargo. The request is for the revocable permit. The contract goes into effect on May 3rd, so deferring this would have a major effect on the members of the military, who use Horizon to transport their household items.

Jack Lar representing Horizon Lines, LLC; they believe this is a fairness issue. Matson used to have the federal contract for the cargo that went in this area, now Horizon has the contract. Horizon believes that the cargo area should go with whoever has the contract. It's been used for federal cargo for 15 years, and now that Matson doesn't have the contract, they are saying Horizon can have the cargo but they have to go somewhere else.

Parks said that he is in agreement that it is a fairness issue, when Matson first got the contract DOT- Harbors told them there was no land for them, so Matson had to go out on their own, get undeveloped land, develop it, add security, lighting, etc. However now that the contract has shifted over, things are being done differently. Parks said yes, this is a common area, but there is language in their lease that covers the common area that requires Matson's consent that prevents taking land or adjusting land that would be harmful to their operations.

Calvert Chun from DOT- Harbors Division Property Management added that it's time for closure.

Unanimously approved as submitted (Kishinami, Goode)

Item L-1 Amend Prior Board Action of January 24, 2014, Item L-2, Approval to Execute a Use and Access Agreement with the U.S. Fish and Wildlife Service for the Hanalei Stream Bank Restoration Project, Kaua'i, Hawai'i to Proceed with Construction of the Project Without a Signed Use and Access Agreement.

Written testimony was submitted by Leslie K. Iczkovitz and Rodney Haraguchi of Kauai Taro Growers Association.

Carty Chang Chief Engineer presented Item L-1 and explained that the department is planning to restore a portion of the Hanalei riverbank that breached in the mid 1990's; currently the breach has created a split condition that impacts the level of flow in the Hanalei river, which impacts the amount of water that enters in it downstream of the breach that serves the U.S. Fish and Wildlife refuge and the taro farmers. This flow in the river breach is continually decreasing as the breach section continually increases. Since fixing the breach benefits the Fish and Wildlife Service, the intent of the use and access agreement was to place ownership and the maintenance responsibility of the restored manmade structure on the U.S. Fish and Wildlife. The department has made an attempt to strike an agreement with U.S. Fish and Wildlife, but is unable to at this point. The department is requesting to move forward with construction without the signed agreement. If the department doesn't proceed DLNR will potentially lose CIP funding (1.55 million dollars) and summer weather conditions in Hanalei don't permit construction.

Additionally, sediments will continue to erode and end up in the bay, which will impact endangered species. The breach is also runs through private residential property, so if the breach isn't fixed, it will continue to erode and affect life and property. DLNR has already solicited bids and is standing by to begin construction within the next couple of months and will continue to work with U.S. Fish and Wildlife Service.

Member Pacheco asked what the delay with Fish and Wildlife is. Chang said that he believes Fish and Wildlife wants the project to move forward, they just have issues with specific terms regarding ownership. The attorneys are trying to work it out; there is just no agreement at this time.

Karol Haraguchi from Hanalei Valley testified by reading a letter on behalf of her husband, who is the president of the Kauai Taro Growers Association. Mr. Haraguchi's letter stated over the past 18 years, the farmers have seen the breach getting progressively worse. Their greatest fear is that the river bottom will give way making it harder and more costly to repair. Without water the Hanalei valley dries up and wetland taro can no longer survive as well as the 5 endangered birds that utilize the taro lo'i as its habitat. Without taro Hanalei valley will change dramatically, which will also affect the state since Kauai supplies 80% of the State's taro for poi and Hanalei valley supplies over 60% for Kauai.

Unanimously approved as submitted (Oi, Goode)

Item D-11 Consent to Sub-Sublease under General Lease No. S-4513, O'ahu Special Schools Association, Lessee, Special Education Center of Hawai'i, Sublessee/Sub-Sub lessor to JK Aquatics, LLC dba Diamond Head Aquatics, Sub-Sublessee, Honolulu, O'ahu, Tax Map Key: (1) 3-1-042:034.

Russell Tsuji, Administrator-Land Division highlighted key points in this item, that the lessee is a nonprofit, under a nominal rent lease and the proposal is to sublease. Tsuji explained that they must maintain their 501(c)(3) status otherwise their lease will be in jeopardy. There was one correction on the sublease: the term should be changed to 46 months from 36 months.

Glenn Tsugawa, representing the applicant, had nothing to add.

Unanimously approved as submitted (Kishinami, Goode)

**Item C-5 Request for Delegation of Authority to the Chairperson to Negotiate, Approve, Execute, Amend, and Extend Memoranda of Understanding (MOU) with Kawailoa Wind LLC (Kawailoa Wind) and Kahuku Wind Power, LLC (Kahuku Wind) for the Division of Forestry and Wildlife to Implement Conservation Actions, Including But Not Limited to Seabird Monitoring, Predator Control, and Auditory Surveys on the Island of Kaua'i And
Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for the Activities Funded by the Subject MOU Agreements.**

Randy Kennedy representing the Division of Forestry and Wildlife-DOFAW presented item C-5 and introduced Angel Amland HCP coordinator and Mitch Craig from First Wind.

Chair Aila explained that this is taking place on Kauai, not Oahu because it's easier to propagate these species of birds on Kauai than any other island, right now.

Craig added that this assessment is to see what changes would occur with the seabird colony using sound; the basic way of control is shooting barn owls. This was proven to be the most effective with the least amount of disturbance to the habitat.

Unanimously approved as submitted (Oi, Kishinami)

Item D-8 Consent to License Agreement between City and County of Honolulu and the Department of Defense for Installation, Operation and Maintenance of Civil Defense Disaster Warning and Communication Devices Purposes over Lands Set Aside to City and County of Honolulu, O'ahu at the following TMKs:

**(1) 1-1-063:014, (1) 1-3-027:001; (1) 1-8-020:013, (1) 2-7-036:005,
(1) 3-1-031:004, (1) 3-1-042:005, (1) 3-5-022:023, (1) 4-1-009:264,
(1) 5-3-002:031, (1) 5-9-001:038, (1) 8-3-001:001, (1) 8-7-005:001,
and (1) 9-9-006:020.**

Tsuji went over item D-8 noting that since the Department of Accounting and General Services-DAGS is implementing the sirens, formal consent is required.

Unanimously approved as submitted (Kishinami, Pacheco)

Item D-6 Acquisition of Private Lands and Set Aside to Department of Education for Elementary School Campus, Kehalani Mauka, Wailuku, Maui; TMK: (2) 3-5-001:103.

Tsuji explained that this item Includes an exhibit. Heidi Meeker with the Department of Education- DOE and the attorney general working this case Linda Chow were both present to answer any questions.

Unanimously approved as submitted (Goode, Gon)

Item D-3 Direct Lease to the Natural Energy Laboratory of Hawai'i Authority (NELHA) for Air Quality Monitoring Site and Storage Purposes, Kapoho, Puna, Hawai'i, Tax Map Key: (3) 1-4-001:082.

Tsuji summarized: NELHA is asking for is land to use as a storage facility. In the lease they are asking for air quality monitoring. Tsuji explained that just prior to the meeting the executive director Greg Barbour raised the issue that the County would now like to ask for a request to do ground water monitoring.

Member Gon noted that ground water monitoring takes away from the surface of the land. Tsuji agreed.

Barbour said that he understood this was a very late request and they can come back or monitoring could be done on other lands in the area, they just want to do the right thing by making it easier for State and County to do environmental monitoring.

Member Gon commented that he agreed that environmental monitoring is a good thing, however given the history of this particular piece of land and the reaction for anything below surface, this could be perceived as a run around.

Attorney General Pam Matsukawa added that she thinks this has potential for generating lots of interest.

Tsuji said if they want to bring this up again later, then it will be properly noticed (with the water monitoring) and he will bring it forward.

Lono Lyman representing Kapoho Land and Development, testified that ground water monitoring can be done on their land. Lyman asked that community economic development be added to the language of what is permitted. The need for community of economic development is needed. He also addressed the fact that this is a site for high drug trafficking. Kapoho Land and Development also submitted written testimony.

Chair Aila ask how community economic development would occur. Lyman explained that there is a community center that the state developed and has been closed and not in use.

Member Pacheco commented that this is a good idea, but feels like this is something that should be brought back for another request.

Chair Aila asked Lyman if it was possible to have discussions in the community and come back. Lyman said coming back would be going up a steep hill; they weren't notified of this meeting and he feels like there is a notification problem. He said that adding the language now would not remove the permitting requirements. Lyman said he is objecting to the limited uses that are being written into the lease and the fact there is a facility that is available for other uses such as a community center.

There was discussion about the history and conveyance property.

Barbour stated that NELHA shares Lyman's passion for economic development. He said that the state's intent was to use this property was to determine the commercial viability of geothermal back in the 1970s/1980s when it was still an unknown. There has been significant value from that early investment.

Chair Aila asked why the visitor's center was built, Barbour didn't know the intent. Tsuji stated that it was being run by another entity at that time.

Member Gon commented that the last time this was before the Board, it was a mutual cancelation, then a reissuance with the same terms and that was the controversial thing, so the holdover would have the same effect and that was not acceptable in the public's eye.

Tsuji agreed that they want to limit the geothermal testing in Puna.

Member Goode asked about NELHA's interest in running the storage site with an air quality monitor. Barbour said that they feel like it's the right thing to do to keep up environmental monitoring for the area; he also feels there are buildings that could be storage.

Member Gon confirmed with Matsukawa that it is possible to come back and modify this lease if needed.

Dan Purcelll commented about the public procedure, as well as how disorganized Barbour is. Purcelll recommend that the board defer this item.

Unanimously approved as submitted (Pacheco, Kishinami)

Item D-2 Request for Approval in Concept of an Extension of Lease Term, General Lease No. S-3832, and General Lease No. S-5578, Pixar Development, LLC, Lessee, por. of Kapa'a Town Lots, Kapa'a, Kawaihau, Kaua'i, Tax Map Keys: (4) 4-5-011:046 and (4) 4-5-012:005.

Tsuji reviewed item D-2 with nothing to add.

Joseph Figueroa, general manager for Hotel Coral Reef which is under Pixar Development, LLC, described how approval of this extension will allow Pixar to secure funding to redevelop the property. The redevelopment concept would include an improved parking lot and a third floor with six ocean front guest rooms. Figueroa submitted pictures of the current development plan.

Tsuji gave history of the extension requests for the new Board member.

Unanimously approved as submitted (Oi, Gon)

Item K-2 Conservation District Use Application (CDUA) MA-3688 for the Wailuku-Kahului Wastewater Reclamation Facility's Shoreline Protection Extension by the County of Maui -Department of Environmental Management Located at 281 Amala Place, Kahului, Maui, Portion of Tax Map Key: (2) 3-8-001:188 and Adjacent Submerged Land.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands- OCCL outlined item K-2. He explained that it was deferred at the last meeting because there was an oral request for a contested case hearing. However, since no written petition was submitted it's back on the agenda.

Member Goode suggested rewriting the existing condition to read, "When the plant is removed, whatever facilities are there, that the county then analyzes what potential changes need to be done to the system to minimize its size."

Lemmo recommended adding the word "natural" to condition #5 so that it reads "The permittee shall implement a decommissioning plan for the Wailuku-Kahului Wastewater Reclamation Facility by June 30, 2064 and restore the shoreline to the best possible *natural* condition as practical."

The Board accepted Lemmo's recommendation.

Unanimously approved as amended (Goode, Gon)

Item K-3 Conservation District Use Application (CDUA) MA-3663 for a Shoreline Protection Structure by the Hololani Resort Condominiums Association of Apartment Owners, Located at 4401 Lower Hono-a-Pi'ilani Road, Kahana, Maui, Seaward of Tax Map Key: (2) 4-3-010:009.

Written testimony was submitted by Toby Yamashiro.

Lemmo asked to defer item K-3.

Unanimously moved to defer (Goode, Kishinami)

Item D-12 Consent to Plan and Agreement of Merger between Waimānalo Teen Project and Hui Mālama O Ke Kai Foundation regarding General Lease No. S-5468, Waimānalo Teen Project, Lessee, Waimānalo, Ko'olaupoko, O'ahu, Tax Map Key: (1) 4-1-009:265.

Tsuji had nothing to add to item D-12.

Al Woods from Waimanalo Teen Project said he was ok with the submittal and appreciated the consideration.

Unanimously approved as submitted (Kishinami, Gon)

**Item C-3 Waikamoi Preserve East Maui Irrigation (EMI) Addition: Request for Enrollment in the Natural Area Partnership Program, Approval of the Long-Range Management Plan for Fiscal Years 2015-2020, Authorization of Funding for Fiscal Years 2015-2020, TMK (2) 2-4:016:004, Por., Makawao, Maui
And
Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for the Project.**

Written testimony was submitted by U'ilani Kapu.

Member Gon recused due to the fact that it involved the Nature Conservancy (TNC) of Hawaii, member Gon is currently employed with the TNC.

Randy Kennedy presented item C-3 and explained that TNC has requested enrolling 5,030 acres of East Maui Irrigation (EMI) lands into the Natural Area Partnership Program. This will involve signing an easement and contracts. Jody Kaulukukui was present to answer any questions. Kaulukukui had nothing to add and is happy with staff's recommendations.

Unanimously approved as submitted (Goode, Pacheco)

Item D-10 Request to Extend the Cure Period on the Notice of Default for General Lease No. S-4887, Winona B. Maka and Simeon Kanila Maka, Lessee, Maunalaha Homesites, Makikī, Honolulu, O'ahu, Tax Map Key (1) 2-5-024:007.

Tsuji reviewed item D-10 and had nothing to add.

Stephanie Maka testified that this is her mom's lease, and asked for another 60 day extension. Maka has to secure the property (fence the property), and reinstate the insurance because it was lost, which is why she lost the lease. Instead of 2 months, she's asking for 4. She has already had 60 days.

Tsuji explained to Maka that a lease doesn't automatically go away, if a default isn't cured in the time period, nothing will happen until it is brought back before the Board. If she isn't able to finish the fence in 60 days, it doesn't mean that her lease is gone. Tsuji advised her to work with the staff and keep them informed.

Unanimously approved as submitted (Kishinami, Pacheco)

Item D-5 Set Aside to the County of Hawai'i for Kapi'olani Street Extension Purposes, Waiākea, South Hilo, Hawai'i, Tax Map Key: (3) 2-4-001: 181 & 182 and (3) 2-4-056:029; and

Grant of Perpetual Easements to the County of Hawai'i, for Kapi'olani Street Extension, Affecting Tax Map Keys: (3) 2-4-001: portion of 019, 024, 167 & 183; (3) 2-4-056:014, 022 & 028; and

Construction Rights-of-Entry to County of Hawaii for Kapi'olani Street Extension, onto State Parcels, Waiākea, South Hilo, Hawai'i, identified as Tax Map Keys: (3) 2-4-001:019, 024, 167, 181, 182 & 183; (3) 2-4-056:014, 022, 028 & 029.

Tsuji summarized item D-5 with noting to add.

Oran Lee with the County of Hawaii, Director of Public Works said that this is part of a

development plan, to connect Kapi'olani Street and make it a through street all the way to University of Hawaii Hilo. Lee was satisfied with the staff recommendations.

Unanimously approved as submitted (Pacheco, Gon)

Item D-9 Authorize the Chairperson to Enter into a Maintenance Agreement Regarding the Lessee's Improvements over the Board of Water Supply's Water Pipeline; 4 Wheels Auto, LLC, Lessee; Kapālama, Honolulu, O'ahu, Tax Map Key (1) 1-5-033:portion of 018.

Tsuji described item D-9 as unusual, explaining that there is a current lease and the lessee 4 Wheels Auto, LLC, currently has a fence on Nimitz Highway but it is getting run down. The lessee wants to build a new fence; the unusual circumstance is that the area is encumbered by a non-exclusive easement in favor of the Board of Water Supply. The Board of Water Supply required certain commitments be made to the fence area and are asking that the State further agrees that any condense of its property be subject to this agreement. The agreement requires that if there is any damage to the water line that the lessee would be responsible. If the lease is no longer in existence, then it is the state's responsibility.

The applicant explained his project and is okay with staff's recommendation.

Unanimously approved as submitted (Kishinami, Pacheco)

Item D-9 Issuance of Direct Lease to Waimānalo Health Center for Community Service Purposes; Cancellation of General Lease No. 5400, Waimānalo, Ko'olaupoko, O'ahu, Tax Map Keys: (1) 4-1-009:279 and 282.

Tsuji had nothing to add.

Mariana Hesse from the Waimanalo Health Center testified in support. Kathleen Kravish, CFO of the Waimanalo Heath Center also testified in full support. Kravish said that they have completed the environmental assessment and also have a letter of support from the neighborhood board. They have also completed the archeological inventory survey.

Unanimously approved as submitted (Kishinami, Gon)

10:45AM	BREAK
10:55AM	RECONVENE

Item J-5 Request that the Board of Land and Natural Resources Approve the Amendments and Compilation of Hawai'i Administrative Rules (HAR), Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits; Chapter 13-251, Waikīkī and Kā'anapali Ocean Waters; Chapter 13-253,

Registration and Permit Fees; and Amendments to Hawaii Administrative Rules, Section 13-256-3 Commercial Operator Permit Requirements and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements. Attached to this Agenda and Incorporated Herein are Chapter 13-231 (Exhibit 1), Chapter 13-251 (Exhibit 2), Chapter 13-253 (Exhibit 3), and Sections 13-256-3 and 13-256-4 (Exhibit 4).

Written testimony was submitted by James Coon, Sheri Brown, Melynda Dant, Jamie Davis, Cynthia A. Farias, Shane & Ka'eo Griffin, Rick Gaffney, Bob Hampton, Ralph F. Harris, Pat Henry, Bryan Y. Y. Ho, U'ilani Kapu, Maureen Kleaver, Chuck Krause, George K. Lindsey, Jr., Mike McCulloch, Richard Rice, Wm Mark Robinson, and Glenn Shiroma.

Ed Underwood, Administrator for the Division of Boating and Ocean recreation presented item J-5. DOBOR has had their 2nd round of public hearings statewide. On Kauai there were 2 people that attended and no testifiers; Oahu had approximately 70 people attend, 53 signed in, and 14 testified, Maui had 14 people attend, with 10 people testifying, Kona had 27 attend, with 5 testifying, and Hilo had 1 person attend, and no testifiers. Underwood explained that certain issues have come up pertaining to operators. Currently there is a requirement that anyone that operates commercially on the near shore waters of Waikīkī or Ka'anapali beaches must obtain a permit from the Board. Several years ago Ka'anapali Beach Resort was issued a permit, but they never implemented the operator permit requirement. So DOBOR came before the Board, approved it and the commercial use permit was issued; everyone pays the same commercial use fee. Subsequent to that DOBOR came before the Board and started the same process for Waikīkī Beach. At this time, it was brought up that the Waikīkī Catamaran operators have already been issued a registration certificate that's covered in the statute, so they are not required to get a permit. The attorneys confirmed and DOBOR went to the legislature, changed the statute and now requires a commercial use permit as well, but it doesn't say *only* commercial use permit, it says *either* registration certificate or commercial use permit. DOBOR wanted to apply the same commercial use fee that every commercial boat in the state pays (\$200 or 3% of gross), currently they pay \$8.50 a year. DOBOR has agreed to limit the number of operators in certain channels that can access Waikīkī Beach; however there are 2 areas where agreements haven't been made. The first disagreement is the use of the word *shall* or *may*. The operators would rather the rules say "we shall reissue a registration certificate for catamaran operations." The way the statute reads "if you're a sole proprietor of a business entity, then we (DOBOR) shall reissue all permits into that new corporation name" Underwood said it does not say "we shall issue your commercial operation or registration certificate each year". The second disagreement is that the operators asked to have language put in to clarify that if you sell your company the sale price doesn't get counted toward your gross receipts. DOBOR didn't put that language in because gross receipts are already defined in the rule. With the Waikīkī Concessioners that operate on the beach (the Beach Boys) the rule requires everyone operating on Waikīkī Beach and in near shore waters to have a permit. The disagreement is because the rule says DOBOR has to issue the operator permits, which means the state is required to certify whether someone is competent to be a surf instructor, or canoe captain, etc. DOBOR does not have the expertise are trying to limit liability. Years ago, there was a Waikīkī Advisory Committee that assisted in these certifications. There were issues with liability so the process stopped. Underwood stated that it should be the business owner's responsibility to certify that their employees are competent enough to perform

the job. Currently there are 68 individuals on the wait list for operator permits, there are 5 new surf schools for Waikīkī Beach waiting to come in. There are 18 surf schools currently operating on the beach. DOBOR feels the best way to handle this is to permit the business, because it will take DOBOR out of the process of permitting individuals. These are the main issues. There is also a concern that failure to issue the operator permits will create a safety hazard. However, DOBOR doesn't agree because they don't believe that the requirements for an operator's permit are stringent enough to avoid safety hazards. . He said DOBOR didn't receive any recommendations for minimum requirements, so DOBOR put them in. There is a rule that says you have to be 18 years old, you must have one year of surfing instruction on Waikīkī beach before you can be engaged in teaching on the beach. These same rules apply to canoe captains and catamaran captains.

Underwood explained that another big issue pertains mostly to the island of Hawaii. DOBOR is limiting the number of commercial launch ramp permits to two per entity. A lot of the launch ramps on the island of Hawaii were unlimited, so some of these companies have multiple permits (6-8) and they were concerned about the effect it would have on their businesses. DOBOR put a clause in the rule saying whatever you have at the time the rules go into effect, you can keep. Over time, DOBAR will bring these down through attrition. For example, if for some reason a business goes out of business, no more than two permits will be issued to the next business in line. The grace period rule was one that the Board requested; the rules were rewritten so now all of the have the 30 day grace period rule.

In Lāhainā small boat harbor the recommendation was to change the vessel size and the marginal warfare. DOBOR wants to clean this rule up. Another issue is that private operators from Ko'olina don't want to have to pay gross receipts, and pay for a permit, and pay for gross receipts for use of near shore water as well. Underwood said this goes for the County, too. If you are on County or private property then, you still need a permit for use of the near shore waters, but you are exempt from paying the percentage; you only pay the minimum of \$200 a month. Finally, Underwood explained that over the past four years, DOBOR has been accused of not following HRS chapter 91. Underwood assured the Board that everything has been done with the advice and consent of the deputy attorney general (AG). Last week, DOBOR met with Senator Galuteria and some of the Waikīkī beach operators. They proposed a Waikīkī subzone created only for operators in Waikīkī. Underwood said that his recommendation would be to move forward with the rule package as written. DOBOR will meet with these operators and see whether it would be feasible to create a special subzone in Waikīkī Beach and address any rule changes necessary after they have met.

Member Pacheco asked if Waikīkī and Ka'anapali are treated differently from other commercial operations because of statutory requirements. Underwood confirmed.

Member Pacheco then asked Underwood where they came up with 2 for the number of ramp permits. Underwood explained that it's the same requirement as the harbors; they took what was consistent for the harbors and applied it to the ramp.

Member Pacheco commented that he has an issue with the fact that the permits are down to 2 because he feels it will hinder the ability for good operators to thrive. Pacheco didn't have a solution, but suggested looking for a bigger number such as 4 or 6. He said marketability and

price point also play a role because if someone is an operator with efficiencies, then they can offer better price points. By setting limits, it creates an artificial market structure so the price goes up. The people utilizing these services are going to be paying a higher price over time.

Underwood clarified that as of the date of the rule, people will keep however many permits they have now and into the future. It won't drop unless for some reason they lose a permit. Underwood understood where Pacheco was coming from and explained that when he went to Hawaii Island everyone seemed to be okay with the language, and no one asked to increase the number from 2 to 4 or 6.

George Lindsey representing Islands Beach Actives Inc., Woodbridge Inc., and Anela Kai Inc. referred, to as IWA, testified in opposition to the rule changes. Lindsey began by referring to page 2 of his April 25th testimony regarding DOBOR's submittal that alleges the purpose of the rule change is to bring parity to Ka'anapali and Waikīkī. DOBOR asserts that it is unfair for Ka'anapali operators to pay 3% gross receipts while Waikīkī operators do not. Lindsey said that the fee has to benefit the person paying the fee otherwise it's an unauthorized tax. He said the 3% gross income is actually 7.712% operating cost. DOBOR's focus is on getting the rules passed, on compiling the rules, on reducing the regulatory responsibilities and on increasing revenue. IWA was looking at preserving their business and providing security, as well as safety.

Next Lindsey discussed safety benefits as a way to justify the increase. IWA agrees with the DOBOR's ruling on the anchor agreement. They have no provisions for alternative anchoring. Low tide anchoring is not covered in the provision; IWA would like to setup low tide anchors for boats to share at low tide. The next provision Lindsey addressed was limiting the amount of traversing over the swimming and surfing areas. The security elements were then discussed. It is IWA's position that if they comply with HRS 293-C(4) then their permit will be reissued. IWA's proposal is that DOBOR *shall* reissue catamaran certificates (referred to as a statue throughout this testimony). If a rule is broken, then IWA feels it's okay to remove a permit, if not then it should be reissued. Member Pacheco stated that the way he reads the statue, it applies to permits that are in place, not to reissue permits. Not that the department is obligated to renew or reissue a permit. Lindsey said they just want the rule codified, even though the statute which over rides the rule is clear.

Transfers to the corporations and the renewal of certificates if the law is followed were their 2 main concerns. They are asking for this to be codified so there is institutional memory. When future successors come through the rules can still be operational making it clear that the 3% does not apply to the sale of the company. IWA is still in disagreement about HAR §13-231-3 which tells what the registration certificate is. However, it doesn't tell you what you shall do, so neither "may" nor "shall" should be used. In section 13-231-6 subsection C, it says that even in the 30 day grace period a permit or registration certificate could still be revoked. IWA feels like the grace period should be the 30 days, then after the 30 days, the permit may be revoked. Section 13-231-13 does not feel the person who sold their company should be held liable. Section 13-231-45 involving vehicle inspections, IWA says the Coast Guard inspects their catamarans and sub section C involving those inspected by the Coast Guards should be exempted from provisions A through M not just A through B. In section 13-231-61 Lindsey addressed the

“shall” and “may” as mentioned before. Lindsey requested that the Board inform DOBOR about the revisions and IWA would be happy to work with them on getting this done quickly.

11:56AM

Member Pacheco departed the meeting.

George Parsons testified on behalf Waikīkī Owners Association and King Parsons Enterprises with regard to HAR §13-231-61 in regards to the reissuance of permits and catamaran registrations. The Waikīkī Owners Association and King Parsons Enterprises believes that “may” should be changed to “shall” because the operators have worked very hard for the past 40 years obeying all rules and requirements including paying a percentage of the gross receipts.

George Lindsey testified on behalf of Woody Brown by stating that every meal that Woody Brown ever had come from their boat. Woody Brown Sr. designed the first catamaran, and he designed it to run specifically in Waikīkī. Brown Jr.’s plea is that “we have put our lives into that boat, so please listen to our plea”.

Shelia Lipton stated that she had nothing to say, Lindsey said it all.

Mando Rillamas said she had nothing to say, but that she partially agrees with what has already been said.

Cynthia Farias representing King Parson Enterprise Ltd. and Mando Rillamas testified that they are supportive the previous testimony by George Lindsey and IWA and join in those requests. Farias addressed two issues, one being the operator permit issue. Farias asked for minimum qualifications in the rules, not in the permits. If these qualifications are in the permits, there is no transparency, the public doesn’t know what those qualifications are and there is a chance of inconsistency. In HAR §13-251-57 DOBOR has proposed rules for minimum qualifications for catamaran and canoe operators. Farias thinks this is good, but this doesn’t go far enough. The term “navigating” is not specific enough. Navigating what? They feel the minimum qualifications should be in a separate section, and not attached to HAR §13-251-57. Farias said that if the blue card is going to be impossible to obtain, then there needs to be qualifications in a separate section so it is clear what they are and what they mean. Also they don’t believe the requirements should be limited to catamaran users and canoes. The biggest industry to regulate is the surf schools. There are many qualified surf instructors, but with no minimum qualifications, safety is a big concern. They do have some recommendations in their submitted testimony on page 3. Another concern is HAR §13-251-49 which limits DOBOR’s authority to suspend or revoke commercial use permits to catamarans. Farias wants the circumstances to be expanded so that catamaran users have a 30 grace period in which to get their catamarans operational. They feel that there could be a number of reasons as to why a catamaran may not be operational and there should be exceptions. Farias said their recommendations are provided in their testimony.

Chuck Krause, general manager at Ko’olina Marina protested the amendments primarily because the Marina was not given the same due process as the other marinas. Krause said they just found out about the rule amendments last week. He said that when he called to find out why they weren’t notified/posted, he was told that since Ko’olina Marina is privately owned, the department was not allowed to enter the property to post meeting notices. Krause said that they always welcome the department and have never refused DLNR entry. He said that in the entire

rule changes Ko'olina is not mentioned anywhere. After reviewing the rules, Krause didn't see how they were involved in these rule changes. When he called and asked the reason for these changes, he was told that it was so that the State could generate revenue. Chair Aila asked Krause why he believes the rules now assess fees on the marina; it's strictly commercial operators out of the marina? Krause said he was representing the marina and his operators. Chair Aila said there is nowhere in the rules saying the state will assess fees on a private marina. Krause's argument is that it does assess fees on the operators that pay higher rates to operate out of Ko'olina, and those rates are taxed; his operators pay a lot of money to operate out of Ko'olina. Krause said the marina and the operators do not use any state facilities and they feel like the permitting fee isn't fair. He thinks there should be another public hearing. This time they were not part of the process, they always have been, but not this time. He said the rules aren't clear, whether the fee is \$200 per boat or \$200 per business. There was a discussion about navigable waterways. Krause said that there has never been a charge for use of navigable waterways but now there is and this must be the only reason they are involved. Chair Aila spoke on behalf of DOBOR stating that this charge is to address some additional cost to DOBOR caused by conflicts of boats coming out of the private facility as well as the amount of work that has to be done in resolving those conflicts. Krause said he's not aware of any issues. Chair Aila stated that this is an attempt to recoup costs of issues that are occurring out in state waters. Krause said that he was addressing due process of notification. Chair Aila agreed that there could've been better notification to him, however in terms of chapter 91 and proper notification, Chair Aila believed all of those requirements have been met.

Member Goode asked Krause if any of his operators were aware of the hearing or where part of any trade groups. Krause said none of the operators were aware and that they were busy operating their businesses.

Ted Bush a Waikīkī Beach Boy and owner of a blue card testified in opposition of the revised rules. Bush believes the rules as written now will increase the threat to public safety and lead to the demise of the Waikīkī Beach Boy. The Waikīkī Beach Boys began in 1905 when the first Beach Boy was born, Dewey Miller. Each beach boy was handpicked by Miller and had to be good waterman. They operated under a strict code of conduct and kept the beach and water clean. Leading up to 1957 as more people came to Waikīkī and more hotels went up, more untrained and unqualified boys showed up on the beach to make a fast buck; rip offs, abuse and constant injuries and near drowning became the norm. This prompted the Waikīkī Beach Boys, trained watermen led by Duke Kahanamoku to form a qualifications committee that would issue licenses to those who portrayed the values and passed a series of exams. A Waikīkī Beach Boy is classified as an individual that holds the same permit Kahanamoku and his team introduced, known as the "blue card", issued by the state to operate as a surfing instructor and canoe handler in the Waikīkī area. This blue card says the holder is water qualified. It also shows a certain amount of time working at an entry level position on the beach, shows proof of canoe and surfboard handling experience on the beach and commits the holder to being a steward of the beach. This administration wants to do away with this process and allow businesses to have a commercial use permit to use anyone they want to preform those duties. This process will allow organizations to do what they want, when they want without any qualifications. Waikīkī has been safe because trained and certified personnel operate in the water, but by doing away with this practice safety risks will increase. Bush isn't opposed to all the rules, just those that address

Waikīkī Beach proper; the removal of the present certification process and the oversight by authorities. They feel the revisions can work if Waikīkī is treated as a special designated zone similar to “specifically designated zones”. They will support the revisions if they are amended to reflect these recommendations. Bush made some suggestions for changes to the rules and asked to have representatives from DOBOR meet with them (the Beach Boys) to work together to ensure the mission of the Waikīkī Beach Boys continues, to insure that Waikīkī remains safe, and continues to prosper. Regarding the liability issue, Bush suggested minimizing exposure to liability by having the best qualified people working out there.

Audience applauded.

Stacy Moniz was next to speak on behalf of Star Beach Boys, Aloha Beach Services, Waikīkī and the Hui o He’e Nalu Surf Club in opposition to the amendments. They agree to the issues that Bush just outlined. They noted the irony in asking for more rules and regulations, whereas normally people would be asking for less. Moniz said that the public health, safety and welfare should be the overriding interest for the state, not just financial gain. Right now there is no limit to how many people one person can take in the water; with all the activity going on in the water it is impossible for one person to watch 20 plus people on surfboards. With respect to the blue cards, who is going to certify the minimum requirements? How are you going to verify that someone has 1 year experience in the water? It’s like DOBOR wants to give the permits out without any enforcement or regulations that cannot be policed. They are just trying to promote the Hawaiian Beach Boy way of life. Regarding the 3% gross receipts, he struggles with this concept of paying for the “month to come” because you don’t know what gross will be like in months to come. Chair Aila clarified that it’s the \$200 that you would pay in advance or 3% of gross income, if your gross income exceeds the 3% then you would pay the difference. Moniz understood, he just asked that it be written. There was discussion about the jurisdiction between the city and state; chair Aila explained that the County permit is to occupy the beach, however once you get into the ocean, you come under DLNR jurisdiction. Moniz then reminded the board of the administrative rules and would like to sit down with DLNR to come up with rules and regulations. Asked that the board defer action allow further discussion on this item.

1:00PM

Member Goode departed the meeting.

Jim Coon, President of Ocean Tourism Coalition supported the previous testimony and suggested some amendments.

DiDi Robello, whose dad was the last original Beach Boy (who died 10 years ago), and who is Barbara Kahanamoku’s son, testified in strong opposition the rule changes and believes the end result will create a threat to public safety, and would lead to cultural and historical loss. Robello said there should be more of an effort to honor the Beach Boys. He doesn’t understand what the rush is; he suggested tabling this today and convening a working group to study this further.

Bob Hampton, who has been at the Hilton Hawaiian Village for 25 years, testified in support of the rule changes. He insisted on minimum requirements. Hampton said that if this permitting process is passed then there will a need for more enforcement.

Mick Regul from Ko'olina Ocean Adventures testified that he agreed with Krause that commercial water use permit fees were too expensive. He doesn't believe the problem is with Ko'olina, he feels the problem is that state harbors do not charge enough.

Chair Aila told Krause that his statement was incorrect, that DLNR has more than just state harbors; the state is responsible for all state waters. Chair explained that these fees are used to pay for the conflicts and activities with commercial users. Extra costs are being incurred by conflicts between commercial users on waters under DLNR jurisdiction.

Regul commented about the lack of notice. He noted he was in opposition and asked for a deferral.

Shane Griffin an operator from Ocean Joy Cruises from Ko'olina testified stating that he was disappointed that member Goode left. Griffin said that the comment member Goode made when talking to Krause about trade organizations was offensive. Griffin said that he is a member of the Navy League, as well as numerous other organizations and he depends on the marina and Krause for knowing things like this. Notification is a main point.

Ka'eo Griffin, Shae Griffin's son testified that there are only two companies that are paying fees and that they should be charged uniformly.

Bryan Ho representing Ko'olina Marina objects to the rules in their current form. He said the rules aren't ready to be passed.

Hubert Chang testified that the board should consider reanalyzing the rules. He doesn't understand why the state would be liable for issuing blue cards. If the state isn't qualified, then who is? Chang made some recommendations, and then asked what the 3% fee was for.

Chair Aila explained that 3% fee is a water usage fee as well as management of the area; managing state waters.

Tony Moniz owner of a business that fronts the Duke Kahanamoku statue in Waikiki expressed how important the Blue Cards are. Moniz explained that he runs his business with only 20 employees and his 5 kids. He hopes they will be able to carry on his tradition. Teaching surfing is how he and his family make their living. Doing away with the Blue Cards greatly affected their livelihood. Moniz said that tourism will also be affected, by having too much going on in the water. Chaos will occur and people are going to get hurt. The Blue Card standard has been high and cannot just be given to anyone. Professionals should not be allowed to operate. Moniz explained his frustration when he has to kick instructors, and local kids off the beach and from the water that are operating legally. He believes more of this is going to happen.

Tammy Moniz, Tony's wife testified that Blue Cards create a standard for professional instructors.

2:26PM
2:36PM

RECESS
RECONVENE

Larry Akiyama a Waikīkī Beach Boy opposed the rules. Akiyama spoke about how congested Waikīkī is. By approving these rules, it's going to make Waikīkī very dangerous. He detailed how many people he has already seen get hurt. Safety is the main thing, especially now.

Mike Easton testified in opposition stating that there aren't enough rules in the code to respond to the commercial activity. He believes the standards should be in the rules and not a separate element in a permit, so that if you question whether someone has a qualification, it's clear that these are the rules for that qualification. Easton agreed with a lot of the recommendations today, and thinks the qualifications should be statewide, and the state should be the ones ensuring a permit holder meets the qualifications. He would like to see something where people are getting referrals so that it is known that these are qualified people. Easton made some recommendations and asked to postpone the rule changes.

Pat Henry a private citizen, who doesn't operate a business, opposed commercial activity from Kapahulu to Diamond Head lighthouse. Commercial activity should be banned on water as it is on land. Henry said he's not opposed to all activities such as the Honolulu Marathon. He suggested maybe expanding zones.

Member Gon made a motion to go into executive secession pursuant to Section 92-5(a) (4), Hawai'i Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Oi seconded the motion.

2:43PM

EXECUTIVE SECESSION

3:08PM

RECONVENE

Member Gon commented that the testimony of the Waikīkī Beach Boys about the maintenance of quality standards for water safety in Waikīkī concerned him. He commented that these types of standards should be established across the entire state, and Waikīkī is the place to establish those standards.

Member Kishinami thanked everyone for their testimony and said that the Board has taken it to heart. After discussion with the deputy attorney general they feel more evaluation needs to be done. The board will need a different level of standard for certification. At this time, to keep the general concept and other items moving forward, member Kishinami made a motion to adopt all the proposed amendments except for the proposed deletions for the operator permit requirements, regarding the blue card process. The Board authorizes DLNR to make all necessary technical non-substantial changes to the documents for style and form with some of the comments that were made today. Member Gon seconded.

Chair Aila clarified that the blue cards stay in place.

Unanimously approved as amended (Kishinami, Gon)

**Item J-4 Request by Sterling Kim for Reimbursement of Repairs Made to Slip # 74/76
Located at the Mā'alaëa Small Boat Harbor, Maui.**

Ed Underwood explained that Sterling Kim is asking for reimbursement, DOBOR said that they approve the project and repairs based on the fact that they said they would cover the costs. The total costs being about \$19,500.

Chair Aila said there is a statute that allows for private repairs; however the letter of the law was not met because pre-approval by the Board wasn't sought and wasn't given. So it is now after the fact.

Sterling Kim said last December his captain informed him that there was a problem with the dock so they discussed it with the harbor master and were told that they need to apply for a permit to make any repairs. They were told there were no funds available at that time for the state to repair the dock, but if they wanted to they could use their own funds. The harbor master told them that it was possible to seek reimbursement via a state harbor tax credit. Kim didn't have funds to repair the dock at that time in December, but in June when the dock failed they had no choice but to repair the dock. They have been trying to get this resolved since last July.

Member Gon said he felt like he was at a loss because none of the Maui representatives were present, and he felt like they may have more information. He would really appreciate if the Maui members could be present. Member Gon asked if we could defer this item until the Maui members were present.

Unanimously moved to defer (Gon, Kishinami)

Item K-1 Conservation District Enforcement Case (ENF) OA-14-62 regarding the Alleged Unauthorized Re-Construction of a Shoreline Erosion Control Structure, located in the Waiālua District, Island of O'ahu, Seaward of Tax Map Keys: (1) 6-8-001:011; (1) 6-8-010:012 & (1) 6-8-010:013.

Written testimony was submitted by Stephen Wojtowicz.

Sam Lemmo handed out pictures.

Lemmo explained that this was an enforcement action regarding unauthorized construction of a shoreline erosion control structure. The landowner is Grand View Apartments Inc. in Mokulē'ia. This involves 3 properties, 2 with residences and one with the county. The beach right of way is owned by the county. There was a large storm in January which caused a lot of erosion problems and structural damage. One of the seawalls on one of the properties failed. The Mitsunagas initiated repair to the failed seawall. The pictures Lemmo presented prior show the failure of the wall. He also presented pictures that were taken prior to the storm. When staff returned to the site in February 2014 there were continuous improvements to sections of the wall on all 3 properties. Photos are included in the staff report. OCCL then issued a notice of violation. The concern is that OCCL believes the wall now encroaches into the area of parcel 13. On parcel 11, they added rocks and shopcrete to extend the structure seaward. Lemmo explained that normally the City would be notified to determine what type of permit would be necessary. This would represent a major type of work; the penalty is \$10-\$15K per violation. Staff's recommendation is to impose a fine of \$15K for the 2 residential parcels and \$15K for the public beach right of way. \$1,000 in

administrative fees totaling \$31K and the landowner must remove all materials and return the land to a condition prescribed by the chairman.

Howard Hanazawa and Dean Hanazawa, brothers, gave the history and background of these properties. H. Hanzawa said last December his brother called the City and County and DLNR saying something needed to be done. In December the waves came up and made a ditch in the right of way about 12ft deep and 6ft below the footings. Water then started flowing into the backyards of parcels 11 and 13. Once the waves broke through, it started taking out material in the yard. In parcel 13 the hydraulic pressure pushed the material towards the ocean. H. Hanzawa said he understands that a permit should've been issued, but this as an act of God type of event. If someone tried to get to the ocean, they would've fallen 12ft. Hanzawa

Steve Wojtowicz, a 25 year resident of Mokulē'ia read his submitted testimony and recommends letting the land owners put up boulders.

Bobby Titcomb, resident of Mokulē'ia saw the right of way gradually deteriorate, and saw that the water would start undermining the Hanzawa's wall. Titcomb understands that rules need to be followed, but the Hanzawas acted out of desperation and over possibly losing their house. The Hanzawa's were also concerned that someone would get hurt.

Moke a friend of D. Hanzawa helped brace the wall with boulders. The whole yard was gone and Moke's main concern was safety. If the wall wasn't taken down there would have been a fatality. He said that when enforcement went out to their property, they were told to do what they need to do to save their property.

D. Hanzawa said that if they remove the repairs the same thing will happen. Safety is their main concern, as well as saving their property. If there was any other option, then they would have done it. D. Hanzawa said that he did call both the City and State and they both said it's not their jurisdiction. He suggested some kind of help from the state or some sort of hotline.

Dennis Esaki from Esaki surveying, hired by the Hanzawas went to visit the site, but hasn't surveyed it yet. In the best situations there have been easements granted over state property. Mr. Esaki requested more time to do the survey.

H. Hanzawa said the ocean took out the boulders from one side and created a situation where the wall leaned. H. Hanzawa asked what the view is if the ocean takes boulders from a private property.

Lemmo said if material comes off your property onto state property; it is now a nuisance and has to be removed. Lemmo suggested deferring the item and have them do a survey of the area of the structure that is seaward of the structures that were previously existing.

H. Hanzawa asked if they could have time to confer with City and County because that's where the problem originated. The right of way will have to remain there, but if they have to remove the boulders, they will be in the same situation.

Chair Aila told H. Hanzawa that they could use this time to confer with the City and County.

Unanimously moved to defer (Oi, Kishinami)

Item C-4 Request for Authorization for the Chairperson to Negotiate, Sign, Execute, and Amend a Contract with the University of Hawai'i Pacific Cooperatives Studies Unit to Perform Mitigative Measures as part of the Abutilon Menziesii Habitat Conservation Plan.

Randy Kennedy had no changes to item C-4.

Unanimously approved as submitted (Gon, Kishinami)

Item C-1 Approval in Concept the Withdrawal of Tax Map Key (3) 4-6-011:040, Comprising Approximately 238 Acres, From the Hāmākua Forest Reserve, Hāmākua, Hawai'i

Approval in Concept for the Redesignation of Tax Map Keys (3) 3-9-001:Portion of 013 and 018, Comprising Approximately 40.09 Acres, from Demonstration Forest Purposes, to the Humu'ula Section of the Hilo Forest Reserve, North Hilo, Hawai'i

Approval in Concept for the Redesignation of Tax Map Keys (3) 4-9-001:Portion of 007, (3) 4-9-013:Portion of 001 and (3) 4-9-014:001, 003-005, 008-011, 013-014, 017, and 020-022, Comprising Approximately 3431.48 Acres, from Waimanu National Estuarine Research Reserve, to the Waimanu Section of the Kohala Forest Reserve, Hāmākua, Hawai'i.

Item C-2 Request to Restrict the Use of or Presence of Dogs Within the Pu'u Ali'i Natural Area Reserve (NAR) and Portions of the Hanawī NAR and Kahakuloa Section of the West Maui NAR Pursuant to Hawai'i Administrative Rules § 13-209-4.5 – Closure of Area, for a Period of Two Years for Safety Purposes, TMKS (2) 6-1-001-002, Por., (2) 1-2-004-005, Por., (2) 1-2-004-007, Por., (2) 3-1-006-001, Por., Moloka'i and Maui.

Written testimony was submitted by U'ilani Kapu.

Kennedy had no changes to items C-1 or C-2.

Unanimously approved as submitted (Gon, Kishinami)

Item D-1 Extension of Lease Term for General Lease No. S-4259, (Contract No. DACA84-5-70-16) to the United States of America, Department of the Air Force, Waimea, Kaua'i, Hawai'i, TMK: (4) 1-2-001: 009.

Item D-2 **Request for Approval in Concept of an Extension of Lease Term, General Lease No. S-3832, and General Lease No. S-5578, Pixar Development, LLC, Lessee, por. of Kapa‘a Town Lots, Kapa‘a, Kawaihau, Kaua‘i, Tax Map Keys: (4) 4-5-011:046 and (4) 4-5-012:005.**

Item D-3 **Direct Lease to the Natural Energy Laboratory of Hawai‘i Authority for Air Quality Monitoring Site and Storage Purposes, Kapoho, Puna, Hawai‘i, Tax Map Key: (3) 1-4-001:082.**

Written testimony was submitted by Lono Lyman.

Item D-4 **Approve a 10-year Extension of Lease Term Pursuant to Act 207, Session Laws of Hawai‘i 2011, General Lease No. S-3619, Mattos Electric, LLC, Lessee, Waiākea, South Hilo, Hawai‘i, Tax Map Key: (3) 2-2-049:013.**

Item D-6 **Acquisition of Private Lands and Set Aside to Department of Education for Elementary School Campus, Kehalani Mauka, Wailuku, Maui; TMK: (2) 3-5-001:103.**

Item D-7 **Issuance of Right-of-Entry Permit to Jack Starr of TS Aloha, Inc. for the Kimo’s Māla Longboard Surf Contest at Lāhainā, Maui, Tax Map Key: (2) 4-5-004: Seaward of 012.**

Item D-8 **Consent to License Agreement between City and County of Honolulu and the Department of Defense for Installation, Operation and Maintenance of Civil Defense Disaster Warning and Communication Devices Purposes over Lands Setting Aside to City and County of Honolulu, Oahu at the following TMKs:**

**(1) 1-1-063:014, (1) 1-3-027:001; (1) 1-8-020:013, (1) 2-7-036:005,
(1) 3-1-031:004, (1) 3-1-042:005, (1) 3-5-022:023, (1) 4-1-009:264,
(1) 5-3-002:031, (1) 5-9-001:038, (1) 8-3-001:001, (1) 8-7-005:001,
and (1) 9-9-006:020.**

D-15 **Denial of Request for Contested Case Hearing by Walter and Ann Liew, Lessees of General Lease No. 4298, Waimānalo, Ko‘olaupoko, O‘ahu, TMK (1) 4-1-010:003, Regarding Issuance of Notice to Vacate.**

Tsuji had no changes to items D-1 through D-4, D-6 through D-8 or D-15.

Unanimously approved as submitted (Gon, Kishinami)

Item D-14 **Report on the Status of Lease Rent Re-Opening Arbitrations in General Leases Nos. S-3583, S-3592, S-3599, S-3609, S-3611, S-3620, S-3621, S-4331 and S-4332, Waiākea, South Hilo, Hawai‘i, which are the subject of: In the Matter of the Arbitration Between, CENTRAL SUPPLY, INC., et al. v. STATE OF HAWAI‘I, DEPARTMENT OF LAND AND NATURAL RESOURCES, S.P. No. 12-1-0029, and In the Matter of the Arbitration Between, STATE OF HAWAI‘I, DEPARTMENT OF LAND AND NATURAL RESOURCES v. YAMADA CONSOLIDATED, INC., et al., S.P. No. 13-1-0035. The Board may go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board’s powers, duties, privileges, immunities and liabilities.**
NO STAFF SUBMITTAL

Unanimously moved to defer (Gon, Kishinami)

Item F-1 **Request for Authorization and Approval to Amend the Existing Cooperative Agreement between DLNR and NOAA’s National Marine Fisheries Service to Include the Main Hawaiian Island Insular False Killer Whale and the Sperm Whale Pursuant to Section 6 of the Endangered Species Act for the Conservation of Threatened and Endangered Species.**

Written testimony was submitted by U’ilani Kapu.

Elia Herman with the Division of Aquatic Resources had no changes to item F-1.

Unanimously approved as submitted (Kishinami, Gon)

Item J-1 **Issuance of a Revocable Permit to Fusion Food Truck, LLC, Manele Small Boat Harbor, Mānele, Lana‘i, Hawaii, Tax Map Key:4-9-17:06 por.**

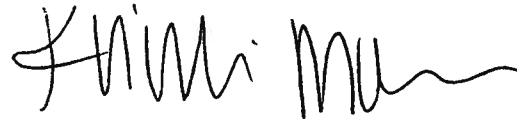
Item J-2 **Issuance of a Revocable Permit to Pacific Biodiesel Logistics, LLC for Fuel Delivery, Mā‘alaea Small Boat Harbor, Mā‘alaea, Wailuku, Maui, Tax Map Key: 3-6-01:02 por.**

Underwood had no changes to items J-1 or J-2.

Unanimously approved as submitted (Gon, Oi)

There being no further business, Chairman William Aila adjourned the meeting at 4:12p.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,

A handwritten signature in black ink, appearing to read 'Ku'ulei Moses', with a stylized, wavy line extending from the end.

Ku'ulei Moses
Land Board Secretary

Approved for submittal:

A handwritten signature in black ink, appearing to read 'William J. Aila, Jr.', with a horizontal line drawn underneath.

William J. Aila, Jr.
Chairperson
Department of Land and Natural Resources