

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

DATE: FRIDAY, JUNE 24, 2005  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:27 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young  
Ms. Kathy Inouye  
Mr. Gerald DeMello

Mr. Tim Johns  
Mr. Ted Yamamura  
Mr. Ron Agor

STAFF

Ms. Charlene Unoki, Land  
Mr. Mike Constantinides, DOFAW  
Mr. Francis Oishi, DAR  
Mr. Richard Rice, DOBOR

Mr. Paul Conry, DOFAW  
Mr. Dan Quinn, Parks  
Mr. Sam Lemmo, OCCL  
Mr. Eric Hirano, Engineering

OTHER

Mr. Russell Tsuji, Deputy Attorney General  
Ms. Sonia Faust, Deputy Attorney General  
Mr. John Andrews, C-3  
Mr. Miles Moby, C-3, K-1, E-1  
Ms. Lynn Walton, D-5  
Mr. Linnel Nishioka, D-10, K-2  
Mr. Richard Ekimoto, D-8  
Mr. Neil Simms, J-1  
Mr. Steve Shropshire, K-3  
Mr. Dave Cowen, K-1  
Pastor Elwin Ahu, E-2

Mr. Mack Humphery, C-3  
Mr. Carl Jellings, C-3, E-1  
Mr. Randall Ishikawa, D-10  
Ms. Donna Yamamoto, D-8  
Ms. Denise Wong, D-7  
Mr. Tim Tunison, K-2  
Mr. Mike Gresham, K-1  
Ms. Maureen Bishop, C-2, K-1  
Mr. Dante Carpenter, E-1

Ms. Linda Dela Cruz, E-1  
Mr. Hayden Burgess, E-1  
Mr. John Kahele, E-1  
Ms. Mary Young, E-1  
Ms. Hooipo DeCambra, E-1  
Mr. Larry Keliikau, E-1  
Ms. Lucy Gay, E-1  
Ms. Darlen E-1  
Ms. Puanani Burgess, E-1  
Ms. Elizabeth Hartford, E-1  
Mr. Rotea, E-1  
Mr. Dan First, E-1  
Ms. Maha Mapuahi, E-1  
Ms. Maltibie Eleger, E-1  
Mr. Carl Jellings, E-1

Mr. Kai Markell, E-1  
Ms. Melissa McGarrett, E-1  
Mr. Kevin Bright, E-1  
Ms. Cynthia Rezentos, E-1  
Mr. Neuman Shin, E-1  
Mr. Mike Hirano, E-1  
Ms. Marilyn Kurshals, E-1  
Ms. Adela Maunakea, E-1  
Ms. Susan Chu, E-1  
Ms. Grace Leach, E-1  
Mr. Daniel Weaver, E-1  
Ms. Shelley, E-1  
Mr. William Aila, E-1  
Ms. Patricia Patterson, E-1  
Mr. Richard Holland, E-1

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

**Item A-1: Minutes of June 9, 2005**

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

**Item C-3: Request for Final Approval of Safe Harbor Agreement with Chevron Products Company, Hawaii Refinery at James Campbell Industrial Park, Oahu and Accompanying Incidental Take License.**

Paul Conry, Administrator of the Division of Forestry and Wildlife let it be known this safe harbor agreement will benefit two endangered species, the Hawaiian Stilt and Hawaiian Coot. Through this agreement Chevron will provide temporary habitat that will maintain the permanent population of stilts or coots at the Refinery. The term of the agreement will be for 6 years and will include an incidental take license. At the end of the six years, Mr. Conry anticipates Chevron will move towards a habitat conservation plan or some other type of permit protection for the area. A public hearing on the draft agreement was held on Oahu on September 2004. At the hearing there was concern with the refinery being in close proximity to the Kalaeloa Airport. The Federal Aviation Administration (FAA) has gone on record as opposing the subject agreement as they feel this agreement has the potential to attract or sustain hazardous wildlife populations on or near the Kalaeloa Airport, which can increase the potential for air-strike hazards. Mr. Conry noted staff did not modify the Agreement based on the FAA's comments as the actual increase in hazards due to the actions outlined in the agreement has not been conducted by the FAA, the increase in stilt population has not been attributed to reproduction occurring at Chevron, the management agreement with Chevron is not permanent but rather temporarily only until the time when the nearby Pouhala Marsh is restored and lastly the agreement includes adaptive management to address changing

conditions or new information. Mr. Conry recommended the Board approve the Safe Harbor Agreement with Chevron Products Company, Hawaii Refinery at James Campbell Industrial Park, Oahu and accompanying Incidental Take License.

Mack Humphery, representing the FAA indicated his organization objects to the safe harbor agreement, as it exists today due to its proximity to the Kalaeloa Airport. Mr. Humphery pointed out the airport receives grants from the federal government therefore they must maintain certain standards of safety and comply with the grant assurance it has with the FAA. He went on to let the Board know that flying activity at Kalaeloa will increase in the future and by approving the subject agreement the Board will be forcing the airport into non compliance with its grant assurance. Mr. Humphery provided the Board with an Advisory Circular from the FAA in which it discussed the Hazardous Wildlife Attractants on or near airports.

In addressing Mr. Humphery's concerns, Mr. Conry communicated the safe harbor agreement is written in such a way that it is an adaptive management agreement, which can adapt to problems that arise.

The Board asked Mr. Conry to report to the Board annually on whether there is an increased risk to the flying public.

Miles Moby told the Board he enjoys viewing the stilts and he does not know of any incidents involving plane crashes due to the stilts being in the area.

Carl Jellings a user of Kalealoa Airport let it be known he hasn't encountered any problems with the stilts.

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

**Item D-5: Conveyance of Village 9, Villages of Laiopua, Together with the Development Rights to Same, to The Hawaii Health Systems Corporation for the Purpose of Developing a Medical Center in West Hawaii, Kealakehe, North Kona, Hawaii, TMK: (3) 7-4-20:04.**

Charlene Unoki, Assistant Administrator of the Land Division announced the Housing and Community Development Corporation of Hawaii (HCDCH) intends to develop a 142-bed medical center on the 35.774 acres conveyed with services that will include long-term care/skilled nursing, psychiatric, a community clinic, etc. The estimated cost of the 225,000 square foot facility and 33,000 square foot energy plant, including equipment and furnishings is \$156 million. The existing Kona Community Hospital will remain a full service community hospital serving the North and South Kohala population. The proposed medical center will service the South Kona population. Ms. Unoki recommended the Board authorize the fee simple conveyance of the 35.774 acres that comprise Village 9 of the Villages of Laiopua to the Hawaii Health Systems Corporation for the purposes of developing a medical center at its own expense.

Lynn Walton of Kona Hospital was present.

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

**Item D-10: Amend Prior Board Action of November 5, 2003 (Item D-16), Grant of Term, Non-Exclusive Easement for Maintenance of Channel Purposes and Issuance of Direct Land License for Removal of Sand and Corraline Purposes to Haseko (Ewa), Inc., Offshore of Honouliuli, Ewa, Oahu; TMK: (1) 9-1-12:seaward of 47.**

Ms. Unoki pointed out after the preparation of the subject documents some errors were found that she would like to correct. She requested 1) the expiration term of the land license be December 31, 2020; 2) the easement area be identified as 30.691 acres; 3) amending the wording of the abandonment clause to take effect one year following the completion of construction of the entrance channel; and 4) amendment of the liability insurance provision. Ms. Unoki recommended the Board amend its prior Board action of November 5, 2003 as stated in staff's submittal.

Randall Ishikawa and Linnel Nishioka were present.

**Unanimously approved as submitted (Inouye/DeMello).**

**Item D-8: Sale of Remnant to Prospect Estates AOA and Sea View AOA, and Cancellation of General Lease No. S-3915 to Sea View AOA, Kewalo, Honolulu, Oahu; TMK: (1) 2-2-04:65.**

Ms. Unoki pointed out the subject land is under a term easement with its character of use being a right of way. The applicants are owners of the parcels on either side of the easement. Ms. Unoki recommended the Board authorize the subdivision and consolidation of the subject remnant by the applicants and authorize the sale of the remnant to Prospect Estates and Sea View covering the subject area.

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

**Item D-7: Extension of Right-of-Entry to City & County of Honolulu; Sand Island, Honolulu, Oahu; TMK: (1) 1-5-41:por. 22.**

Ms. Unoki reminded the Board in November 2000 the Department issued a right-of-entry (ROE) to the City and County of Honolulu over approximately 16.021 acres for use as a construction staging area, temporary stockpiling, and dewatering area while the City upgraded the Sand Island Wastewater Treatment Plant. Throughout the course of construction the City discovered contaminated soil may have been tracked onto the ROE site via construction activity. Ms. Unoki recommended the Board extend the expiration date of the subject ROE to the City & County of Honolulu from June 30, 2005 to June 30, 2006 subject to the conditions in staff's submittal.

Denise Wong of the City and County of Honolulu was present.

**The Board amended the Recommendation Section by deleting Recommendation 3)**

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

**Item J-1: Issuance of Revocable Permit for Land-Based Operations in Support of an Ocean-Based Aquaculture Project to Kona Blue Water Farms, LLC, a Hawaii limited liability company, located at Honokohau Small Boat Harbor, Kealakehe, Honokohau, North Kona, Hawaii, TMK: (3) 7-4-08:003 (por.).**

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) noted Kona Blue requests a permit for the subject area for land-based operations in support of its aquaculture project. The land-based operation will include a portable office, tool containers and feed storage containers, enclosed by a perimeter fence. Kona Blue also intends to apply coarse gravel to the driveway and bring in a concrete pad. Mr. Rice pointed out Kona Blue understands that the Department is currently seeking to develop a master-planned, mix-use project on approximately 350 acres of public lands, which include the subject area. Furthermore, Kona Blue understands that there are no assurances of any long-term occupancy and they may be required to vacate the subject area. Mr. Rice recommended the Board approve the issuance of a Revocable Permit for the subject area for land-based operations in support of an ocean-based aquaculture project.

Neil Simms, Chief Operating Officer of Kona Blue asked the Board if he would be able to obtain an immediate right-of-entry so they can bring in the necessary equipment as soon as possible. Mr. Simms wants to be able to place some gravel on the road, place a container on the subject parcel and park boats.

**The Board amended the Recommendation Section by adding**

**6. Authorize the issuance of a Right of Entry for the subject area .**

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

**Item K-2: Final Report on Compliance with July 23, 2003 Board Action to Restore the Habitat and Forest areas Impacted by the Harvesting of Koa at Kahuka Ranch, Hawaii, and Request to Release Bond Posted with the Department of Land and Natural Resources.**

Member Johns himself.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) reminded the Board on April 11, 2003, the Board found the Estate of Samuel Mills Damon in violation of Chapter 183C for unauthorized timber harvesting. Damon was fined

\$466,800 for the unauthorized action. In lieu of payment Damon had the option of restoring the lands while at the same time posting a bond in the amount of \$466,800 which would be returned to Damon upon satisfactory completion of the actions required by the Department. Mr. Lemmo went over the status of the conditions imposed upon Damon as well as highlighted the major efforts on Damon's part. He pointed out upon review of the regeneration project by staff from DOFAW it was determined that Damon satisfactorily complied with the Department's conditions. Mr. Lemmo recommended the Board find that Damon Estate has complied with all terms and conditions imposed by the BLNR regarding enforcement case HA-02-01 and approve the release of the remainder of the Bond posted with DLNR to Damon Estates.

Linnel Nishioka attorney representing Damon Estate pointed out Damon has just completed segment six of the fencing, which means they've completed the entire ten-mile of fencing. Ms. Nishioka showed pictures of the reforestation project and updated the results of the ungulate control project.

Tim Tunison of Hawaii Volcanoes National Park briefly summarized the accomplishments of Damon's restoration efforts. He spoke of the successful aerial and ground hunting to remove unwanted ungulates, which have had a negative impact on koa regeneration. Mr. Tunison spoke of the various koa plants he observed with most being ankle high after the first twelve months and knee high sprouts after sixteen months.

Michael Constantinides told the Board the restoration plan exceeds the expectation of native species regenerating. He believes the partnership between Damon Estate, the National Park Services and the Department was a positive experience.

**Unanimously approved as submitted by the remaining Board members (DeMello/Yamamura).**

**Item C-2: Request for Approval to Release for Public Review the Draft Habitat Conservation Plan and Accompanying Incidental Take license for Kaheawa Pastures Wind Energy Generation Facility, Maui.**

Member Johns recused himself.

Mr. Conry disclosed the subject Habitat Conservation Plan is to mitigate for impacts that construction and operation of the wind energy facility may have on the Hawaiian Petrel, the Newell Shearwater, the Hawaiian Goose and the Hawaiian Bat. The duration of the conservation plan will be for twenty years. In order to mitigate for the anticipated impacts to the Hawaiian Petrel and Newell's Shearwater, Kaheawa Wind Power will be conducting surveys for nesting colonies in West Maui, estimating numbers and distribution, identifying management needs and where possible, implementing beneficial management measures. To mitigate the impacts to nene the plan calls for the funding for construction of a nene release pen, the production of nene goslings from the Maui Bird Conservation Center to release into the pen, and the operation and maintenance costs of the pen. At present the project site have not detected the presence of the Hawaiian hoary bats but

because they are known to occur in the vicinity, Kaheawa Wind Power will provide \$20,000 to the Hawaiian Bat Research Cooperative to expand their research on the habitat requirements of the species. Additional funds will be provided to either fund additional research or implement management actions indicated by the research findings if the actual take exceeds the anticipated level. Mr. Conry recommended the Board approve the release for public review of the Kaheawa Pastures Wind Energy Generation Facility Draft Habitat Conservation Plan and accompanying Incidental Take License, by the required two-thirds vote of the authorized membership, subject to review and approval as to form by the Attorney General.

The Board questioned Mr. Conry as to the difference between a habitat conservation plan and a safe harbor agreement. He indicated a habitat conservation plan is used when there is a need to take endangered species. The plan proposed would mitigate the actual take of the species. A safe harbor agreement occurs when the landowner expresses an interest in improving the habitat of the species as well as increasing the number of endangered species.

**The Board amended Attachment I of the following three paragraphs**

- 1. Mitigation for Potential Impacts, Petrels and Shearwaters, Page 57 ( last paragraph of section)**

~~“Kaheawa Wind Power will establish a contingency fund to be available for implement further mitigation measures (the “Seabird Contingency Fund”) only in the event that the mitigation provided herein will both be sufficient to offset the adjusted take that is reasonably expected to occur over the life of the project. The need for the Seabird Contingency Fund, or whether it needs to be continued, will be assessed in coordination with USFWS and DOWAW at year 10. The fund will have a maximum value of \$100,000 (2005 dollars), indexed to the US Consumer Price Index—All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5 percent annually for 20 years is being used, for a total maximum of \$163,861.64 to be made available for use in year 20. To the extent still required following review at year 10, funding for the Seabird Contingency Fund will commence in year 16 of project operation. Funding will occur at 25 percent per year (i.e., \$40,965.41 annually for four years), with the total Seabird Contingency Fund established by year 19.”~~ To further ensure the success of the mitigation effort, Kaheawa Wind Power will establish a \$100,000 Seabird Contingency Fund that will be made available prior to construction of the proposed turbines. The value of the fund will be adjusted for inflation over the 20-year term of the license, indexed to the US Consumer Price Index – All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5 percent annually for 20 years is assumed, for a total maximum of \$163,861.64 (if let unused through year 20). The fund will be available to implement adaptive management strategies to ensure mitigation is commensurate with take. If at the end of the 20-year period, mitigation implemented is not commensurate with take, any remaining funds will be used to continue to implement mitigation measures.

2. Mitigation for Potential Impacts, Nene, Page 59-60 (last paragraph of section)

~~“[As an additional measure to further ensure the success of the mitigation effort, Kaheawa Wind Power will establish a contingency fund (the “Nene Contingency Fund”) to be made available if, at the end of year 20 and as a direct result of project operations, the Hanaula Nene population is smaller than the population existing at the time the permit is issued (i.e., if the take of Nene exceeds birds released at Hanaula plus population growth). The Nene Contingency Fund will ensure that sufficient funds are available to construct an additional new release pen, to operate this new pen for up to five years beyond the life of the project, and to supply the new pen with up to 50 Nene. The fund will have a maximum value of \$180,000 (2005 dollars), indexed to the US Consumer Price Index – All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5 percent annually for 20 years is being used, for a total maximum of \$294,950.96 to be made available for use in year 20. To the extent still required following review at year 10, funding for the Nene Contingency Fund will commence in year 16 of project operation. Funding will occur at 25 percent per year (i.e., \$73,737.74 annually for four years), with the total Seabird Contingency Fund established by year 19.] To further ensure the success of the mitigation effort, Kaheawa Wind Power will establish a \$264,000 Nene Contingency Fund prior to construction of the proposed turbines. The value of the fund will be adjusted for inflation over the life of the project, indexed to the US Consumer price Index – All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5 percent annually for 20 years is assumed, for a total maximum of \$432,594 (estimated 2025 dollars). If at the end of the 20-year period, the Hanaula Nene population is smaller than the population existing at the time the permit is issued as a direct result of project operations, the Nene Contingency Fund will be available to construct an additional new release pen, to operate this new pen for up to five years beyond the life of the project, and to supply the new pen with up to 50 Nene.”~~

3. Mitigation for Potential Impacts, Hawaiian Hoary Bat, Page 61 (last paragraph of section).

~~“[Kaheawa Wind Power will establish a contingency fund in the event that take exceeds the estimated 20 bats over the 20-year project duration. The fund will be used to fund on-the-ground measures such as, but not limited to, implementation of technologies to reduce the likelihood of collisions with the wind turbines and protection of roosts sites as identified by the Hawaii Bat Research Cooperative and as agreed to by USFWS and DOFAW biologists. The fund will have a maximum value of \$20,000 (2005 dollars), indexed to the US consumer Price Index – All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5 percent annually for 20 years is being used, for a total maximum of \$32,772.40 to be made available for use in year 20. To the extent sill required following review at year 10, funding will commence in year 16 of project operation. Funding will occur at 25 percent per year (i.e., \$8,193.10 annually for four years), with the total contingency fund established by year 19.] To further ensure the success of the mitigation effort, Kaheawa Wind Power will establish a \$20,000 Bat Contingency Fund that will be made available prior to~~



**construction of the proposed turbines. The value of the fund will be adjusted for inflation over the term of the license, indexed to the US Consumer Price Index – All Urban Consumers. For budgeting purposes in 2005, an increase of 2.5 percent annually for 20 years is assumed, for a total maximum of \$32,772.40. The funds will be available in the event that adjusted take exceeds the estimated 20 bats or as required to implement adaptive management strategies to ensure mitigation is commensurate with take. The fund will used to fund on-the-ground measures such as, but not limited to, implementation of technologies to reduce the likelihood of collisions with the wind turbines and protection of roosts sites as agreed to by USFWS and DOFAW. If at the end of the 20-year period, mitigation implemented is not commensurate with take, any remaining funds will be used to continue to implement mitigation measures.”**

4. **Appendix 11 - Edit each take scenario to reflect availability of Nene, Seabird, and Bat Contingency funds at commencement of project activities (Year 1) and estimated 2.5 percent annual increase.**

**Unanimously approved as amended by the remaining Board members (Yamamura/Inouye).**

- Item C-1: Approval to Establish a Two-Year Contract to Continue Repair and Replacement of a Predator-Exclusion Fence at Kanaha Pond Wildlife Sanctuary, Maui.**

**The Board amended the “Contract Provisions” Section, third sentence**

**“The contract will provide [~~\$65,000~~] \$114,000 of FY 2005 federal and state special funds to provide labor, and materials to repair, and replace portions of the fence beginning in FY 2005 and complete the job in 2006 with FY 2006 funding. An estimated [~~\$65,000~~] \$16,000 will be needed to complete the project in 2006, depending on the per foot bid price, and is available from the FY 06 State Wildlife Grant program and state special funds.”**

**Unanimously approved as amended (Yamamura/DeMello).**

- Item K-1: Request to Modify Conditions of Conservation District Use Permit MA-3103 for the Construction and Operation of a Wind Farm and Associated Facilities to Supply Wind Generated Electricity.**

Member Johns recused himself.

Mr. Lemmo made it known on January 2003, the Board approved an application for a wind farm and associated improvements in Ukumehame, Maui. On May 23, 2005, Mike Gresham on behalf of the applicant Kaheawa Wind Power LLC (KWP) requested modifications to the current permit conditions as they believe that some of the permit condition language could be clarified to be more concise and unambiguous in the context

of what they currently know. Mr. Lemmo went over the conditions 4, 9, 11, 13, 14, 20, 21-27, 30, 36, 38, 39 and 42 and stated the proposed change and why OCCL did or did not support those changes. Mr. Lemmo recommended the Board approve the modifications listed in staff's submittal relating to CDUP MA-3103.

Mr. Conry indicated to the Board that he would not be in favor of replacing condition 38) as he feels the proposed language by the applicant is not strong enough. As far as condition 42) and the applicant's request to eliminate the need for the U.S. Fish and Wildlife Service permit, Mr. Conry let it be known the Department has an agreement with the U.S. Fish and Wildlife Service not to issue a permit unless a permit was obtained from them. Mr. Conry believes if this condition was eliminated the Department could be held liable for damages incurred due to an incidental take.

Mike Gresham, President of Makani Nui and representing the applicant Kaheawa Wind Power, LLC appeared before the Board. With regards to condition 42), Mr. Gresham believes it needs to be deleted and cannot be modified if this project is to survive. Mr. Gresham communicated since July 2004 KWP has been working to satisfy condition 42) which called for the preparation of a Habitat Conservation Plan (HCP). In March 2005 the HCP received approval on the draft with some changes. Upon consultation with their lenders, KWP learned they viewed the HCP as a discretionary permit which, could potential interfere with funding for the project. KWP's lenders gave them until August 31, 2005 to obtain the HCP or funding would end. In closing, Mr. Gresham noted it is his intention to fulfill their responsibility to the community and to the species by working with the Department to find an alternative that will satisfy all parties while not jeopardizing the future of this project.

Dave Cowen, Environmental Coordinator acknowledged that the HCP needs to be completed to receive an incidental take license but completion of the HCP does not guarantee the issuance of a license. Mr. Cowen reiterated that they intended to complete the HCP and acquire the incidental take license but at this moment it is a matter of timing as funding could be in jeopardy.

Maureen Bishop representing Hawaiian Electric Company (HECO) and Maui Electric Company (MECO) and a member of the negotiation team for the power purchase agreement, let it be known they support the development of a Wind Farm on the island of Maui. They believe the wind farm will increase state revenues while at the same time provide jobs.

Miles Mobley a resident of Maui spoke of the excitement of the Maui community with regards to the development of this wind farm project.

**The Board amended the following**

1. **Page 8, delete the last 2 lines**

~~[The applicant shall comply with the Temporary Incidental Take ing permit Licensing requirements of the Hawaii Board of Land and Natural Resources (HRS195D-4(g) and]~~

2. Recommendation 9)

The applicant shall take appropriate measures to mitigate the impacts of erosion and siltation, and prevent oil, fuel, or cement products from falling, blowing, or flowing on Conservation lands and ocean waters. All ground work will be scheduled during periods of low rainfall; The applicant shall submit an NPDES application to the Office of Conservation and Coastal Lands in satisfaction of this condition.

3. Delete condition 42)

~~[The applicant shall comply with the Incidental Take ing Licensing Permit requirements of the U.S. Fish and Wildlife Service, including the preparation of the Habitat Conservation Plan;]~~

4. Add Recommendation 46)

“The Permittee shall implement the conditions as stated in the draft Habitat Conservation Plan as approved by the Board at its 6/24/05 meeting, agenda item C-2. At the time the applicant obtains a Habitat Conservation Plan and receives an Incidental Take Permit from the U.S. Fish and Wildlife Services and a temporary license to allow a take under Hawaii Revised Statutes §195D-4, this condition shall be satisfied which will supercede the draft Habitat Conservation Plan.”

5. Renumber the Recommendation Section

Unanimously approved as amended by the remaining Board members (Yamamura/Inouye).

Item K-3: Conservation District Use Application (CDUA) HA-3224 for Tree Removal, Landscaping and Commercial Agriculture.

The Board amended

1. Recommendation 12

“Within 24 hours of any grubbing and tree felling activities, all waste materials shall be removed from within 100 feet of the top of the sea cliff or mulched and place in a flume gulch of not less than 30 feet;”

Unanimously approved as amended (DeMello/Yamamura).

**Item E-2: RESUBMITTAL – Establishment of Volunteer Agreement for Sand Island State Recreation area, Oahu.**

Dan Quinn, Administrator for the Division of State Parks conveyed this submittal is an extension of the curator program, which encourages community involvement in the care, and management of State-owned properties. The curator agreement will be for Sand Island State Recreational Area (SRA), which encompasses 140 acres. Several years ago the Police Athletic League made repairs to the baseball fields prior to their use. Volunteer assistance is now needed to fill and grade the fields, plant the turf and repair the irrigation system. New Hope Christian Fellowship, the volunteer group proposes to repair the baseball field as well as construct two canoe hale. New Hope will be requesting a permit for the use of one of the canoe hale. Mr. Quinn recommended the Board authorize this agreement between the New Hope Christian Fellowship Oahu and the Division of State Parks be approved for a 2-year term.

Pastor Elwin Ahu of New Hope Christian Fellowship was present.

Sonia Faust, Supervisor at the Attorney General's Office explained she worked with Mr. Quinn in formulating this agreement. The Board asked Ms. Faust if the subject agreement violates any of the constitutional provisions. Ms. Faust replied that she did not think so. Ms. Faust pointed out a similar incident on Kauai in which a church leased state property for recreational use. She noted the public has the right to use the park. As far as use of the canoe hale she does not believe we are doing anything wrong. She went on to say she does not believe it is a separation of church vs. state issue but a land use issue. Ms. Faust pointed out pursuant to sections 184-3(2) and (3) of the Hawaii Revised Statutes allows the State to accept gifts.

**The Board amended the Recommendation Section**

**“ . . . Therefore, we recommend that this agreement between the New Hope Christian Fellowship Oahu and the Division of State Parks be approved for a 2-year term subject to final review by the Attorney General's Office.”**

**Unanimously approved as amended (Inouye/Johns).**

**Item E-1: RESUBMITTAL – Request for a Kayak and Related Commercial Activity Permit/Concession for Makua Lani to Operate Kayaks from Sections of Makua Beach of Kaena Point State Park, Oahu.**

Mr. Quinn indicated there were no substantive changes to the submittal and he recommends the Board not issue a new permit to Mauka Lani and based on recent public testimony, the Department temporarily cease the issuance of any further commercial recreation activity permits at Makua Beach of Kaena Point State Park until the Department further reviews the situation.

Dante Carpenter, trustee at the Office of Hawaiian Affairs (OHA) read the written testimony from Chairperson Haunani Apoliona in support of staff's recommendation. Mr. Carpenter made reference to the user conflicts that have occurred at Makua Beach especially noting the negative impact the kayak tours have had on akule fisheries. OHA asked the Department not to issue any permits for the subject area until adequate studies have been done on the natural and cultural resources of the area.

Linda Dela Cruz, trustee with OHA testified in support of staff's recommendation. Ms. Dela Cruz spoke of the way people fished in the past and longed for those ways. She spoke of the various ocean resources that have been depleted and stressed that the coastlines must be protected.

Kai Markell, Policy Rights Analyst for OHA acknowledges their Native Hawaiian Historic Preservation Council held a meeting in Waianae this week and received testimony on this subject issue.

Hayden Burgess, a resident of Waianae and Executive Director of Hale Naaupono, an organization that services individuals with mental illnesses testified in support of staff's recommendation. Mr. Burgess spoke on the topic of Makua Lani claiming they are a non-profit organization. He point out their articles of incorporation do not state what their purpose is and he does not feel Makua Lani would qualify as a non-profit organization under 501-3(c) according to the Internal Revenue Service. Addressing Makua Lani's application, Mr. Burgess feels their answers are evasive. He believes Makua has been invaded for commercial purposes.

Melissa McGarrett, a marine biologist coordinator with Reef Check Hawaii testified in opposition of staff's recommendation. She let it be known she has observed Makua Lani's operation, which she believes to be environmentally sound. Ms. McGarrett stated the tours boats that launch out of Waianae boat harbor provide a greater impact on the environment as compared to Makua Lani. As far as the akule fishing, she reminded the Board the Department's Best Management Plan put into effect by the Department in 2001 stated there were no problem with the akule population.

John Kahele, an underwater videoer testified in support of staff's recommendation. He let it be known he has video of Makua Lani relating to the desecration of the subject area. He believes the motor boats in Makua are disturbing the natural resources and ocean life.

Kevin Bright, an employee of Makua Lani testified in opposition of staff's recommendation. He let it be known the job he has with Makua Lani is the best job and he does not believe they are doing anything wrong. He noted the employees of Makua Lani clean up the beach of debris brought in by others.

Mary Young, an employee at Makua Lani testified in opposition of staff's recommendation. Ms. Young communicated that she does not believe the kayakers are responsible for the decline in the akule population. She went on to speak of the jobs created by Makua Lani and their teaching of good work ethics to its employees.

Cynthia Rezentes, Chair of the Waianae Neighborhood Board spoke in support of staff's recommendation. She indicated the Department needs to understand its resources and determine what type of impacts should be allowed.

Hooipo DeCambra, a resident of the Waianae Coast testified in support of staff's recommendation and read from her written testimony.

Neuman Shin, Vice President of Maka Canoe Club spoke in support of staff's recommendation. Mr. Shim let it be known he has been involved in this issue from the beginning and gave the Board a brief history on this issue. He let it be known there are other jobs in the community aside from working for Makua Lani. Lastly he pointed out Makua Lani operates their van without a Public Utilities Commission license.

Larry Keliikau communicated he has been fishing all his life and spoke of various techniques in catching fishes. He told the Board when he was young he would go fishing with his father. He let it be known the natural resources are his life.

Mike Hirano, a resident of Waianae and an employee of Makua Lani spoke in opposition of staff's recommendation. He conveyed if the Board does not issue a permit to Makua Lani he will be without a job.

Lucy Gay testified in support of staff's recommendation. Ms. Gay went on to speak of the Hawaii Maritime Academy and other job opportunities available as well as training in Waianae.

Marilyn Kurshals, a resident of the Waianae Coast read her written testimony in support of staff's recommendation. Ms. Kurshals spoke of her belief that Makua Lani is not a legitimate non-profit organizations and believes this business is questionable. She indicated the renewal of Makua Lani's permit would not serve the best interests of the general public.

Darlen a life long resident of Waianae spoke in opposition of staff's recommendation. She believes the issue of the decline in akule population has not been proven to be a result of the kayak tours and until then Makua Lani should be issued a permit to operate. She spoke of the respect Makua Lani employees have for the environment.

Adela Maunakea, a resident of Waianae came forward to speak in support of staff's recommendation. She believes the natural resources are being depleting and there is no proof that commercial companies aren't to blame. Ms. Maunakea spoke of the decline in the akule and ulua population.

Puanani Burgess, a resident of Waianae testified in support of staff's recommendation. Ms. Burgess pointed out a proper study was not done prior to the issuance of the subject permit. She communicated to the young employees of Makua Lani that there are other jobs available for them.

Susan Chu, a resident of Waianae spoke in support in staff's recommendation. Ms. Chu presented the Board with pictures of Makua Lani's operation and its negative impact.

Elizabeth Hartford, a resident of the Waianae Coast testified in support of staff's recommendation. She spoke of the beauty of Waianae and a time when Makua won't be there unless we protect the area. Ms. Hartford spoke of the Department's Hierarchy of Use.

Francis Oishi, Acting Administrator of the Division of Aquatic Resources (DAR) provided the Board with information relating to the commercial akule landings from the Leeward coast of Oahu and another chart of statewide commercial akule landings. Mr. Oishi pointed out in 2000 there was a peak in the pounds of akule caught in both the Waianae area as well as throughout the State, but those numbers decreased the following years throughout the State.

Grace Leach testified in support of staff's recommendation. Ms. Leach let it be known her biggest fear is the natural beauty of Makua being exploited by commercial use. She communicated the need to preserve the Waianae Coast for our future generations.

Rotea, an employee of Makua Lani testified in opposition of staff's recommendation. He spoke of the joy he experiences from his job.

Miles Mobey presented the Board with copies of research completed by DAR, which affirms the information presented by Mr. Oishi.

Daniel Weaver, an employee of Makua Lani testified in opposition of staff's submittal. Mr. Weaver spoke of a fire in the vicinity of where they operate. He let it be known it was the workers from Makua Lani that called the fire department. As far as conflicts with the fishermen he is willing to make a compromise so they can work in harmony.

Dan First, an employee of Makua Lani spoke in opposition to staff's recommendation. Mr. First conveyed if Makua Lani is to survive they must have the community's support. He pointed out Makua Lani has made some mistakes but asked for the community's forgiveness.

Shelley spoke in support of staff's recommendation. She pointed out Makua Lani's permit states that they are not to swim with dolphins but while observing them she saw employees of Makua Lani corralling the dolphins so their guest could swim with the dolphins.

Maha Mapuahi, spoke on behalf of Kumu Hula Noelani Chang who recently joined the staff of Makua Lani and spoke in opposition of staff's recommendation. She spoke of the pride and her excitement in teaching the employees about their culture. Ms. Chang's testimony told of the pride the employees have in their culture.

William Aila spoke in support of staff's recommendation. He noted if the community of Waianae was so concerned with jobs they would not have adopted a policy not to have any

resorts north of Kepuhi point. He believes the community believes this area should not be developed and its rural nature should be protected. Mr. Aila indicated any jobs in Waianae should not come at the expense of other jobs or the sacredness and beauty of Waianae. Mr. Aila went on to speak of the Hawaiian culture.

Maltbie Alager testified in support of staff's recommendation. Ms. Alager spoke of the old CETA program which has been in operation for the last thirty years and which today has evolved into the Hawaii Work Links Program. She spoke of her experience with the graduates of the CETA program and provided handouts from Hawaii Work Links about their program to Mr. Holland and his employees.

Patricia Patterson read a quote from Dr. Alan Friedlander, which stated that ornamental fishes are collected in Hawaii due to its high quality and being rare and endemic species. The value of collecting these fish's rates second in its economic value (1.06 million) coming second behind akule fishing.

Carl Jellings, a fisherman testified in support of staff's recommendation. He noted he is against the increased ecotourism in Waianae. He let it be known increased ecotourism will threaten their ability to be self-sufficient.

Richard Holland, Executive Director of Makua Lani let it be known most of the testimony heard in opposition of Makua Lani is aimed directly at him. He feels if he were Hawaiian this opposition would not have occurred. Mr. Holland reminded the Board at last year's meeting he had a lot of support behind him and the issuance of a permit to Makua Lani but since then those people have opposed this permit. Mr. Holland spoke of the jobs generated by Makua Lani, the money spent in Waianae and the sense of identity that has been instilled in his employees. He let it be known his employees have cleaned up the subject beach. He pointed out this is a very worthy project that is low impact. Mr. Holland asked those in the community that oppose Makua Lani to embrace them and share and educated the knowledge of their culture with them. He asked the Board to grant his company a one year permit at which time an Environmental Assessment can be completed. Mr. Holland believes there is enough resources out there for everyone to share.

The Board asked Mr. Holland if there is another area he could conduct his operation and also if he'd be willing to work with the community. Mr. Holland replied that he is willing to work with the community but has been met with opposition. As far as relocating, Mr. Holland believes there is no other place on the island with that special "mana" felt at Makua and it can not be duplicated somewhere else on the island. Mr. Holland believes this is a "all or nothing" decision.

Mr. Mobey acknowledged the Department has offered to help Makua Lani find another suitable area and has passed on that suggestion to Mr. Holland.

The Board acknowledged it is not its intention to eliminate jobs and today's decision is based on conflicts of uses. Member Inouye pointed out the testimony made by the public indicated Makua is a very important cultural and sacred area, which commercial uses can



not impose upon. It is the Board's hope that the youngsters of Makua Lani will not view today's decision as an end for them. Member Agor told the youth of Makua Lani to hold the community accountable to put together a plan for their future. Chairperson Young encouraged Mr. Holland to work with the Department to find another suitable site his operation can occur.

**Approved as submitted (Inouye/Johns).  
Member Johns voted no**

**Item F-1: Request for Approval to Amend/Extend Contract No. 52740 with the University of Hawaii (UH) for the Local Action Strategy to Address Land-Based Pollution Threats to Hawaii's Coral Reefs (9/15/05-3/30/08).**

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

**Item D-9: Mutual Cancellation of General Lease No. S-3899, First Hawaiian Bank, Lessee, for Non-Exclusive Easement for Tunnel and Vault Facilities, Punchbowl, Honolulu, Oahu; TMK: (1) 2-2-06:25.**

Member Johns recused himself.

**Unanimously approved as submitted by the remaining Board Members (DeMello/Agor).**

**Item D-1: Consent to Assign General Lease No. 3168, Norman Bonner Green, Assignor, to Christian Gallery and Lucy Snyder, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-07:34.**

**Item D-2: Issuance of Revocable Permit to I. Kitagawa & Company, Ltd., Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-1-07: por. 51.**

**Item D-3: Rescind Prior Board Action of September 13, 1985 (Item F-9), Direct Sale of Easement to The Bayou Corp., Inc. dba Roussels, Piihonua, Hawaii, TMK: (3) 2-3-5:portion 5.**

**Item D-4: Request to Write-Off Uncollectible Accounts on Hawaii.**

**Item D-6: Amend Prior Board Action of October 8, 2004 (Item D-10), Consent to Assign Grant of Non-Exclusive Easement Bearing Land Office Deed No. S-27747, Henry M. Bush and Sybil A. Bush, Assignor, to Charles Walter Schachter and Catherine Sara Harrold, Assignee, Ualapue, Molokai, TMK: (2) 5-6-2:portion 5, 24.**

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

**Item L-1: Approval for Award of Construction Contract – Job No. F00CF75A, Individual Wastewater System at Hapuna Beach State Recreation Area, South Kohala, Hawaii.**

**Item L-2: Approval for Award of Construction Contract – Job No. 500BO45A, Perimeter Fence for TMK: (1) 4-1-27: 016, Waimanalo, Oahu, Hawaii.**

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

There being no further business, Chairperson Young adjourned the meeting at 3:12 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*

Terry Crowell

Approved for submittal:



PETER T. YOUNG

Chairperson

Department of Land and Natural Resources