

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

DATE: FRIDAY, AUGUST 23, 2002  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI

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Chairperson Gilbert Coloma-Agaran called the meeting of the Board of Land and Natural Resources to order at 9:02 a.m. The following were in attendance:

**MEMBERS**

Mr. Gilbert Coloma-Agaran	Ms. Lynn McCrory
Mr. Timothy Johns	Mr. Ted Yamamura
Mr. Toby Martyn (arrived 10:23 am)	Mr. Gerald DeMello
Mr. Kathryn Inouye (arrived 1:20 pm)	

**STAFF**

Ms. Dede Mamiya, Land Division	Mr. Sam Lemmo, Land Division
Mr. Barry Cheung, Land Division	Ms. Nancy McMahan, Historic Preservation
Mr. Dan Quinn, State Parks	Ms. Martha Yent, State Parks
Mr. Alvin Tamashiro, Historic Preservation	Mr. Paul Conroy, DOFAW
Mr. Bill Devick, Aquatic Resources	Ms. Athline Clark, Aquatic Resources

**OTHERS:**

Ms. Jean Credick, Department of the Attorney General		
Mr. Tom Welch, D-2	Mr. Bruce Voss, D-12	Mr. Earl Matsukawa, D-9
Ms. Suzanne Case, D-7	Ms. Lisa Okutata, D-18	Mr. Lloyd Sueda, D-18
Mr. Stratford Whiting, D-4	Ms. Pauline Masaniai, E-2	Ms. Joan Malama, E-1
Ms. Carol McLean, E-1	Ms. Donna Camwell, E-1	Mr. Lono Correa, E-1
Senator Bob Nakata, E-1	Mr. Curtis Kam, D-15	Mr. Andrew Carvalho, D-8
Dr. Bill Walsh, F-2	Ms. Cha Smith, F-2	Mr. Dave Raney, F-2
Ms. Linda Paul, F-2	Ms. Marion Kelly, F-2	

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

**ITEM A-1: Approval of the May 10, 2002 minutes.**

The minutes of May 10, 2002 were unanimously approved as submitted (Johns/McCrory).

**ITEM C-1: Request for Approval of a 2-year Contract with the Zoological Society of San Diego to Provide Services to Operate Endangered Bird Captive Propagation Facilities on Maui, and Conduct Related Forest Bird Propagation Projects throughout the State.**

Mr. Paul Conroy, Forestry and Wildlife Program Manager briefed the board on the activities planned for the program. He also made the following amendment with regard to the Compensation and Payment Schedule.

2. **FISCAL YEAR PAYMENTS:** Subject to the availability of federal funds and the annual appropriation of funds, the State shall provide the following payments:

Fiscal Year [2001] <u>2003</u> :	\$330,000
Fiscal Year [2002] <u>2004</u> :	\$330,000
Total Payment:	\$660,000

4. . . . the CONTRACTOR must document allowable charges totaling [\$410,000] \$440,000 per fiscal year.

Mr. Conroy stated that there were some typographical in general conditions therefore he will substitute it with a corrected copy.

There was discussion as to questions raised in 1999, dealing with the openness of the program and assignment over to San Diego Zoological Society. Mr. Conroy stated that all questions were addressed satisfactorily.

**Unanimously approved as amended (Johns/Yamamura)**

**ITEM C-2: Request Preliminary Permission to Amend Chapter 209 Rules Regulating Activities within Natural Area Reserves, to Prohibit Commercial Activities without a Special Use Permit.**

Mr. Conroy briefed the Board and recommended the approval to amend section 13-209-4 and to add two additional definitions to sections 13-209-2, Hawaii Administrative Rules, as specified.

Discussion was brought up as to whether the rules govern car top kayaks. Randy Kennedy of Historic Preservation stated that they were using the Board approved definition of commercial use. The intent of this rule is to regulate commercial use, not stop it.

**Unanimously approved: (Johns/Yamamura)**

**ITEM D-1: Amend Board's Action of September 14, 2001, Agenda Item, D-16, by Granting Separate After-the-Fact Perpetual, Non-Exclusive Access and Utility Easements to Lafayette & Beverly Young, and Baron & Melissa-Ann Souza, over State Lands Identified as TMK: (2) 2-9-001: Poor. 001, Hoopoe Makawao, Maui.**

Dede Mamiya, Administrator of the Land Division briefed the Board and recommended that the Board amend its action of 9/14/01, Agenda Item, D-16 and issue separate easements to the Young's and Souza's. Also because the parcels have been determined "kuleanas" there will be no charge for either easement.

**Unanimously approved as submitted (Johns/McCrory)**

**ITEM D-2: Grant of Term, Non-Exclusive Easement to Arapahoe Financial Plaza, LLC for Rock Groin Structures Purposes, Spreckelsville, Wailuku, Maui, TMK: (2) 3-8-002: Seaward of 025.**

Ms. Mamiya, briefed the Board on the subject matter and made the following recommendations: the removal of groin structures could increase erosion there by reducing recreational activity, therefore the structure in question should remain in place; removal of the gazebo; access a \$500.00 administrative penalty; and issue a Term Non-Exclusive easement according to the terms and conditions in the staff submittals.

Mr. Tom Welsh representing Arapahoe was present to answer any questions.

**Unanimously approved as submitted (Yamamura/Johns).**

**ITEM D-3: Forfeiture of General Lease No. S-5347, Martin Lagundino, Lessee, Lots 1, 23, 34-A, 33-A, 35-A, Hanalei Homesteads, Hanalei, Kauai, TMK: 5-4-2: 26 & 31.**

Ms. Mamiya briefed the Board and recommended the cancellation of General Lese No S-5347.

A letter was sent by fax from Mr. David Estrella, Land Manager requesting the Board to postpone their decision.

**Motion to Defer (Johns/Yamamura)**

**ITEM D-4: Resubmittal – Grant of a Term, Non-Exclusive Easement to Stratford L. Whiting, as Trustee of the Stratford Lord Whiting Revocable Living Trust**

**dated February 9, 1003 and Anita Berg Whiting, as Trustee of the Anita B. Whiting Revocable Living Trust dated February 9, 1993 for Boat Ramp Purposes, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-4-014:003 SEAWARD.**

Ms. Mamiya, of the Land Division briefed the Board and recommend that the Board approve a Term Non-Exclusive easement.

Mr. Strafford Whiting asked the fine be waved because the ramp was already in place when he purchased the land from the State.

The Board decided to eliminate the fine because the land was purchased from the State and there was an opportunity for the State to clean it up and it was not done.

The board amended the "Recommendations" section by deleting Item 2 (impose a fine of \$500).

**Unanimously approved as amended (Johns /Yamamura)**

**ITEM D-5: Sale of Reclaimed Lands to Wallace T. Yamamoto and Betsy S Yamamoto, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-4-007: 003 Seaward.**

Ms. Mamiya briefed the Board and recommended the sale of the subject reclaimed land. It was determined that the Yamamoto's were exempt from an environmental assessment because this project will probably have minimal or no significant effect on the environment.

**Unanimously approved as submitted (Johns/Yamamura)**

**ITEM D-6: Amend Prior Board Action of October 27, 1989 (Agenda Item F-13), Direct Sale of Abandoned Government Road Remnant Parcels at Hamakualoa, Maui, TMK: (2) 2-7-7 and 2-7-8.**

Ms. Mamiya briefed the Board and recommended amending the Board's Prior approval of October 27, 1989, Item F-13 by deleting Recommendation B.6.

**Unanimously approved as submitted (Johns/McCrory)**

**ITEM D-7: Resubmittal; Grant of Perpetual Non-Exclusive Easement to the Nature Conservancy for Access Purposes, Pahala, Kau, Hawaii, TMK: 3<sup>RD</sup>/9-6-02: 05.**

Ms. Mamiya briefed the Board and recommended the issuance of a Perpetual, Non-Exclusive easement to the Nature Conservancy.

Chairperson Agaran questioned the cost of the easement in terms of the non-profit statute if it would apply. Ms. Mamiya stated that it would not apply because it pertained to leases, not easement of lands.

Suzanne Case, Executive Director of the Nature Conservancy questioned the cost in surveying and maintaining cattle proof fencing along the length of its Mauka boundary.

The Board amended the recommendation Section by amending paragraph 2.C to read as follows:

“2.C. The grantee shall be required to survey and locate its Mauka boundary as well as install and maintain cattle proof fencing along its length as determined to be necessary in consultation with the Land Division and the division of Forestry and Wildlife.”

**Unanimously approved as amended (DeMello/Johns)**

**ITEM D-8: Consent to Assign General Lese No S-5496, Andrew Carvalho, Assignor, to Progressive Landscaping, Inc., Assignee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-010: 081.**

Ms. Mamiya, informed the Board and that the Lessee was moving and would like to sell the Lease Hold Interest to Progressive Landscaping. She recommended the Consent to Assignment of General Lease No. S-5496.

Andrew Carvalho, expressed to the Board that he currently leases other lands (from Campbell Estate) on a month-to-month basis but he was looking for a place with a long-term lease.

**Unanimously approved as submitted (Johns/McCrory)**

**ITEM D-9: Issuance of Right-of-Entry to the Department of Transportation, Highways, Division for Purposes of Archaeological Survey Work, General Lease No S-3709, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-014: Portion 013.**

Ms. Mamiya, briefed the Board and recommended the issuance of a Right-of-Entry to the Division of Transportation, Highways Division.

Earl Matsukawa, of Wilson, Okamoto & Associates informed the Board that he had approval from all 5 companies.

**Unanimously approved as submitted (Johns/Yamamura)**

**ITEM D-10: Grant a 55-YEAR Non-Exclusive easement for Seawall to Hajime and Tokuko Asanoma, Husband and Wife, under the Asanoma Family Trust, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-58: 41.**

Ms. Mamiya, briefed the Board and recommended to grant a 55-year Non-Exclusive easement to the Asanoma Family trust and wave the \$500 fine.

Tokuko Asanoma was there to answer any questions.

**Unanimously approved as submitted (Johns/Yamamura)**

**ITEM D-11: Set Aside and Immediate Right-of-Entry to the Department of Transportation, Airports Division for Addition to Kahului Airport and the Kahului Airport Access Road, Airport Industrial Subdivision, Kahului, Maui, TMK: 3-8-079.**

Ms. Mamiya brief the Board and recommended to set aside and immediate Right-of-Entry to the Department of Transportation, Airports Division.

**Unanimously approved as submitted (McCrorry/Yamamura)**

**ITEM D-12: Conservation District Enforcement File No KA-02-11: Unauthorized Grubbing and Landscaping: and Unauthorized Construction of a Jacuzzi and Pump House, Haena Ahupuaa, Hanalei, Kauai,**

**Pursuant to Section 92-5 (A)(4), HRS, the Board may enter into executive session to consult with legal counsel.**

Sam Leemo, Senior Staff Planner for the Land Division briefed the Board on what has transpired between the Land Division and the Lessee after the discovery of human remains during the construction of the Jacuzzi. He also noted on February 28, 2002, a Notice and Order to Cease was issued. Mr. Lemmo, recommendation was a fine of \$2,000 for each of the 2 offenses (construction of a Jacuzzi and unauthorized landscaping), \$2,000 for one day of work following the Notice and Order to cease work plus administrative time (\$500 Planning Staff and \$325 for DOCARE) for a total fine of \$6825, and removal of the Jacuzzi and pump house within 60 days of the Board's action.

Board Member McCrorry questioned whether additional work was done for more than one day and as to where the logs came from. She questioned if it was possible to issue a fine per log cut down. She asked the staff to check into this matter.

Nancy McMahan, Kauai Archeologist with Historic Preservations briefed the Board on the history of the property including areas where human remains were found in the past.

Bruce Voss, Attorney for the lessee asked for a deferral until the next meeting so he could look at the Land Board files. He also stated sod was not placed around the Jacuzzi, but was placed by the steps by the beach.

Motion made at 9:30 a.m. to move into executive session to consult with legal counsel (Johns/McCrory). The meeting was reconvened at 9:45 a.m.

The Board instructed the staff to conduct a follow-up site visit to determine where the logs came from and to evaluate whether the landowner can be assess a separate fine for each cut tree. The Board also made note that the pump house was separate from the Jacuzzi therefore it would be an additional fine.

Chairperson Coloma-Agaran stated for the record, that in the executive session the Board consulted with their attorney on their options since there has been a request on the due process clause for a deferral and they received that advise

The Board amended staff recommendations:

1.Paragraph 1 to read as follows:

“The alleged violated the provision of Chapter 183 C. Hawaii Revised Statutes, and Chapter 13-5, Hawaii Administrative Rules (HAR), in [two} three instances by failing to obtain the appropriate approval for the construction of the jacuzzi and pump house, and for the unauthorized grubbing and the landscaping action within the Conservation District. The alleged is fined a total of [4000] \$6000 for the conservation District violations;”

2. Paragraph 5 to read as follows:

“The alleged shall pay all fines (total [\$6,825] \$8,825 within 30 days of the Board’s Action:”

Chairperson Agaran advised Mr. Voss that his client is entitled to a contested case but he must make a request by the end of this meeting and follow up.

Mr. Voss requested a contested case.

**Unanimously approved as amended (McCrory/DeMello)**

**ITEM D-13: Amend Prior Board Action of June 9, 2000, Agenda Item D-1, Withdrawal form Governor’s Executive Order No 2594, Reset Aside, and Set Aside of State Lands to the Department of Transportation, Highways Division for road Purposes, Kahului Airport, Maui, Various Tax Map Keys.**

Ms. Mamiya briefed the Board and recommended amending the Board’s prior action of June 9, 2000, Agenda item D-1. She also requests that the applicant provide survey maps and description, according to State DAGS standards, and obtain a title report to ascertain ownership where necessary, at the applicant’s own cost.

**Motion to Defer: (DeMello/Yamamura)**

**ITEM D-14: Consent to Assign Perpetual, Non-Exclusive Access and Utility Easement [L.O.D. NO. S-27016], From Caine Enterprises (Hawaii) Corporation as Assignor, to Valley Isle Enterprises, Ltd., Assignee, Kamaole, Wailuku, Maui, TMK: (2) 3-9-004: POR. 061.**

Ms. Mamiya briefed the Board and recommended the Consent of the Assignment from Caine Enterprises to Valley Isle Enterprises, Ltd.

**Unanimously approved as submitted (Yamamura/Johns)**

**ITEM D-15: Forfeiture of General Lease No. S-4007, Alofa Corporation, Alofa, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-027: 023 & 024.**

Ms. Mamiya, briefed the Board on the history of the lessee and recommended the cancellation of General Lease No. S-4007 and authorize the Department of the Attorney General to collect all monies due the State of Hawaii.

Curtis Kam, attorney representing Mr. Ah Sam, owner and operator of the Alofa Corporation, claims his client did not understand the decision of the arbitrator regarding his payments. Chairperson Agaran stated that Mr. Ah Sam was put on an installment plan and this did not pertain to the default. Mr. Kam reported that his client has brought everything current except the performance bond. His problem is getting the \$52,000 performance bond. He asked that the Board defer until he hears from the Bond company. The Board explained that Mr. Ah Sam has been given extensions and installment payment and he still has not kept up with the payments.

Mr. Barry Chueng, of the Land Division confirmed that the Land Division was working with Mr. Ah Sam in trying to acquire a performance bond but as of today, no response was received.

**Unanimously approved staff recommendations (Johns/McCrory)**

**ITEM D-16: Delegation of Authority for the Issuance of Right-of-Entries for Grazing Purposes, Puuwaawaa and Puuanahulu, North Kona, Hawaii, TMK: 3<sup>RD</sup>/7-1-002: 001 & 7-1-0003: 01; and 7-1-004: 01.**

Ms. Mamiya briefed the Board and recommended that due to minimal or no significant effect on the environment an environmental assessment was not necessary and to authorize the delegation of the Chairperson to issue periodic right-of entry permits for grazing of areas within the subject Tax Map Key parcels.

**Unanimously approved staff recommendations (DeMello/Yamamura)**



**ITEM D-17: Amend Prior Board's Action of July 24, 1998, Agenda Item D-8, Issuance of After-the-Fact Revocable Permit to Association of Apartment Owners of Mana Kauai-Maui, Kamaole, Wailuku, Maui, TMK 3-9-004: Por. 001.**

Ms. Mamiya informed the Board the attorney for the owners has requested a deferral.

**Deferred to the next meeting (Yamamura/McCrory)**

**ITEM D-18: Issuance of Direct Leas to the Harry and Jeannette Weinberg Foundation, Inc. for Parking Purposes, Kapalama, Honolulu, Oahu, TMK: (1) 1-5-042:002**

Ms. Mamiya briefed the Board and recommended the Issuance of Direct Lease to the Harry and Jeannette Weinberg Foundation, Inc for parking purposes.

Lisa Okutata, of the Harry and Jeannette Weinberg Foundation was present to answer any questions.

Lloyd Sueda, of Sueda and Associates brought in maps to show the area.

**Unanimously approved staff recommendations (Johns/Yamamura)**

**ITEM D-19: Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu, Department of Design and construction and the Issuance of an Immediate Construction Right-of-Entry for Sewer Purposes along Kainehe Street, Hamakua Drive and Keolu Drive Situate Kailua, Koolaupoko, Oahu, , TMK: 4-2-03:30.**

Ms. Mamiya briefed the Board and recommend granting of Perpetual, Non-Exclusive easement to the City and County of Honoulu.

**Unanimously approved staff recommendations (McCrory/Johns)**

**ITEM E-1: Request for Approval to Grant a Lease for Buildings at Heeia State Park, Oahu.**

Dan Quinn, Administrator, State Parks briefed the Board on the history of the Lease with The Friends of Heeia and recommend the approval of a 20-year lease.

Member Johns questioned as to whether other organizations have been given the opportunity to bid for or be considered for the lease. Mr. Quinn states that no formal requests have been received but if one were received, consideration would be given and taken to the Board prior to the issuance of a lease. It was also brought up that the "Master Plan" needs to be updated.

Joan Malama, Board of Directors, Friends Advisory Board – In terms of a January 1, 2003, start date for the new contract she feels that it is a concern of The Friends that they will be losing 2 years off their existing lease.

Carol McLean, Executive Director of the Friends of Heeia – Their basic leases has been inclusive; therefore they are looking at revenue producing activities because they get no money from the State to do work at the park. They have kayak tours where they observe coral spawns but they have not charge for this activity.

Donna Camwell, Lihue Poao Kea Lono Ohana – She opposes the 20-year lease for the Friends of He'eia. Instead of granting the Friends of Heeia a 20 year lease, she would like The Friends to continue their current lease and within that time have the State review and revise the Heeia State Park Master Plan, form a task force to include community input and lastly have the State put out a RFP (Request for Proposals) before issuing a long term lease. She also stated the group, A'awapua'a Restoration Council of Heeia has sent in a request with State Parks to adopt the front section of the Park. Addressing the Master Plan, she feels that none of the issues regarding the physical and environment concerns were addressed

Lono Correa-He opposes the 20-year Lease for Heeia State Park because the State did not give other organizations the opportunity to bid for the lease. He believes an RFP should be issued to the entire windward community. He feels the start date of January 1, 2003 is too soon instead The Friends should continue their present lease thereby allowing time for other organizations to turn in a proposal. If given a year to come up with a proposal, Mr. Correa envisions an educational center, a cultural center to tie in with the new park (Heeia Kea), and an amphitheater to hold cultural programs as well as other programs. He would tap various agencies and foundations to come with the resources needed. He believes that the Master Plan is okay, but it lacks the Hawaiian cultural input to a great degree, therefore it needs to be updated in that respect.

Leialoha Rocky Kalokeva, Na Iwi Ola o Heeia Kea organization- the organization opposes the 20-year lease for The Friends of Heeia. She believes the Board should practice due process and put the lease out to bid to other non-profit organizations in the community. She believes the existing lease should be kept in place thereby giving other organizations the opportunity to bid for the lease. In response to condition # 3, she feels The Friends of Heeia should continue their current lease until 2004 in which time it will give other organizations a chance to put in a bid.

Senator Bob Nakata, echoes the concern that four months is too soon for other organizations to come up with a proposal. He believes The Friends should be given a 4-year extension on their current lease, in which time the community can heal some of the mistrust and see of the other organizations can work together with The Friends. Senator Nakata feels the 20-year lease is too long there should be a shorter lease, like 4 years. With a shorter lease the community might be more receptive to the idea. He would also like to see a broader representation on The Friends of Heeia board.

Motion made at 11:50 a.m. to move into executive session to consult with legal counsel (Johns/McCrory).

In the Executive session the Board discussed the process and statutory compliance for issuing non-profit leases, including notice requirements, options on modification of existing leases)

The meeting was reconvened at 12:25 p.m.

Member McCrory asked Joan Malama to responded to the question that the Friends are hard to work with.

Joan Malama said she felt that The Friends could work with the community. Over the years people have dropped out of their board for various reasons. Also the reason the Board was kept small was because it was hard to get people together for a meeting. She made it known that The Friends are open to other people joining them.

Carol McLean also stated the need for a long-term lease in order to get more grants. They are currently working with the EPA (2-year grant) and they would like to reapply for this grant but the EPA would like to receive assurance that The Friends will be around. The other grant they have is with NOA (National Marine Fishery Services), to do replanting of the coastal strands indigenous flora. The also have other small grants. The Friends would like to embark on a capital campaign, but would need assurance of long-term security. Ms. McLean brought up the point that their lease only includes use of the two buildings but they're required to carry \$1,000,000 insurance policy for the entire park.

Mr. Bud Henry submitted written testimony in support of this matter.

Member Johns made a motion for deferral.

Member Johns expressed the Boards appreciation to The Friends for the work they've done. He stated that the Board is in favor of a long-term lease, but the Board is not comfortable with making a decision today because of the issues that were raised. He asked Dan Quinn to work together with The Friends, the other organizations and Senator Nakata and come back to the Board in October with his recommendations. If the groups cannot work together then the Board will consider a bid process for the lease.

#### **Motion to Defer (Johns/McCrory)**

#### **ITEM E-2: Request by Kahuku High and Intermediate School to Extend Its Permit for an Alternative Learning Center at Ahupua'a 'O Kahana State Park.**

Mr. Quinn, briefed the Board on the history of the ALC program at Kahana and recommended the approval of a special use permit for the use of the community center and adjoining lot for 3 years beginning Sept 2002-June 2005.

Pauline Masaniai, VP Kahuku H.S. spoke on recommendation number 2. She stated, that due to contractual restraints (teacher workday 7:30 a.m. – 3:00 p.m.) the ALC teachers would not be the individuals providing the tutoring service, instead they would partner with volunteers.

Martha Yent, Interpretive Program Manager, stated that the Kahana Valley community initially looked at the ALC providing tutoring for 2 hours per week, as a show of effort in giving back to the community. In terms of cultural program requirement, the ALC is fulfilling that requirement by working on the fishpond and the taro lo'i restoration.

The Board approved staff recommendations with the addition that they report back to the Board in 6 months as to the status and success of the tutoring program

**Unanimously approved as amended (Johns/DeMello)**

**ITEM F-1: Request for Approval to Hold Public Hearings to Adopt Hawaii Administrative Rules, Chapter 13-60.6, Wai'opae Tidepools, Hawaii Marine Life Conservation District.**

Mr. William Devick, Administrator of Aquatic Resources briefed the Board and recommended approval to hold public hearings to establish a New Marine Life Conservation District.

Dr. Robert Nishimoto was present to answer any questions.

Member DeMello disclosed he works for the University of Hawaii at Hilo (Chairperson Coloma-Agaran decided the University would not benefit financially, therefore Member De Mello can vote on issue).

**Unanimously approved as submitted (DeMello/McCrory)**

**ITEM F-2: Request for Approval to Hold Public Hearings to Adopt Hawaii Administrative Rules Chapter 13-60.5, Northwestern Hawaiian Islands Marine Refuge.**

Mr. Devick briefed the Board on the proposed changes of HRS Chapter 13-60.5-1, 13-60.5-4, 13-60.5-5 and 13-60.5-6 and recommended the Board approve holding public hearings for the adoption to HAR, Chapter 13-60.5.

Athline Clark and Dr. Bill Walsh were present to answer any questions

Cha Smith, executive director of Kahea, strongly supports moving ahead with the public hearings. She believes it give everyone the opportunity to work out any issues or problems. She believes: VMS should be required; there is a need to review permits by some sort of ecological approach or scientific review; and the State should require insurance coverage for commercial

boats. She stated that it was not fair that half the boats, in the last 5 years, that grounded themselves in the Hawaiian Islands, were fishing, they were not just transiting.

Dave Raney, chairman of Sierra Club, Nation Marine Wildlife and Habitat Committee, strongly supports the approval to hold public hearings. The new rules would give the State the authority to protect the resources of the NWHI.

Linda Paul, Executive Director for Aquatics, Hawaii Audubon Society supports the bill with some reservations. In terms of "Boundaries and Enforcement," she feels the State needs to work with the federal government to convert fathom boundaries to enforceable longitude and latitude boundaries. Regarding "Vessel Grounding Bonds," the State should require the posting of a \$1 million bond for any non-government vessel over 50 feet as a condition for a permit or commercial activities. Lastly there should be an independent panel to review permit applications.

The Sierra Club, Issac Harp and Charles Burrows sent letters in support of holding public hearings to adopt HAR CH 13-60.5

Marion Kelly testified in support of holding Public Hearings. She asked the small "n" in native Hawaiians be changed to a large "N" thereby including all Hawaiians.

Chairperson Coloma-Agaran raised the question as to the intent of the word "native" in the Executive Order. Athline Clark stated that the intent in the draft is meant for all Hawaiians. Therefore Chairperson Coloma-Agaran stated that the draft needs to be changed from "native Hawaiians" to "Native Hawaiians."

The Board amended the following rules as follows:

Chapter 13-60.5.1

(5) To allow [native] Native Hawaiian cultural, subsistence, and religious practices...

Chapter 13-60.5-5

(b) (3) "Non-commercial subsistence, cultural and religious use by [native] Native Hawaiians, in accordance with State law."

Member Johns asked Mr. Devick to address why certain changes were not made specifically VMS, Boundaries, Vessel Groundings Bonds and the permit process.

Mr. Devick stated that VMS would be incorporated as the technology becomes possible. In terms of insurance, cost was a consideration Member Johns, questioned if Boating's regulations have it in their statutes, the authority to require insurance coverage. With reference to the comment "that a single DAR employee can grant a permit without consulting with anyone else and that no one is ever turned down," Mr. Devick stated that it is simply not true. He recognized

that there is a need for permits to be reviewed but in the end, the Board or its designee will have the final decision, but everyone will be able to make his or her comment

Member Johns asked for a report within the next couple of months from the Division of Aquatics and Boating regarding their ability to impose insurance or bonding requirements for commercial fishing vessels and the Division of Boating regulations.

**Unanimously approved as amended (Johns/McCrory)**

**ITEM F-3: Request for Approval to Assign a Hearings Officer in the Revocation of an Aquarium Fish Permit.**

**Pursuant to Section 92-5 (a) (4), HRS, The Board may enter into executive session to consult with legal counsel.**

Mr. Devick briefed the Board on the nature of an aquarium fish permit and made it known that Mr. Basabe, was convicted of a violation associated with collecting small marine fish. He recommended that the Board Assign a Hearings Officer in the revocation of Mr. Basabe's aquarium fish permit.

Chairperson Coloma-Agaran informed the Board that Mr. Basabe has hired a lawyer who has requested a hearing on the revocation. Chairperson Coloma-Agaran suggestion was to appoint a hearing officer.

**Unanimously approved as submitted (Martin/Yamamura)**

**ITEM I-1: Awarding of Historic Preservation Grant-in-Aid.**

Alvin Tamashiro, State Historic Preservation, briefed the Board and recommended the Board negotiate and execute a contract agreement with the County of Maui.

**Unanimously approved: (Yamamura/DeMello)**

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 2:00 p.m.

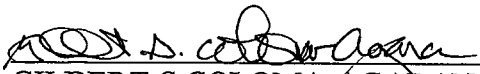
Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



GILBERT S COLOMA-AGARAN

Chairperson

Board of Land and Natural Resources

