

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

DATE: FRIDAY, SEPTEMBER 23, 2005
TIME: 9:00 A.M.
PLACE: NATURAL ENERGY LABORATORY OF HAWAII
AUTHORITY
73-4460 QUEEN KAAHUMANU HIGHWAY
KAILUA-KONA, HAWAII 96740

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:05a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Ms. Taryn Schuman

Mr. Tim Johns
Mr. Gerald DeMello
Mr. Ron Agor (arrived at 10 am)

STAFF

Mr. Russell Tsuji, Land
Mr. Dan Quinn, Parks
Mr. Paul Conry, DOFAW
Mr. Bob Masuda, Deputy Land
Ms. Maryann Maignet, K-1

Mr. Keith Chun, Land
Mr. Sam Lemmo, OCCL
Mr. Mike Donoho, DOFAW
Ms. Jennifer Bethel, CO

OTHERS

Ms. Linda Chow, Deputy Attorney General
Mr. Luna O'Neil, D-1, J-1 D-4, D-3, E-1
Mr. Robert Klein D-3
Ms. Virginia Isbell, D-3
Rep. Cindy Evans, D-3
Mr. Jen Jensen, D-3
Mr. Sam Kahanamoku III, D-3
Ms. Jane Thompson, D-3
Mr. William Meyers, D-3
Mr. Douglas Carr, D-3
Ms. Nancy Murphy, D-3, E-1
Ms. Kamala Lockstader, D-3

Mr. Dickson Lee, D-4
Mr. Frank Ramney, D-3
Mr. Angel Pilago, D-3
Ms. Maile David, D-3
Mr. George Handis, D-3
Ms. Gerry Bell, D-3
Mr. Glen Ross, D-3
Mr. Kelly Greenwell, D-3
Mr. William Aila, D-3, E-1
Ms. Kay Colton, D-3
Mr. Don Bryan, C-2

Mr. George Martin, C-2

Mr. Steven Lim, K-1

Mr. Ronald Self, K-1

Mr. Bob Graham, K-1

Mr. Jim Medeiros, K-1, E-1

Mr. Jim Walsh, K-1

Ms. Claudia Kane, E-1

Dr. Roger Dills, E-1

Mr. Gordon Leslie, E-1

Mr. Cheryl Matthews, E-1

Mr. Puhi Dant, E-1

Ms. Corinna Rodrigues, E-1

Ms. Marissa Pond, E-1

Ms. Claudia Merrill, E-1

Mr. Mitchell Allara, E-1

Mr. Bryce Rork, E-1

Mr. Iwa Tolleson, E-1

Mr. Daniel Starsong, E-1

Mr. Rob Shallenberger, E-1

Mr. D. A. Nana, E-1

Ms. Luella Nohea Chang-Crutcher, K-3

Ms. Keoalani Hanoa, K-1

Rep. Bob Herkes, K-1, E-1

Mr. Alfred Spinner, K-1

Ms. Mikihala Roy, K-1, K-2, E-1

Ms. Sheoli Makana, E-1

Mr. Richard Harrison, E-1

Mr. Yanos Malind, E-1

Mr. Steve Amanson, E-1

Mr. Luis Holiday, E-1

Ms. Teri Leicher, E-1

Ms. Betsy Morrigan, E-1

Mr. Craig Hawkins, E-1

Mr. Kevin Merrill, E-1

Mr. Brock Stratton, E-1

Mr. Kyle Fields, E-1

Ms. Elaine Watay, E-1

Mr. Sherman Williams, E-1

Mr. Bill Zabolski, E-1

Mr. Jeff Hand, E-1

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

Item A-1: Minutes of September 9, 2005

Motion to Defer

Unanimously approved to defer (Johns/Yamamura).

Item D-1: Permission to Hire Appraisers for Land Division – Land Maintenance Funded Project.

Russell Tsuji, Administrator for the Land Division made known is request for the Board to authorize the Chairperson to proceed with the hiring of qualified appraisers for the projects indicated in staff's submittal and to sign the necessary documents to implement the project.

Luna O Neil appeared before the Board and stated for the record that any individual that was previously involved in any part of the approval process or linked to an agency involved should not be considered for these positions.

Unanimously approved as submitted (Johns/Schuman).

Item D-5: Quitclaim of State's Interests, if any, in a portion of Hart Street to the City and County of Honolulu; Kapalama, Honolulu, Oahu, Tax Map Key: (1) 1-5-33:04 (Adjacent Roadway).

Mr. Tsuji noted under law the land division is not required to document the quitclaim of this road but in this case the City is entering into a land exchange with a third party. Mr. Tsuji recommended the Board authorize the quitclaim of interests, if any, the State may have in the subject roadway area to the County of Honolulu.

Unanimously approved as submitted (Johns/DeMello).

Item D-2: Consent to Assign General Lease No. S-5225, Robert M. Gouveia Jr. Assignor, to Priscilla N. Spencer, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:64.

Mr. Tsuji gave a summary of the events that have transpired with regards to the subject lease. The original lessee, Dwayne Gouveia assigned his rights to the subject lease to Robert Gouveia, Jr, which was also consented by the Board. Next Robert Gouveia Jr., assigned his interest to Priscilla Spencer. Priscilla subsequently paid Robert Gouveia, Jr. compensation in the sum of \$5,000 and made payments to bring the account current. Later in 2004 Robert Gouveia wanted to assign his interest in the subject lease back to Dwayne Gouveia. Staff sought advice from the Attorney General's office, which concluded that staff should consent to Priscilla Spencer being the rightful lessee. Mr. Tsuji recommended the Board consent to the assignment of General Lease No. S-5225 from Robert M. Gouveia Jr., as Assignor to Priscilla N. Spencer as Assignee subject to the conditions listed in staff's submittal.

Unanimously approved as submitted (DeMello/Johns).

Item J-1: Permission to Hire Consultants for Repair and Maintenance Services at Various Small Boat Harbors.

Richard Rice, Administrator for the Division of Boating and Ocean Recreation (DOBOR) let it be known the division would like to hire consultants to perform specialized services that his staff is not equipped to perform. Funds for these projects are available from the Boating Special Fund. Mr. Rice recommended the Board authorize the hiring of consultants for the projects indicated and authorize the Chairperson to sign all necessary documents to implement the projects.

Luna O Neil questioned whether the work being done at the harbors included the legal and legal harbors. He communicated if the State is doing work on legal boat harbors he feels they should also work on the illegal harbors.

Unanimously approved as submitted (Johns/DeMello).

Item L-1: Approval for Award of Construction Contract Job No. F00CF27A Individual Wastewater System at Heeia State Park, Oahu, Hawaii and Job No. F00CH70A Individual Wastewater System at Malaekahana State Recreation Area, Oahu, Hawaii.

Unanimously approved as submitted (Johns/DeMello).

Item D-4: Third Amendment and Consent to Assignment of General Lease No. S-4604, the Arc of Hilo, Assignor, to Mental Health Kokua, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-5-04:02.

Mr. Tsuji briefed the Board and recommended they consent to the Assignment of General Lease No. S-4604 from ARC of Hilo to Mental Health Kokua and authorize the third amendment of this lease.

Dickson Lee, attorney for Mental Health Kokua let it is known the organization carries out a State program, which provides housing for individuals with mental retardation. HCDCH is providing financing for this project. Mr. Lee indicated approval of this item is important in order for the organization to qualify for additional financing.

Luna O Neil came forward to make sure the applicant complies with Section 7 of the State Constitution.

The Board amended the Recommendation Section to add

- “3. Amend General Lease No. S-4604 to add the following concepts, provided that the language of the Amendment shall be subject to the review and approval of the Department of the Attorney General and Land Division staff:**
- a. The Lessee will not discriminate based on a person being handicapped;**
 - b. If the State, in its discretion, were to sell the leased fee interest in the premises to the Lessee, the State will record an instrument which encumbers the fee interest with the agreed upon Use Restriction mentioned in condition 1) of the Board submittal;**
 - c. If the lessee were to default under the Lease, allow HCDCH to step in and cure the default (akin to our standard multi protection clause) and to further assign to another project sponsor who is qualified in all respects including qualifying under General Lease S-4604 subject to the Board’s consent;**
 - d. Authorize DLNR staff (through the Chairperson) to consent to further amendments or clarifications of the lease as long as such amendments and clarifications are consistent with the Use Restriction and reasonably necessary for HCDCH and the lessee to comply with HUD leasehold requirements as a condition for the federal grant; and**
 - e. Any and all amendments are subject to the review and approval by the Department of the Attorney General and Land Division Staff**

4. Release original Lessee, The Arc in Hilo from the payment and performance obligations under General Lease No. S-4604.”

Unanimously approved as amended (DeMello/Johns).

Item D-3: Approval of (1) Set Aside to Department of Land and Natural Resources, Division of Boating and Ocean Recreation of approximately 68.55 acres of public lands for the operation of the Honokohau Small Boat Harbor; (2) Development Agreement and form of Master Ground Lease with Jacoby Development, Inc. for approximately 297.79 acres of public lands for a master-planned mixed-use development project; and (3) Extension of time to finalize and execute Development Agreement, Kealakehe, North Kona, Island of Hawaii, Hawaii; TMK: (3) 7-4-08: 3, 40, 41, 42, 46, and 74.

Mr. Tsuji gave a brief background on this issue. He reminded those present over a year ago the Board authorized staff to solicit and seek out a developer to build additional marina facilities and to possibly develop the lands surrounding Honokohau Small Boat Harbor. Jacoby Development Inc. (JDI) submitted a proposal and was selected by the Board to negotiate a development agreement and lease for this project. Since that time JDI, staff and the attorney general's office has been working on the terms of the lease agreement. Mr. Tsuji made it known that today's approval by the Board does not mean a lease would be issued for this project. Instead staff is asking the Board to approve a development agreement. Attached to the development agreement is a form of the master lease to be executed only after all of the terms and conditions of the development agreement have been fulfilled. If the terms and conditions are not met the parties may terminate the agreement and no lease will be issued. Staff is also requesting a set aside of lands to the division of Boating and Ocean Recreation (DOBOR) which will place the management and operation of the Harbor and surrounding fast lands under their jurisdiction.

Keith Chun, Special Projects Coordinator with the Land Division explained what the set aside would mean to the lessee's occupying space at the harbor. Mr. Chun clarified in the early 1990's the subject land was transferred to the Department of Land and Natural Resources (DLNR) from the Department of Transportation but an executive order has never been issued. This set aside would include the existing basin, boat ramps, parking and almost all of the existing lessee's (except Hawaii Big Game Fishing Club and the Federal Government lease to manage the anchialine ponds) and turn over management jurisdiction to the Division of Boating and Ocean Recreation (DOBOR). Approval by the Board today would give JDI the right to seek permits and entitlements and perform an Environmental Impact Statement. Mr. Chun believes this process should take anywhere from three to five years to complete. There were several conditions within the development agreement, Mr. Chun would like to make the Board aware of 1) if the lease is issued JDI is asking the Board to consent in advance to assignments to entities controlled by JDI; 2) with regards to sublease JDI would like the Board to waive consent on subleases within improvements constructed 3) JDI will submit a performance bond equal to one-year rent.

Robert Klein and Frank Ramney representing JDI came forward to testify. Mr. Klein confirmed they understood what areas were involved in the set aside. Mr. Ramney indicated the only area that would be shared with the lessee's would be the channel entrance. He noted in twelve months they would come before the Board for approval of the master development plan, and the core infrastructure plan. Mr. Ramney went on to give a time line of when they expected different components of the agreement to take place. Mr. Ramney pointed out they would like Hawaii Big Game Fishing Club to be a signature facility of the new park. The area adjacent to the Federal park (area with cultural features) they would like to restore and protect the area as part of community improvements. Mr. Klein assured the Board JDI will work with the community to make this an extremely successful community oriented development.

Mr. Tsuji clarified that DLNR is issuing a development agreement. If terms of the development agreement are not satisfied then the Department can choose not to negotiate a lease. Mr. Tsuji communicated the Environmental Impact Statement (EIS) will be available before the Board makes a decision on the issuance of a lease to JDI

Virginia Isbell, Hawaii County Council member requested the Board defer action on this item in order to seek community input on what they think should be done with the subject area. Ms. Isbell communicated her intention to introduce a resolution at the next legislative session, which would call for island-wide hearings to obtain input from the users of the subject small-boat harbor and ramps.

Angel Pilago, Hawaii County Council member spoke in opposition of staff's submittal as presented. He asked that this item be deferred in favor of a public meeting, which would give the community the opportunity to discuss this project with staff and the developer. If this project should move forward, Mr. Pilago believes it would further tax the limited resources the County has available and they will be unable to meet the requirements of the resources that this project will take away from the general community. Mr. Pilago does not see anything in the current plan that shows JDI will be a good neighbor by taking care of infrastructure needs within the community. Mr. Pilago also pointed out the lack of water for this development.

Representative Cindy Evans asked the Board to defer action on this item as many people have just received the information on this submittal and do not fully understand what it means. Representative Evans asked the Board to reach out to the local community at the local level and really understand what this community is about. She pointed out attorney's at the legislature have looked at the submittal and have noted that HRS 171 requires the Department to seek approval from the Legislature for the disposition of State property if 1) it involves using State land and allowing a private developer to develop the land; 2) dealing with submerged lands and 3) if a resort component is involved in the development.

Luna O Neil believes the Board should put in place a policy that does not allow the Board to form an agreement in which a developer seeks necessary approvals without any vested interest. He feels if the community does not agree with the development project it should not be permitted.

Maile David, a member of Councilman Pilago's staff came forward to let the Board know their office has received a lot of inquires expressing concern with the approval of the subject development agreement. Ms. David feels the development agreement and master lease should not be approved until all the information and concerns of the community have been received. This development affects the entire island not just the Honokohau community therefore everyone should be given the opportunity to comment. Ms. David communicated the impact of this development needs to be assessed prior to any agreements being approved by the Board.

Jen Jensen spoke of his concern with the 800-slip marina. He noted the developer has skipped over utilizing the south basin, which would need to be blasted out which it turn would ruin 15 slips. He questioned what will happen to the displaced boaters. Mr. Jensen acknowledged there is currently three hundred boating slips at the marina and JDI is proposing to add an additional 800 slips without taking into consideration the increased traffic. His main concern is that the department should have a clause in the agreement that binds JDI to take care of the people on the outer basin when they pass through. In closing, Mr. Jensen would like to see the harbor in place prior to JDI placing the first brick for the construction of a hotel or condominium.

George Handis, President of Gentry Kona Marina (GKM) thanked the Board for clarification on the request before the Board today. Mr. Handis questioned if it's the State's long-term plan for the submerged land, slips and contiguous lands to be turned over to JDI. Chairperson Young noted there have been discussions with some Counties to see if they would be interested in taking over management of the small boat harbors and ramps in their respective counties. Mr. Handis spoke of the amount of miscommunication that surrounds this submittal. He believes if the community had access to the information presented to the Board today there would have been less opposition to the submittal. Mr. Handis asked that JDI be required to construct the 800 slips prior to the development of other parts of the project and also require JDI to put in place a performance bond.

Sam Kahanamoku III gave a history of how the subject lands were obtained by the Department of Transportation. He let it be known the lands were under the jurisdiction of the Hawaiian Homestead Commission Act and Commission bylaws states that the ownership of the land must be by a part Hawaiian. Being the only part Hawaiian paying dues at the Harbor (since 1975), Mr. Kahanamoku III believes he should be the owner of the subject land.

Gerry Bell, Superintendent of Kalopa Honokohau National Historical Park that is on the north end of the harbor testified before the Board. Ms. Bell conveyed that the area was established as part of the national park system because of its rich cultural and natural resources. These resources include a heiau, petroglyphs, anchialine ponds and the endangered hawksbill turtle. Ms. Bell asked that these resources be protected. She spoke of her organizations desire to enter into an agreement or a lease to partner to protect these resources.

Jane Thompson representing Redcell Sports spoke of her concern with the outer basin. She let it be known her company owns a commercial slip, which is located in the hatched area and would like to know what will happen to her company if the plan before the Board is approved.

Ms. Thompson asked the Board to defer decision on this item until all questions can be addressed.

Glen Ross, Owner of Marina Seafood's indicated if he knew the Department planned to exclude a portion of the harbor from JDI's lease he would not have attended today's meeting.

William Meyers feels this proposal will create more problems for the community. He believes the proposed project will create more unaffordable housing. Mr. Meyers indicated the Department should use the subject land to build affordable housing for the community.

Kelly Greenwell announced this is the "biggest land opportunity" of his lifetime and asked the Board to take into consideration the testimony of Virginia Isbell before rendering a decision. He told the Board to allow the community to give its input on what will happen to this area.

Douglas Carr came forward and testified. He spoke of the lack of money available to make improvements at Honokohau Harbor. As far as parking, it's first come first serve, there is no organization at the harbor. He spoke of the theft problem occurring at the harbor. He believes in ten years if you look back at the harbor, the State's portion will be a big mess while JDI's area will be a beautiful masterpiece. Mr. Carr asked the Board to give JDI some consideration.

William Aila applauded the decision to remove the harbor area from JDI's lease agreement. Mr. Aila told the Board they should be clear on its intention for the future of the harbor (i.e. privatization). With regards to the set aside, Mr. Aila does not feel it provides enough land for future growth of the harbor. Also the set aside should include the revocable permit to the Big Island Game Club. With regards to the revocable permit issued to the National Park Service, Mr. Aila feels the land should be excluded from JDI's agreement. Also Mr. Aila feels the 800-boat slip should be completed before any other part of the development begins. He noted he has a problem with the language in recommendation 3) and asked the Board that this authorization does not include leasing of the lands in the set aside to JDI at a later date.

Nancy Murphy, a community member came forward and asked the Board to defer decision making on this item to give opportunity for the community to review staff's submittal. It will also give JDI the opportunity to work with the community.

Kamala Lockstader spoke of the importance of the archeological features in this area and its need to be preserved as they hold an important significance to the Hawaiians and the community. She questioned the need for another development in Kona as they currently lack proper infrastructure. She believes another development in Kona will take away needed resources the community can use for its people. Ms. Lockstader asked the Board to defer action on this item.

Kay Colton, a Board member of the Big Game Fishing Club came forward and spoke of her concern that no one from their organization was contacted with regards to this submittal. Ms. Colton asked that the Board defer action on this item. She spoke of her organizations willingness to meet with JDI to discuss their proposed plans.

Written testimony was received from George J. Handgis.

The Board amended the Recommendation Section by adding the following

“6. The Environmental Impact Statement (EIS) shall be presented to the Board in an open Board meeting prior to the issuance of the Master Ground Lease.”

Motion to Defer

Approved to defer (DeMello)

Members Young, Johns, Yamamura, Agor and Schuman voted No.

Motion fails.

The Board made the following changes to the Recommendation Section

1) Amended Recommendation 2)

“2. Approve the Development Agreement and form of Master Ground Lease, but with the following conditions and/or modifications:

a. The Environmental Impact Statement (EIS) shall be presented to the Board in an open Board meeting prior to the issuance of the Master Ground Lease, at which time the Board may elect to terminate the development agreement based on the results of the EIS; and

b. The lands encumbered by Revocable Permit Nos. B-93-53 to Hawaii Big Game Fishing Club and 6783 to the U.S. Government (Department of Interior/National Parks), shall be included in the lands to be set aside to DLNR, Division of Boating and Ocean Recreation and shall not be subject to the Development Agreement and/or Master Ground Lease to Jacoby Development, Inc.”

2) Add the following recommendation

“6. Staff shall report to the Board every six months on the status and progress of Jacoby Development, Inc. under the Development Agreement.”

Unanimously approved as amended (Yamamura/Johns).

Item C-2: Amendment No. 3 of Timber Land License No. H-0101 held by TW, LLC.

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) reminded the Board of the two proposed amendments to the timber land license that was agreed upon prior to the August 12, 2005 Board meeting 1) Proposed assignment of interest to Rockland Capital Energy Investments, LLC and 2) Change of Domicile for Tradewinds from a Washington

LLC to a Delaware LLC. At that meeting the Board asked staff to negotiate terms that would allow the partnership with Tradewinds to continue while compensating the State for lost opportunities and further extensions to Tradewinds project timelines. Mr. Conry identified six negotiated terms which addressed 1)Milestones and Deadlines 2)Payment for option to extend Milestone 3 deadline 3) Penalties for missing milestones 4)Stumpage pricing 5) Proposal to expedite startup of a sawmill and 6) Miscellaneous Other Changes to the Timber Land License. Mr. Conry recommended the Board approve the nine recommendations as listed in staff's submittal.

Don Bryan representing Tradewinds came forward to testify. Mr. Bryan conveyed that Mr. Harlan has taken the negotiated proposals to Rockland's board and they are in full agreement with the terms and conditions and ready to invest in this project. Mr. Bryan spoke of Tradewinds decision to upfront monetary payments for the extension and to negotiate for the deferral in the startup of the increased prices. He believes the toughest part of the negotiations was to give up 40 thousand meters of very high value wood. Mr. Bryan acknowledged Tradewinds still expects to build a small pallet mill, which would cut wood of value for internal consumption. Mr. Bryan announced to the Board he is satisfied with the results of the negotiation.

George Martin representing Okala Community Association and North Hilo Community Association asked the Board to look favorably on this proposal as it represents potential employment in these communities. Mr. Martin communicated if there are people interested in operating a sawmill the community he would welcome it as it would provide more jobs.

Written testimony was received from Scott Harlan.

The Board amended staff's submittal

1) Page 2 "Milestones and Deadlines" milestone 1

"Commence the filing of all applications for all major state and federal permits associated with the project"

2) Page 3 "Penalties for missing milestones" fourth paragraph, last sentence

"In any case, should TW elect to extend the plant construction completion date from July 1, 2008 to January 1, 2009, it shall pay the extension fee as [~~provided in Section B, above~~] proposed in amendment #4."

3) Page 4 "Stumpage pricing" second paragraph, second sentence

"Beginning on the Amendment Date and running through the 5th anniversary of the start-up of the plant . . . adjusted to reflect any increases or decreases in the Bureau of Labor Statistics Producer Price Index for Lumber and Wood Products, index number [~~WPS08~~] WPU08 (The "PPI") during the Pricing Extension Period;"

Members DeMello and Agor voted to amend
Members Young, Johns, Yamamura and Schuman voted No.

Motion fails.

The Board amended staff's submittal

1) Page 2 "Milestones and Deadlines" milestone 1

"Commence the filing of all applications for all major state and federal permits associated with the project"

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"Beginning on the Amendment Date and running through the 5th anniversary of the start-up of the plant . . . adjusted to reflect any increases or decreases in the Bureau of Labor Statistics Producer Price Index for Lumber and Wood Products, index number [WPS08] WPS (The "PPI") during the Pricing Extension Period;"

4) Page 4 "Stumpage pricing" third paragraph, seventh sentence

"TW was not comfortable with this arrangement . . . and requested a concession on the pricing schedule detailed above, indexing stumpage prices with a base starting in ~~[2005 rather than 2001]~~ 2003. ~~[Staff Agreed to this compromise. The difference in using the 2005 base date versus the 2001 base date is equivalent to an approximate \$220,000 concession to TW on the part of the State over the course of the Pricing Extension Period.]~~

5) Add Recommendation 10)

"10. TW has thirty days (30) days to respond to the changes in the terms of the lease if not it is withdrawn"

Approved as amended (Johns/DeMello).
Member Yamamura voted no.

Item C-1: Annual progress briefing to the Board of Land and Natural Resources Regarding Implementation of the Management Plan for the Ahupuaa of Puu Waawaa and the Makai Lands of Puu Anahulu.

Mike Donoho, Project Coordinator for Puu Waawaa Ahupuaa Management Plan gave the Board a progress report on its implementation plan at Puu Waawaa and Puu Anahulu. As background information, Mr. Donoho reminded the Board on July 25, 2003, the Board approved in concept the management plan for the two subject areas. In approving the management plan, DOFAW and State Parks were directed to provide the Board with annual briefings that identified their progress and the effectiveness of the public and private sector involvement. The management plan consisted of sixty-two (62) objectives, many of which have been initiated. Mr. Donoho touched on the various subjects which include the proposed education center, the development of a public shooting range, fencing the remaining sections of native forest and removal of ungulates from the conservation units and the volunteer program.

For future reports the Board asked staff to include a breakdown of the amount of money obtained, where it came from and what are the chances of obtaining additional funding from that source.

No Action.

Item K-3: Enforcement File No. HA-04-05 Regarding Alleged Unauthorized Structure, TMK: (3) 1-4-028:030.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) pointed out the subject violations were identified a few years ago. Since then steps were taken to resolve these violations with the former landowner. During this period the subject land was transferred to Ms. Chang-Crutcher. Over the last year staff has been working with Ms. Chang-Crutcher to resolve the violations without much success. Therefore, Mr. Lemmo is recommending the Board find Luella Nohea Chang-Crutcher in violation of HRS, Chapter 183C and HAR, Chapter 13-5, and is subject to the conditions listed in staff's submittal.

Luella Nohea Chang-Crutcher, the landowner came forward to testify. Ms. Chang-Crutcher indicated when she purchased the subject land from the former owner they did not disclose they had a violation with the DLNR. Also upon obtaining a list of areas included in the conservation district it did not list Waa Waa. At the time Ms. Chang-Crutcher purchased the property she had limited funds but her intention was to build a single dwelling. She decided to live on the property in the structure until she could get the land cleaned. Ms. Chang-Crutcher indicated she needs to live on the property as she cannot afford a rental. Her intent is to use the structure until she can afford to build her home. Ms. Chang-Crutcher spoke of the work she has done on the property to clear it of trash, plants and cars. Ms. Chang-Crutcher asked the Board not to assess her a penalty because of the money she has already spent cleaning the subject parcel of the mess left by the previous landowner. She conveyed to the Board she would be able to remove the unauthorized structure within three months.

An identified speaker spoke of the unfairness of Ms. Chang-Crutcher's situation. He questioned why the previous developer was not fined for the subject violation. He asked the Board to not assess Ms. Chang-Crutcher a fine.

The Board amended the following Recommendations

1. Recommendation 1)

“That Luella Nohea Chang-Crutcher violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules,(HAR), in one instances by failing to remove the structure[,and is fined \$2,000.00];

2. Recommendation 3)

“That Luella Nohea Chang-Crutcher shall pay all fines (total [3,500.00] \$1,500.00) within thirty (30) days of the date of the Board’s action;

3. Recommendation 4)

“That Luella Nohea Chang-Crutcher shall remove the structure after [nine] three months from the date of the Board’s action [~~or Ms. Chang-Crutcher will apply for and execute a Conservation District Use Application (CDUA) within nine months of the date of the Board’s meeting to keep the structure. If Ms. Chang-Crutcher can not receive acceptance to process the CDUA and/or approval by the Board to keep the structure, it will be removed within nine months of the date of the Board’s action~~];

Unanimously approved as amended (DeMello/Johns).

Item K-1: Conservation District Enforcement File No. HA 05-19 Regarding Construction of a Single Family Residence Not in Accordance of Approved Construction Plans & Mitigative Measures to Reduce Impact to the Natural Resources for A. David and Mary Carroll Located at Hokukano, Ka'u, Island of Hawaii, TMK (3) 9-5-016:036.

Member Johns recused himself.

Mr. Lemmo disclosed the Board approved construction of the subject residence in February 2001. Upon completion of the residence staff received complaints asking staff if permits were obtained for the structure and whether or not two residences were allowed on the property. Staff went out to the subject property and found three instances where the property owner appears to be noncompliant. The first issue was that the Department did not approve plans for a courtyard. Secondly, condition 19 of the approval stated that the single family residence shall not contain any “South Wing or separate, but connected living area” or any other similar design. The third issue dealt with the color of the structure, which staff believes is not compatible with the surrounding environs. Mr. Lemmo recommended the Board find the landowner in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules and is subject to the twelve conditions listed in staff’s submittal.

Steven Lim, attorney representing the landowner testified. Mr. Lim announced that the previous owners are responsible for any prior illegal activities, which involve the grading in the 1970's, and the Carroll's had no knowledge of this action. Mr. Lim acknowledged the construction of the entry way and the failure to connect the two residences were done without permits. He noted it was a practical matter done during the development process. Mr. Lim informed the Board the net effect of these actions were to bring the two wings of the house closer. He presented the Board with picture showing the proposed connection of the two residences. With regards to the shade of the residence, Mr. Lim noted that conservation district rules state that the color of the structure must be "earth tones or compatible with the surrounding area." The rules do not state a specific color the structure must be painted. In their construction plans approved by staff in 1991, Mr. Lim indicated the Carroll's mentioned there would be a stucco exterior. The Carroll's have chosen a metal roof to match the lava landscape. They've also chosen a lighter color for their home to blend in with the area. Mr. Lim asked the Board to delete conditions six and seven of the recommendation as he feels if staff wanted the structure painted a specific color they should have stated that fact when approving the construction of the residence. With regards to recommendation eight, Mr. Lim notes the nearest sand beach is approximately two miles away therefore he does not believe residential light screening is necessary. He proposed a condition, which stated that the natural resource manager at Hawaii Volcano's National Park would complete a study on whether or not the interior and exterior lighting from the single family residence has an impact on the turtle nesting. If the results of the survey found there was an impact the landowner would submit a residential light screening and mitigation plan to OCCL. Mr. Lim also asked that condition 10 be removed as the study would determine the effects of outside lighting.

Keoalani Hanoa, a past commissioner with the Hawaii Island Burial Council testified before the Board. Ms. Hanoa spoke of the discrepancies that have occurred with regards to the subject residence. She made it known in 2004 she reported the violations to staff at DLNR. Also prior to the development of the subject residence the area was a known burial cemetery a fact Ms. Hanoa states is documented in the files in the conservation office. In the burial council meetings of April, May and June 2004, Ms. Hanoa again reported these violations to her office, which she notes were prior to grading equipment being brought in, and any work being done. Ms. Hanoa prepared a two minute video presentation on the subject area. She questioned why the Carroll's were not required to obtain an SMA, which is required in conservation areas.

Ronald Self questioned a comment from the applicant attorney, which stated there are no endangered species occurring on the subject property. Mr. Self went on to speak of the various endangered species existing on the property. Responding to staff's statement that the public had an opportunity to comment on the construction plans, Mr. Self noted the community did not know about such a meeting. Mr. Self asked the Board to have the applicants remove the structure on the subject site.

Representative Bob Herkes who represents the district the subject structure was built on testified. Mr. Herkes communicated that the South Kona Coast must be preserved. He pointed out after a visit to Kona by the speaker of the House he was asked to introduce a bill that would kapu the entire Kau coast ten miles inland. Mr. Herkes announced a task force has

since been formed whose task is to identify all of the cultural, historical and environmentally sensitive area in the south Kona coast and develop a plan for its preservation.

An identified speaker spoke in support of the need to preserve Keeku an ancient heiau.

Maryann Maigret, an archeologist with the State Historic Preservation Division (SHPD) provided testimony. Ms. Maigret announced that her division is currently seeking advice from the Attorney General's office on this matter with regards to potential violations relating to burial sites. She went on to point out there were archeological sites identified on the subject property prior to the ground being disturbed in the 1970's. Ms. Maigret disclosed when it was brought to her division's attention that there were possible disturbance to burial sites, she reviewed their records. She indicated with regards to this conservation district use application DOFAW provided comments, which recommended disapproval of the application until the issue of historic sites and the destruction of some historic sites, were investigated. Ms. Maigret further revealed additional correspondence from her division to Mr. Lim. She notified the Board she has conducted a site visit of the subject land and has concluded there was no direct physical evidence of destruction to any grave sites.

Bob Graham, a resident and former educator expressed his concern over this issue. He concluded this issue was circumvented through Carlsmith Ball on Oahu. He believes things went through the so called back door. He feels the State has not done its job to protect the endangered species and the federal government should take control of this issue.

Alfred Spinner a process server, served a order to cease and desist all actions dealing with property belonging to any and all Neepapa living within the territorial boundaries of the Ka pae aina Hawaii.

Jim Medeiros spoke in support of the testimony given by Kealani Hanoa. He asked the Board not to grant any further permits for this residence. He asked that the subject house be removed from upon the graves as it is no place for a residence to exist.

Mikihala Roy, a member of the Foundation for the Search for Wisdom testified in support of the testimony received from Kealani Hanoa. She spoke of her kupuna's teaching of the importance of the land to their culture. She asked the Board to remedy those things that were done incorrectly.

Motion made at 2:10 p.m. to move into Executive Session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

The meeting resumed at 2:20 p.m.

Written Testimony was received from James W. Coleman Jr. and Dale Thompson.

The Board deferred decision making on this item in order to review the minutes of the February 23, 2001 meeting as well as seek legal advice from the Attorney General's office.

Motion to Defer

Unanimously approved to defer by the remaining Board members (DeMello/Yamamura).

Item K-2: Conservation District Use Application (CDUA) MA-3232 Atlantis Submarines Hawaii LLC request to install Two Artificial Reefs.

Mr. Lemmo informed those present Atlantis Submarines Hawaii LLC (Atlantis) proposes to sink the Carthaginian at Drop Zone A. There are currently no plans to sink any artificial structures at Drop Zone B. However there is a condition in the permit that may enable Atlantis to further develop Drop Zone A and B upon consultation with staff that will decide if the matter should be brought to the Board. Mr. Lemmo recommended the Board approve Atlantis Submarines Hawaii LLC request to sink the Carthaginian at Drop Zone A subject to the terms and conditions listed in staff's submittal.

Jim Walsh, representing Atlantis Submarines Hawaii noted his support of staff's recommendation. He informed the Board there is a sense of urgency as the Carthaginian may not last through another winter.

Mikihala Roy raised concern with artificial reefs being placed in the ocean. She wonders what kind of effect these artificial reefs will have on the fish population. Ms. Roy believes the State should work on preservation of the fish population.

Unanimously approved as submitted (Yamamura/Schuman).

Item E-1: Request for authorization to institute immediate natural and cultural protection, safety and user conflict mitigation measures for recreational and commercial activity through issuing permits, approval of proposed administrative rule changes governing the West Hawaii Ocean Recreation Management Area, Kealakekua Bay Ocean Waters and Kealakekua Bay Marine Life Conservation District and authorization to take to rule changes to public hearing, investigation and implementation of facility improvements, funding of an on-site ranger(s), initiation of a "Makai Watch" program with appropriate partners, reconvening the intradepartmental working group, issuing of an RFP for the rental of kayaks at Napoopoo Landing, monitoring proposed actions and reporting back to the Board.

Bob Masuda, Deputy Director, Land for the Department conveyed to the Board this item is aimed at the protection of our natural and cultural resources at Napoopoo and Kealakekua Bay. He pointed out there have been various efforts in the past to protect these areas. Through community input and staff's recommendation, the department has developed the submittal, which is before the Board today.

Jennifer Bethel, Special Projects Coordinator spoke of various changes she would like to make to the recommendation section based on input received by the community.

Sheoli Makana spoke of her observation of dolphins for the past twenty years. She has noticed that the dolphins chooses to swim around people when they want to and don't when they don't. It is clear to her that the dolphins enjoy interaction with people. Ms. Makana supports the education versus regulation as visitor come to Hawaii with the purpose of seeing and being with dolphins. Should the Board decide to ban swimming with dolphins, Ms. Mocura believes this is a violation of an individuals civil rights. As an alternative she believes the department should produce educational pamphlets in various languages available to the visitors at the entrance to the bay.

Jim Medeiros testified in opposition to staff's submittal. He indicated in lives by Hoonounau Bay, which is a neighboring bay and whatever happens in Kealakekua Bay results in a negative impact to Hoonounau Bay. It's a spin out effect. Mr. Medeiros supports a total closure of a "no swim" with dolphins in Kealakekua but if this is done he feels the people will move to Hoonounau Bay, which will negatively effect the bay. Mr. Medeiros does not feel the submittal before the Board is complete enough to address all of the concerns and problems at the bay. He feels the department needs to investigate the impact these proposed rules will have on nearby bays. As far as landings in Kaawaloa, he believes there should be no landings.

Claudia Kane read the testimony of Representative Josh Green who could not attend today's meeting. Mr. Green spoke of his constituents concern with some of the language in the recommendation section. They feel some of the wording of the rules are not specific enough therefore the public do not know how the new rules with affect them. He hopes Kealakekua and the reef are protected and preserved.

Richard Harrison a resident of Napoopoo testified. He spoke of the sacredness of Kaawaloa and the department's duty to protect the area. He feels the Marine Mammal Protection Act already protects the dolphins in the bay. Mr. Harrison acknowledged what the department is doing is right but it needs to be simplified as the department does not have the staff to enforce these rules. Mr. Harrison does not want Kealakekua Bay to be commercialized.

Dr. Roger Dills who lives above the bay provided testimony. He applauded the departments efforts in obtaining community input but feels the decisions made are arbitrary and capricious. He feels more public meetings on this issue need to be held before decisions are made. Dr. Dills pointed out changes were made to the submittal by staff this afternoon and the department has not given the public the opportunity to comment on these changes. He agrees with the idea of a kapu area for the dolphins and feels this area should be enlarged. He encouraged the Board to limit the extent of the new rules until there is maximum amount of public input into these rules. Mr. Dills spoke of the importance of signaga as verbal communication does not always work.

Yanos Malind, Marine Coordinator for the Nature Conservancy spoke of his concern with the impact these rules will have on other areas adjacent to the bay. These rules should be the first

step in protecting dolphins in other areas. As far as the kapu zone, he feels more work needs to be done to determine the exact kapu area. Mr. Malind feels a study should be done on the bay before the Board determines a carrying capacity. Lastly he feels the Hawaii Island Kayak Association should work with the Maki Watch program in distributing information about the bay to the public.

Gordon Leslie pointed out the department has not brought the subject recommended changes to the community for input. Mr. Leslie communicated Kealakekua Bay is a Marine Conservation Area therefore an Environmental Impact Assessment or an Environmental Impact Statement should be done to address the impact to the bay. Mr. Leslie asked the Board not to approve any of the recommendations before the Board today except to allow the department to proceed with making new rules and amending existing rules.

Steve Amanson a user of the bay testified of his involvement with matters related to Kealakekua Bay. He spoke of his agreement with the department's hierarchy of use. Mr. Amanson went on to address the swim zone of the spinner dolphins. He is in favor of a protected zone for the dolphins as their population is decreasing. Mr. Amanson feels the protected zone needs to be expanded as the dolphins need a sandy bottom to rest.

Cheryl Matthews, a resident of Napoopoo spoke of the confusion in the submittal as to what the department is requesting and supporting. Ms. Matthews spoke of her desire to assist the department in cleaning up the proposal into its final form. She made a comments on recommendations 1, 2, 3, 4, 6, 7, 8, 9, 13 and 15.

Luis Holiday, owner of Kayak Central spoke of the holes in staff's submittal. He believes there is only one chance to make this correct and the department should not rush into passing these rules as it stands today. Mr. Holiday proposes 1) postponing any changes; 2) enforcement of existing laws relating to Kealakekua Bay; 3) revise community meetings with the residents of the bay; 4) open a dialogue with commercial boaters and the department; and 5) no tourist permits shall be issued for the bay. Mr. Holiday feels there should be a moratorium on advertisement on the bay and a quota for each operator. He believes this will slow down the amount of people coming into the bay, which will result in the bay being in the condition it was five years ago.

Puhi Dant, Owner and Operator of Fairwinds Cruises since 1971 testified before the Board. Mr. Dant let it be known his business makes daily trips to Kaawaloa and over the years he's seen a vast improvement due to education, awareness and monitoring. He believes the area of Kaawaloa and Napoopoo should be separated as there are different problems in each area and the department's submittal should have addressed these issues. Mr. Dant feels there are many problems with the department's plan including lack of enforcement, no analysis as to how the proposed changes will effect the environment, how will users fees be collected from non-permitted users and the restrictions on the permit do not offer due process in accessing the fairness and business impact. In closing, Mr. Dant requested the Board delay decision making on this item until further analysis can be done and to allow for the proper democratic process to take place.

Teri Leicher, a partner in Jack's Diving Locker and active community member testified in favor of a deferral of the subject agenda item. Ms. Leicher believes the community has not had ample opportunity to review the 86-page document prepared by the department. In the spirit of due process she asked the Board for a 60-day review process to give the public the opportunity to give comments on their proposed plan. Ms. Leicher has several areas of concern with regards to fees and restrictions that could not only have legal implications but could have serious future effects Statewide.

Representative Bob Herkes spoke of the principle of "limits of acceptable change." He feels the department needs to do an inventory of the natural resources and decide what is the limit for the area. Should we fall below the limit we should cut back on the use of that area.

Danny Horimoto, an employee of Fair Wind testified before the Board asking that Fair Wind be allowed to continue daily usage of the bay. Mr. Horimoto started by saying that Fair Wind does not allow any of their passengers to stand on the bottom of the bay, climb up onshore or on the monument. As part of their tour, Fair Wind provides a mandatory safety and reef awareness briefing with emphases on protecting the shoreline resources. Mr. Horimoto believes his company has been an asset to the reef, visitors and the community due to their due diligence in educating their guests. He indicated if the department were to impose a limitation on usage or number of guests Fair Wind were allowed to take to Kealakekua it would prove a financial burden on its workers.

Corinna Rodrigues, an employee of Sea Quest Rafting testified. She spoke of the rules imposed by her company on their visitors (no standing on the shore, no going up to the monument, no touching of coral). She informed the Board if her company is not allowed to conduct tours on the weekend and holidays it will effect the company in a negative way.

Betsy Morrigan, a member of Hawaii Island Kayak Association and owner of Hawaii Pack and Paddle Kayak and Hiking testified. She feels it is time to institute the recommendations proposed by the department. Ms. Morrigan believes the small details can be worked out later. Ms. Morrigan demonstrated a type of landing at Kaawaloa she believes will not damage the bay.

Marissa Pond, an employee of Fair Wind Cruise spoke of her concern with the department's plans to eliminate commercial operators from the bay two days of the week. By restricting access to the bay it will result in a negative effect. With limited days to access the bay, Ms. Pond believes their customer will try to focus their visit within the five days allowed by the department, which would result in a large number of people per day using the resources at the same time. Ms. Pond spoke of the various community service efforts Fair Wind has undertaken but which could be limited should the department not allow commercial cruises in the bay two days a week.

Craig Hawkins, an employee of Sea Quest Rafting and Snorkeling Adventure feels it would be an injustice to the bay should the department limit the number of days commercial operators would be able to conduct tours in the bay. Also limiting use of the bay, the department is not taking advantage of a tremendous resource. Mr. Hawkins indicated when

they are using bay they become the eyes and ears of the bay. At times, they even provide rescue efforts for others in need. Mr. Hawkins proposed that the department should require all commercial users of the bay be certified.

Claudia Merrill, owner of Dolphin Discoveries and a certified Hawaii tour guide provided testimony. Ms. Merrill spoke of the various practices initiated by her company some of which include a vessel free zone for the dolphins, no-wake zone for the swimmers, staggered boat times to lessen impact on the snorkel area, strict enforcement that no one goes ashore at Kaawaloa as well as certifying her crew in CPR and First Aid. At present while conducting tours at the Bay, Dolphin Discoveries have been witness to unsupervised kayak rentals, standing on the coral, littering, dragging of kayaks over the coral at Kaawaloa and individuals chasing and swimming with the resting dolphins. Ms. Merrill conveyed her concerns with the proposed rules as her company could experience a negative economic impact and be forced to downsize. Ms. Merrill asked the Board for more time to review the document of the proposed rules and the opportunity to meet one on one with members of the department.

Kevin Merrill, owner of Dolphin Discoveries spoke of his company's involvement in the community meetings held. He went on to reinforce the measures his company has initiated in the bay. Mr. Merrill requested the Board limit vessels to no bigger than 30-feet, as bigger vessels would have difficulty navigating the area. He also feels the permits should be issued for two or three years to allow adequate time for the department to conduct studies on the area.

Mitchell Allara, employee of Sea Quest Rafting spoke of their efforts to educate the tourist that comes to visit the bay. He noted it is a policy of Sea Quest to not allow people to go a shore, step on coral or walk on the rocks. He indicated out these rules will affect the lives of a lot of people and asked the department to take a careful look at the rules that effect commercial operations in the bay.

Brock Stratton, a resident of Napoopoo came forward to testify in support of staff's recommended changes to the rules. Mr. Stratton testified that he has attended virtually every meeting on this issue and feels he has a good understanding of the issues and the concerns of all groups involved. He spoke of his strong support for the response drafted by the Hawaii Island Kayak Association and urged the Board to examine and incorporate these suggestions into their rules.

Bryce Rork, owner of an underwater video production business and user of the bay testified before the Board. He stated that Kaawaloa and the surrounding areas are very much alive. He feels education of the public is the key. Mr. Rock began to speak of his observations of the coral and fish population at the bay. He communicated that he would like to see whatever needs to be done to protect the bay.

Kyle Fields, owner and operator of Sea Quest Rafting and Snorkeling Adventure thanked the department for its efforts in drafting the submittal that's before the Board today and asked for additional time to review staff's submittal. He expressed his belief that he sincerely cares for the reef, the bay and its health. He noted his concern that there will not be due process with

regards to the prohibition of tours on weekends and holidays and the increase in fees. Mr. Fields questioned the wording of the proposed document with regards to the permit language and asked for some clarifications.

Iwa Tolleson, owner of Aloha Kayak Company spoke of his mission to educate the public on safety issues as well as the cultural history of the area. He noted his support of the testimony made by members of the Hawaii Island Kayak Association.

Elaine Watay, a member of the Kealakehe Neighborhood Watch believes this issue is about and for our youth and not how we as adults should preserve Kealakekai Bay. Ms. Watay spoke of the opportunities Fair Winds provides to our children to visit and observe Kealakekua Bay. She reminded the Board we must all live with the decision they make today.

Daniel Starsong, a resident of Kona and director of the Big Island Sailing Foundation testified. He feels the amended recommendations to the submittal are fine. As far as a no swim zone in Kealakekai Bay he let it be known this is unreasonable and would be hard to enforce. With regards to the dolphins, he does not feel the swimmers or kayakers bother them. Mr. Starsong asked that day moorings be installed at or near the monument so boats will not drift as they are a danger to the swimmers. Lastly, he believes the rule that would prohibit commercial tours on holidays and weekends should not be approved, as it is the time local families would use the area.

Sherman Williams of Kealakekua Kayak noted his support for the testimony made by other kayak vendors.

Rob Shallenberger, Big Island Director of the Nature Conservancy responded to comments he heard at today's meeting. Mr. Shallenberger spoke with regards to recommendations 10, 16 and 17 which all talk about assessment, future meetings, coordination and documentation. He asked that the department add a commitment to monitoring the area as part of these recommendations so when new data become available the rules can be adopted if needed.

Mikihala Roy, President of Kulana Hui Honua appeared before the Board and asked that they defer action on this item. Ms. Roy believes the ways of the land should be available for all to enjoy. She told the Board an Environmental Impact Statement for the area must be undertaken.

Bill Zabolski, owner of Captain Zodiac Raft Expeditions supports the fact that Kealakekua Bay needs to be protected and managed. Mr. Zabolski foresees working with the department to finalize the subject documents. He asked the Board to organization a group of people from the department and the community who would be consulted with when making future decisions for the subject area

D.A. Nana, one of the principles of Sea Paradise added their support that Kealakekua Bay is the single greatest resources for the commercial vendors and wants to protect the area. He

would like the permitting process to address those users who do not go to the bay on a daily basis.

Jeff Hand, owner of Adventures in Paradise spoke in support of the proposed rule changes. He spoke of the importance of accepting this submittal as it is the first step in managing Kealakekua Bay. Failing to accept this submittal would mean another five years of delay in managing the bay.

Nancy Murphy informed the Board that we've overstressed our resources and must take action to be sure we take care of it. She feels it would be okay for two kayak concessions to be at the bay but feels no further permits should be given until more research is done regarding the impacts.

William Aila spoke in support of the following items: a kapu zone for the dolphins, no landings at Kaawaloa to protect our cultural and natural resources, and establishing proper protocols for SNUBA activities. He informed the Board now is the perfect time to prohibit any other users in Kealakekua Bay. He noted his support of the installation of kayak mooring buoys if they do not impact akule fisherman and the installation of ladder at Napoopoo as long as it is done in accordance with the recommendation of Ralph Goto's safety study. Mr. Aila strongly recommend staff work with Attorney General's office on these rules due to the various jurisdictions and the incompatibility with existing land laws and ocean laws.

Written testimony was received from Charles Dougherty, Geoff and Karen Hand, Frank Carpenter, Deborah Chang, Kayak Central Pineapple Park, David Lyth, Karen Anderson, the Sierra Club, Hawaii Chapter, BillHulick, Wendy Nickl, Connie Green, Cindy Manoske, Glen Hilton, Duane Burghard, William H. Wilton, Linda Rennhack, Patricia A. Mickelsen, Bob Paddock, Nancy Burns, Malama Pono Kealaakekua Bay Cultural and Planning Committee, Marie Saplan, Doug Hackell, Mary Lyn Ogletree, Craig Hawkins, Ru Carley Hawaii Island Kayak Association and Lynn Ekstrom

The Board amended the following Recommendations

1) Recommendation 2)

“[Approve and] authorize the department to [conduet public hearings to amend HAR §13-29-2 and HAR §13-244-30 and add HAR §13-256-165 to prohibit the launching and landing by any type of vessel (kayaks, boats etc.) at Kaawaloa. Proposed HAR rules are shown as Attachments 2, 3 and 4. Authorize the department, to establish entry/exit procedure at Kaawaloa for individuals to get in and out of the water safely as well as develop appropriate signage for the area (to comply with State Park rules)] work with the kayak operators and the community to develop a designated landing site and establish proper procedures and techniques (use of mats etc.) at Kaawaloa for the entry/exit of kayakers, as well as develop appropriate signage for the area (to comply with State Park rules).”

2) Recommendation 3)

“Authorize the department to conduct public hearings to amend HAR §13-29-2 and HAR §13-244-30 and add HAR §13-256-165 to prohibit ~~[snuba activities and]~~ introductory/training SCUBA diving within Kealakekua Bay. Proposed HAR rules are shown as attachments 2, 3 and 4.”

3) Recommendation 11)

“In accordance with HAR 13-321-51, 13-29-4, 13-250-5, 13-256-3, 13-146-68 and HRS 190-4 and 187A-6-b, authorize the Chairperson to negotiate and enter into permit agreements, generally represented in attachment 6 and subject to Attorney General approval, with conditions and access protocols that address resource protection measures, management, that also permit watching of aquatic life, with terms not to exceed one year, with commercial kayak operators, that include permit fees of \$5 per guest per day (permit revenue to be divided as follows: first, cover costs and expenses related to the resource ranger stationed at Kealakekua Bay, Kayak mooring buoy maintenance and operation and maintenance of portable toilets, other associated costs in the Bay, then, any balance to be divided $\frac{1}{4}$ - $\frac{1}{4}$ - $\frac{1}{4}$ - $\frac{1}{4}$ between DAR, DOBOR, Parks and DOCARE.) Permittee shall be required to conduct safety and natural & cultural resource briefings prior to entering the water at Napoopoo Wharf. The chairperson will work with DLNR staff and the commercial operators to develop final permit conditions.”

4) Recommendation 15)

~~“[Authorize the chairperson to conduct a public process, with first consideration to non-profit entities, for a permit for rental of up to 25 kayaks, at Napoopoo Landing, for use within Kealakekua Bay. In the event that no non-profit entities qualify or negotiations do not materialize, the department is authorized to issue a RFP to for-profit entities] In lieu of a kayak rental concession at Napoopoo Landing, authorize the chairperson to negotiate with the Hawaii Island Kayak Association for daily services at Napoopoo landing including: Giving a safety and natural and cultural resources briefing to all independent kayakers/paddlers; Assisting with the safe launching and landing of independent kayakers/Paddlers from Napoopoo Landing; Monitoring pier use (Kayak numbers, parking, visitor #'s); and Coordinating with the state Ranger program, the Makai Watch program, and DLNR staff .”~~

5) Add Recommendation 20)

“20. Authorize the chairperson to work with the SNUBA operator in Kealakekua Bay to develop proper protocols to ensure that SNUBA activities do not negatively impact the bay’s resources.”

The Board directed staff to report back to the board in six months on how they plan to address the impacts at Kaawaloa if we are going to allow landings.

Unanimously approved as amended (DeMello/Johns).

Item M-1: Issuance of Direct Lease Japan Airlines International Co., Ltd Honolulu International Airport.

Item M-2: Issuance of a Supplemental Lease Agreement to Harbor Lease No. H-74-2 to the U.S.A. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Survey, Portion of Pier 2 Shed at Nawiliwili Harbor, Tax Map Key No. 4th/3-2-004:063 (Portion).

Item M-3: Rescind Prior Board Action of December 15, 2000, Item K-11, and Issuance of Construction Rights-of-Entry and Grant of a Non-Exclusive Perpetual Easement for Waterline Purposes to the Water Commission, County of Hawaii, at Kona International Airport at Keahole.

Unanimously approved as submitted (Johns/Yamamura).

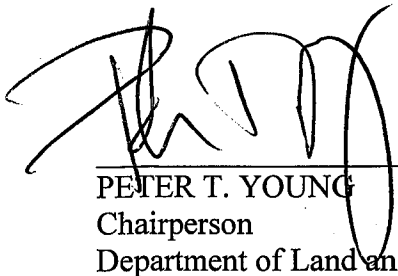
There being no further business, Chairperson Young adjourned the meeting at 4:45 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources