

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

DATE: FRIDAY, APRIL 28, 2006
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 9:10 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Gerald DeMello
Ms. Taryn Schuman

Mr. Ted Yamamura
Mr. Ron Agor

STAFF

Mr. Sam Lemmo, OCCL
Mr. Randy Kennedy, DOFAW
Ms. Athline Clark, DAR
Mr. Glen Abe, DOT

Mr. Russell Tsuji, Land
Mr. Francis Oishi, DAR
Ms. Jill Zamzow, DAR

OTHERS

Mr. William Wynhoff, Deputy Attorney General
Ms. Sandy Fund, D-14
Ms. Sandra Song, D-3
Ms. Karen Polani, C-1, 2, 3
Ms. Gail Byrne, K-3
Mr. Mike Isaac, K-3
MS. Toni Withington, K-3
Ms. Ruth Mano, F-2
Mr. Mark Fox, F-2
Mr. Sareen P.K. Asuncion, K-2
Ms. Stephanie Fried, F-3, 4, 5, 6, 7, 8, 9, 10
Dr. Carl Meyer, F-5
Mr. Don Polaski, F-6

Ms. Patricia Otoole, D-3
Ms. Collette Machado, C1,2, 3, F-2
Mr. Randy Vitousek, K-3
Mr. David Frankel, K-3
Mr. Fred Cachola, K-3
Mr. Mac Poepoe, F-2
Mr. Terry George, F-2
Ms. Charlotte Needham, K-2
Mr. Randy Kosaki, F-4
Dr. Rob Toonen, F-5, 7
Mr. Brian Bowen, F-6
Ms. Cha Smith, F-7

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

Item A-1: Minutes of February 24, 2006

Members Agor and Martyn recused themselves.

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

Item A-2: Minutes of March 16, 2006

Member Yamamura recused himself.

Unanimously approved as submitted by the remaining Board members (Schuman/Agor).

Item A-3: Minutes of April 13, 2006 briefing

Deferred due to lack of quorum.

Item A-4: Minutes of April 13, 2006

Deferred due to lack of quorum.

Item D-12: Request to Approve Resolution to Lease Violation, General Lease No. S-4372, U.S. Department of Agriculture, Natural Resource Conservation Service, Hawaii Plant Material Center and Field Office, Hoolehua, Molokai, TMK: (2) 5-2-01:07.

Russell Tsuji, Administrator of the Land Division indicated today's Board action is a result of a resolution of a violation by the United States Department of Agriculture (USDA). Apparently the USDA entered into a contract with contractor Detric Manaba to remove some trees on the subjected leased premises. Subsequently the trees were buried and Mr. Manaba took the dirt off the site onto his private property which he mixed with other dirt and gravel to create a landing. Mr. Tsuji pointed out the lease terms prohibits the removal or sale of dirt or other materials from the premises. Staff met with USDA and they were not aware of the lease prohibition and staff feels their actions were inadvertent. Mr. Tsuji recommended the Board authorize staff to resolve the aforementioned lease violation by having the USDA-NRCS pay to DLNR the sum of \$1,292.50 for the soil removed from State lands and the USDA-NRCS shall submit to DLNR an updated and complete copy of a Conservation Plant for the Hawaii Plant Material Center.

Written testimony received from George Peabody and Donovan Keliipuleole.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-14: Consent to Sublease General Lease No. S-4488, University of Hawaii, Sublessor, to the Department of Transportation, Harbors Division, Sublessee; Kalihi-Kai, Honolulu, Oahu; TMK: (1) 1-2-25:por. of 17.

Mr. Tsuji made it known the current lessee on the property is the University of Hawaii (UH) and they are requesting the Board's permission to sublease a portion of the property (3,900 square) to the Department of Transportation (DOT), Harbor's Division. If the request is granted DOT Harbors Division will use the area as an access way for people in the sand island area.

Sandy Fund, representing the Department of Transportation, Harbors Division noted her concurrence with staff's recommendation.

Written testimony received from the Department of Transportation.

Unanimously approved as submitted (Schuman/DeMello).

Item D-3: Set Aside to the County of Hawaii for Adult Day Care and Other Related Community Purposes, Piihonua, South Hilo, Hawaii, TMK: (3) 2-3-31:por. 01.

Mr. Tsuji briefed the Board and recommended subject to the Applicant fulfilling the Applicant Requirements above, approve of and recommended to the Governor the issuance of an executive order setting aside the subject lands to the County of Hawaii under the terms and conditions cited in staff's submittal.

Patricia O Toole, Deputy Cooperation Council noted their agreement with staff's recommendation.

Sandra Song, Vice Chair of the Board of Hawaii Adult Day Care urged the Board to support this item. Ms. Song let it be known their current building is very old. The provide day care services to many seniors who are low income and she feels this something that everyone needs.

Unanimously approved as submitted (DeMello/Schuman).

Item C-1: Mo'omomi Preserve Continued Enrollment in the Natural Area Partnership Program and Authorization of Funding for FY07-12.

Item C-2: Kamakou Preserve Continued Enrollment in the Natural Area Partnership Program and Authorization of Funding for FY07-12.

Item C-3: Waikamoi Preserve Continued Enrollment in the Natural Area Partnership Program and Authorization of Funding for FY07-12.

Randy Kennedy, Natural Area Reserve System (NARS) Program Manager for the Division of Forestry and Wildlife (DOFAW) let it be known that Items C-1 and 2 deal with lands located in Molokai while C-3 is located in Maui. The request before the Board is a continuation of the

management responsibilities undertaken by the Nature Conservancy which started in 1993. Mr. Kennedy requested the Board continue approval of the activities identified in the Moomomi, Kamakou and Waikamoi Preserve, authorize the continued funding for the above areas and authorize the Chairperson to enter into a contract to encumber funds for the aforementioned areas with The Nature Conservancy for Fiscal Years 2007-2012 subject to the conditions listed in staff's submittal.

Colette Machado, trustee for the Office of Hawaiian Affairs (OHA) stepped forward to acknowledge the wonderful work done by The Nature Conservancy in maintaining these areas.

Karen Polani of The Nature Conservancy (TNC) came forward to thank the department for their support, specifically staff from NARS. She also informed those present the monies received from NAT program allows TNC to do a lot more in terms of conservation management.

Unanimously approved as submitted Items C-1, C-2 and C-3 (Yamamura/DeMello).

Item C-4: Request for Approval to Enter into a Contract with JBH to Furnish, Deliver, and Install Ungulate-Proof Fencing in Kuia Natural Area Reserve and Na Pali-Kona Forest Reserve, Kauai.

Unanimously approved as submitted (Agor/Schuman).

Item K-3: Conservation District Use Application (CDUA) HA-3269 for a Single Family Residence located at Paoo, North Kohala, Island of Hawaii, TMK: (3) 5-7-001:005.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) acknowledged the office has received a request from the council of the applicant requesting a contested case hearing.

Chairperson Young acknowledged that the applicant's council request for a contested case hearing is also a request for a time extension for the Conservation District Use Permit (CDUP).

Randy Vitousek, attorney for the applicant conveyed that they requested a contested case hearing because his client felt that staff's submittal did not reflect the application process. He pointed out that Mr. Cohen went through the application process very slowly and thoughtfully. He met with various organizations as well as the burial council in the development of his plans. Mr. Cohen also worked with the descendants as to how the site was to be developed as opposed to working with Mr. Cachola. Mr. Vitousek pointed out staff's submittal makes no reference to the public hearings at which time several lineal descendants came to testify in favor of this project. He noted staff accepted written comments after the comment period ended.

Gail Byrne, a resident of Kohala let it be known that staff did not solicit comments from her regarding the proposed CDUP. In any event she told the Board she has seven thousand (7000) signatures asking for no development on the Kohala coast. Subsequently, Ms. Byrne noted they've collected 1600 signatures asking for the legislature to preserve the Kohala coastline. Ms. Byrne pointed out the subject area is part of a contiguous region that has the most intact

pre-contact archeological sites in the state. She let it be known they now have a funding source which will allow them to purchase the subject land. Ms. Byrne acknowledged a previous permit was granted for the construction of a SFR at this location but it was done so without much community input. She went on to say that the permit was let to expire when the Board heard the outcry of the community against development on the subject site. She confirmed OHA has rescinded their approval of the permit. In closing Mr. Byrne asked the Board to deny the applicant's request for a CDUP.

David Frankel, an attorney with the Native Hawaiian Legal Corporation and who represents Makai Kamakani O Kohala requested a contested case hearing. Mr. Frankel stated he did not object to the hearings being consolidated and confirmed he would submit a written request within ten days. Mr. Frankel wanted to make it clear that the contested case hearing is not about DLNR staff nor the process but is about whether this applicant has met his burden to prove that his proposal has met the criteria in the conservation district regulations.

Mike Isaac, representing Kohala Historic and Cultural Preservation Group asked the Board to deny this CDUA as it infringes upon burial rites and it has a negative impact on ancient spiritual beliefs. Mr. Isaac's believes the proposed residence is a massive private vacation retreat of connecting structures which when combined demonstrates a blatant and deliberate intrusion on Hawaiian burial sites. He feels the placement of the subject dwelling as an arrogant affront on his spiritual and cultural beliefs. This dwelling will have a significant negative effect on his desire to feel and experience the manao of his ancestors. Mr. Isaac's disclosed that "special places" (wahi pana) are sorely needed to nurture the spiritual needs of Hawaiians as they are dwindling drastically and the few remaining places must be preserved in perpetuity for the people. He believes the subject land should not become a private playground for very wealthy non-residents who do not understand our culture or our spiritual needs. This area must be preserved and protected for Hawaiians. Mr. Isaac's stated that the Board should deny the application before them as it deliberately omits a very significant burial and sacred site and he also questions the research conducted. He made reference to Site 2382 which was previously disturbed but is hardly mentioned at all as a Probable Shrine. Mr. Isaac's disclosed that for many years he and other Hawaiians have known this site to be a burial enclosure for a very prominent Native Hawaiian, Mr. Kauwe. He went on to communicate that Mr. Kauwe's iwi were placed at this site and therefore greatly magnifies and accentuates the Hawaiian cultural, spiritual and religious value that is now a more integral and confirmed part of this unique wahi pana. Mr. Isaac noted this walled, burial enclosure at Paoo has great mana. He conveyed that he went on a site visit of this area and found that the burial enclosure is not just a simple rock wall, but rather a unique document of the Hawaiian spiritual world that has been altered. In closing, Mr. Isaac stated that the major omission of Site 2383 as a significant burial and spiritual site in all of the plans that were submitted, coupled with questionable historical research and conclusions are sufficient rationale for the Board to deny this CDUA.

Fred Cachola, who was born and raised in Kohala came forward to provide testimony. Mr. Cachola asked the Board to deny this application. He stated that Mr. Vitousek implied they had a contract and that is not true. Instead he went on to say Ike Aina proposed a memorandum of agreement to explore opportunities in which the community and the landowner could benefit by collaborative works. Mr. Cachola informed the Board he could provide meeting minutes to support his claim. With regards to a contract, Mr. Cachola let be known a memorandum of

agreement between Ike Aina and the applicant was submitted to the applicant whom they drastically altered to take out all the historical significance of the area. He does not believe there was sincerity by the applicant to maintain the cultural, historical and spiritual integrity of the sites on the subject parcel. Mr. Cachola implored the Board not to issue a permit to the applicant.

Toni Withington, a resident of Kohala representing Kakoo testified. She noted her personal contact with the land since 1969 and spoke of the high resource value of the land through pictures shown to the Board. She communicated that the community has had continued unimpeded access to the subject parcel since settlement and uses the area for camping and fishing. Ms. Withington let it be known that there are so few portals (two) to access the ocean from North Kohala. Ms. Withington submitted a written request for a contested case hearing on behalf of Kamakani O Kohala Ohana, Inc. dba Kakoo. When asked by the Board if she had any objections to consolidating the three requests for a contested case hearing into one hearing, Ms. Withington responded no.

Written testimony was received from Gail Byrne, Sheila June Winters, Silus Standard, Ruth Ann Naksone, Ben Fisher, Joe Ayer, Lynda Wallach, Gary Keller, Achahn Schulze, Kanoa Withington, John E. Goble, Kyla Jacobs, Crystal West, Leia Lawrence, David Kahanu, Michael Moriarty, Lani Bowman, Micah Ching, Tahjra Alcoran, Erik Estabilio, Lani Bowman, Fred Cachola, Matt Laber, Kehaunani Abad, Valerie and Anthony Anjo, Luhiau Ohana, Papa Arthur Mahi, Toni Withington and Marian Carvalho Johnson.

Motion to defer.

Unanimously approved to defer (DeMello/Agor).

Item F-2: Request for Approval to Hold Public Hearings to Amend Hawaii Administrative Rules (HAR), Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, To Further Restrict the Use of Lay Gill Nets, for Prohibiting their Use in Certain Waters of the State, Including Redescription of Restricted Areas, Define Affected Species, Clarify Penalties, and Other Housekeeping Measures.

Francis Oishi, Project Manager at the Division of Aquatic Resources (DAR) announced that he is requesting approval to hold public hearings to amend Administrative Rules Chapter 13-75 which regulates the possession and use of certain fishing gear and to further restricts the use of lay gill nets and prohibits there use in certain waters of the state including a redescription of the restricted areas, closed areas and defining affected species, clarifying the penalty provision and other housekeeping measures. Mr. Oishi noted that this item was previous brought to the Board but upon review by the Attorney General's Office changes were made and it was recommended the item be brought back to the Board for its reconsideration. Mr. Oishi communicated that the changes proposed were non substantive, grammatical and housekeeping measures. He noted the penalty reference has been expanded to include all applicable penalties to make the rules more enforceable and the definition of fishes will include their scientific name for clarity. Also maps and descriptions denoting the proposed closed areas to lay gill net fishing have been changed to make it more enforceable.

Chairperson Young noted a summary sheet was distributed which indicated some of the other changes (clarification of fishing with only one net at a time, clarification on the hours of fishing, penalties) as well as a complete set of the rules.

Mac Poepoe, representing Hui Malama O Moomomi indicated he does not want a four hour time limit on the use of nets. He pointed out they held several public meetings on Molokai and the community has said they would like to be able to leave their nets in the water overnight. Mr. Poepoe let it be known the residents of Molokai would like to make their own rules. He suggested that lobster nets be placed into the same category as gill nets and these nets catch both lobsters and fishes.

Ruth Mano communicated that the residents of Molokai would like to be exempt from the gill net rules as the residents catch fish for subsistence purposes. She let it be known that they would like to make sure the rules proposed by the department are rules which the community can live by as well as prepare their own rules for the community to live by.

Chairperson Young asked the two previous speakers to come up with specific recommended changes to the proposed rules they would like to see with regards to Molokai.

Collette Machado, a third term trustee (Lanai and Molokai) for the Office of Hawaiian Affairs (OHA) spoke of the efforts put forth by the previous speakers. Ms. Machado announced that the goal of those individuals who spoke before her was to preserve the resources to that it would be available for future generations and to do so we must start today to take care of what is there and apply the appropriate techniques. Ms. Machado made certain to involve OHA in documenting the comments received from the community at public meetings. Ms. Machado asked the Board to be open to possible rule changes that the residents of Molokai might propose.

Terry George, Vice President and Executive Director of the Harold K. L. Castle Foundation testified in support of the clarification of the rules and proceeding with the public hearing process so more public input can be received. Mr. George noted that there are not as many fishes in the ocean as in the past.

Mark Fox, representing The Nature Conservancy acknowledged the work done by the community and Hui Malama O Moomomi as an example of doing things properly in their community. Mr. Fox pointed out there are a lot of people wishing to follow the model of subsistence fishing set up in Molokai.

The Board amended the submittal as follows

1. **§13-75-12.4 (a) (5) Fish with more than one lay net at a time.**
2. **§13-75-12.4 (b) (10) Use a lay net during the period from one-half hour after sunset to one-half hour before sunrise.**
3. **§13-75-2 Penalty. A person violating any provision of this chapter shall be subject to administrative penalties as provided under chapter 187A, HRS, as**

amended, in addition to any other penalty [be punished] as provided by law. [Eff: Dec 03 1998; am and comp §§HRS 187A-5, 187A-12.5, 187A-13, 188-70, 189-4] (Imp: §§HRS 187A-5, 187A-12.5, 187A-13, 188-70, 189-4)

Unanimously approved as amended (Yamamura/Martyn).

Item D-16: Resubmittal: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. and Hawaiian Telcom, Inc. for Access and Utility Purposes and Issuance of Construction Right-of-Entry, Waimanalo, Oahu, TMK: (1) 4-1-08:05 & 80 pors.

Unanimously approved as submitted (Martyn/Schuman).

Item D-19: Mutual Cancellation of General Lease No. S-5663, and Issuance Direct Lease to Honolulu Community Action Program, Inc., Waianae, Oahu, TMK: (1) 8-5-02:12.

Unanimously approved as submitted (Martyn/Schuman).

Item D-18: Re-submittal Cancellation of Easement 12 and Grant of Perpetual, Non-Exclusive Easement to 300 Corporation, Housing and Community Development Corporation of Hawaii and State of Hawaii on behalf of the Department of Accounting and General Services for Access and Utility Purposes and Issuance of a Construction Right-of-Entry, Honolulu, Oahu, TMK: (1) 1-5-07:por. 01 and 02.

Written testimony received from the Pacific Housing Assistance Corp.

Unanimously approved as submitted (Schuman/Martyn).

Item M-6: Issuance of Lese from Department of Accounting and General Services, Lessor, to Washington Place Foundation, Lessee, for a portion of Washington Place, Honolulu, Oahu, TMK: (1) 2-1-18:1.

Motion to defer.

Unanimously approved to defer (Yamamura/DeMello).

Item M-1: Consent to Sublease of Lease No. DOT-A-95-0025 Nunui & Associates, LLC to Royal Hawaiian Movers, Inc. Honolulu International Airport.

Item M-2: Rescission of Land Board Action of March 24, 2006, Item M-4 Issuance of an Inconsistent Revocable Permit A Tom Moffatt Production, Inc. Pier 19 Ferry Terminal Building, Honolulu Harbor

Unanimously approved as submitted (Schuman/DeMello).

- Item M-3:** Issuance of Lease by Direct Negotiation to Izuo Brothers, Limited, Parcel 4, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu.
- Item M-4:** Issuance of Lease by Direct Negotiation to DCL, Inc., Units FV7E, FV7F and FV7H, Multi-User Building, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu.
- Item M-5:** Issuance of Lease by Direct Negotiation to Honolulu Fish & Seafood Corp. DBA Honolulu Fish Company, Units FV7A, FV7B, FV7C and FV7D, Multi-User Building, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Oahu.

The Board made amended the following recommendations

1. "STATUS" – Change Reference to GEO 1396 to GEO 1346.
2. Amend the Recommendation Section

~~"That the Board authorize the issuance of a lease by direct negotiation to the applicant, subject to the terms and conditions outlined above and incorporated herein by reference and such terms and conditions as may be prescribed by the Director of Transportation~~ That the Board authorize the issuance of a Right-of-Entry to the Applicants, together with its consultants, contractors and subcontractors, to the proposed leasehold lot for the purpose of performing a site environmental assessment, related environmental work and remediation work, if necessary together with all preliminary work needed to obtain all required permits for the lease hold improvements on the subject site and further subject to expiration within six (6) months of is issuance or upon execution of the subject lease, whichever occurs sooner."

Unanimously approved as amended Items M-3, M-4 and M-5 (Yamamura/DeMello).

- Item K-1:** Conservation District Use Application (CDUA) MA-3290 for After-the-Fact Permit for 20,000-Gallon Water Storage Tank and Proposed Cement Wellhead Platform located at Kahua, Kaupo, Hana, Island of Maui, TMK: (2) 1-7-002:001.

Unanimously approved as submitted (Yamamura/Martyn).

- Item K-4:** Conservation District Use Application (CDUA) OA-3271 for a Single Family Residence & Related Improvements Variance to Lot's Setback (Joint Lot Development) located at Tantalus, Honolulu, island of Oahu, TMK: (1) 2-5-017:006 & 018.

Unanimously approved as submitted (Schuman/Yamamura).

Item K-2: Enforcement File No. OA-06-34 Regarding Alleged Unauthorized Placement of Structures on State Leased Lands General Lease S-4900 located at Maunalaha Homesites, Island of Oahu, TMK: (1) 2-5-024:005.

Charlotte Needham, Vice President of the Maunalaha Valley Community Association asked the Board to either defer action on this issue or grant her clients an extension so they make work out some issues (descendancy) with the various families. Ms. Needham would like the parties to take this matter to the probate court so the issue of decendancy can be addressed. Ms. Needham also asked for a waiver of fines due to the hardships placed upon these individuals.

Mr. Tsuji informed the Board that they and the department do not have the right to decide who the rightful heir to the lease is. He stated that question must be decided in probate court.

An identified speaker let it be known he is in favor of remedying the situation today. He noted there are several families involved and wonders if a deferral will help to resolve the situation.

Written testimony was received from Maunalaha Valley Community Association.

Motion to defer.

Unanimously approved to defer (Marty/DeMello).

Item D-15: Issuance of a 2nd Right-of-Entry Permit to Natural Systems, Inc., for Insitu Phytoremediation of the Ala Wai Canal Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-7-36:02-B (Ala Wai Canal).

Unanimously approved as submitted (Yamamura/DeMello).

Item F-3: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Special Activity Permit to CDR. TY W. Rinoski, U.S. Coast Guard Cutter (USCGC) Kukui, for Entry of State Waters and marine Debris Removal at Maro Reef.

Athline Clark, Planner with the Division of Aquatic Resources (DAR) communicated that the US Coast Guard Cutter Kukui would be going to Maro Reef and working with the National Marine Fisheries Service marine divers to remove a series of nets and fishing gear from Maro Reef. In the process of removing marine debris the divers will need to cut the nets from the reef and sometimes coral can be caught in the process. Ms. Clark noted the coral caught in the net will be returned to the ocean but at times there will be some take of coral. Ms. Clark recommended the Board authorize and approve with stated conditions, a Special Access Permit to Ty W. Rinoski, USCGC Kukui, for activities and access within the State waters of NWHI.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui noted their support of marine debris removal but would like to see some changes made to the permit requirements. Ms. Fried asked the Board to require best management practices for

decontamination/disinfecting of tender vessels so there are no alien species on the tender vessel (before departure vessels are washed, fumigated and inspected for alien terrestrial and aquatic species. All gears are soaked in 100% fresh water for 24 hours. Care is taken to open all pockets and zippered compartments before soaking in fresh water. Life vests, cushions are washed and frozen for 48 hours). Ms. Fried questioned how much raw sewage and grey water will be dumped during this procedure and how will it be treated as no data has been made available.

Written testimony received from Stephanie Fried and Isabella Abbott.

The Board amended staff recommendation by inserting a permit condition to “use best management practices” for tender vessels and equipment.

Unanimously approved as amended (Yamamura/DeMello).

Item F-10: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Cynthia Vanderlip of the State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife, for the Removal of Marine Debris at Kure Atoll.

Ms. Clark noted that a staff member from the department, Cynthia Vanderlip is requesting permission to eliminate marine debris in and around Kure Atoll as well as take photos and conduct a population count of spinner dolphins. Ms. Clark recommended the Board authorize and approve, with stated conditions, a Research, Monitoring and Education Permit to Cynthia Vanderlip of the State of Hawaii Division of Forestry and Wildlife, for activities and access within the State waters of the NWHI.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui applauded the applicant’s efforts in paying attention to detail and alien species protocol. Ms. Fried brought attention to the fact that the department has received but has not reviewed Ms. Vanderlip’s permit application regarding spinner dolphins. She asked that the department release the spinner dolphin permit application and all other applications to the public to enable analysis and public comment. Ms. Fried asked for clarification if raw sewage is dumped in NWHI as it is being done. She asked that if raw sewage is dumped that the applicant provide a map of where this occurred.

Ms. Clark noted that no sewage is dumped with regards to this permit.
Written testimony received from Stephanie Fried and Isabella Abbott.

Unanimously approved as submitted (Schuman/Martyn).

Item F-4: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue Two (2) Northwestern Hawaiian Islands (NWHI) Permits: 1) A Special Activity Permit to C.O. Scott E. Kuester, National Oceanic and Atmospheric Administration

(NOAA) Ship Hiialakai, for Access to State Waters to Support Marine Research Activities, and 2) A Research, Monitoring and Education Permit to Dr. Randall Kosaki of NOAA to Observe, Monitor, and Facilitate Marine Research Covered under Separate Permit Applications.

Ms. Clark went through the permit review process. She conveyed that the permits were sent out to three staff members from DAR, DOFAW, KIRC executive director and staff, OHA, U.S. Fish and Wildlife Service and the Northwest Hawaiian Island Reserve. After comments were received a meeting was held with the Hawaiian Institute of Marine Biology staff to discuss concerns raised (going through point by point). Based on the meetings applicants in F5-9 revised their request and resubmitted their application based on what was discussed at this meeting. Ms. Clark pointed out ninety percent of the samples taken are non lethal (size of a grain of rice), all samples will be shared among the researchers, knowledge gained from research will benefit management and decision making and the permit guidelines will ensure the samples are used for non-bioprospecting types of activities.

Randy Kosaki, Research Coordinator with NOAA, Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve came forward to answer any questions. He communicated the long term goals is to enable the long term conservation and protection of the NWHI reefs and it is their belief to accomplish this we need management action that are supported by the best available science. To achieve this goal they have entered into a relationship with the Hawaii Institute of Biology so they may bring their expertise to the table. Mr. Kosaki noted that his responsibilities include facilitating research and supporting the scientific mission. They'll also be conducting education and outreach activities while complying with all state and federal regulations within the area.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui started off by giving an overview of the application process and their involvement in this process. Mr. Fried stated their concern is with the protection of the area . She noted her concern with the non-lethal sampling of the various species she feels there is no proof that what they are doing will not have detrimental impact on the species. She asked for scientific information to back up their claim that taking samples from the various species will cause no harm. Ms. Fried pointed to the NWHI rules which listed prohibited activities as "to engage in any activity that can or does result in damage or destroying coral." Ms. Fried questioned that a number of these proposed activities can be conducted in the main Hawaiian Islands instead of the NWHI. She noted another concern with this permit is the storage and dumping of raw sewage. She asked the Board to include a condition in the permit in which NOAA must provide a detailed map of waste dumping sites during this research period. As for next season, Ms. Fried recommended the department refuse to issue permits to NOAA or NOAA contracted vessels without waste storage and treatment facilities on board sufficient to prevent the dumping of raw sewage or wastes containing harmful chemicals into the Reserve or proposed sanctuary waters. Lastly, Ms. Fried asked the Board to include a permit condition which call for the use of "best practices" as described by Cynthia Vanderlip for tender vessels and equipment.

In the future Ms. Fried requested that the department make all permit applications available to the public for a forty-five (45) day review and comment period.

Written testimony received from Stephanie Fried and Isabella Abbott.

The Board amended the permit requirements to add the Vanderlip protocol.

Unanimously approved as amended (Yamamura/Schuman).

Item F-5: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Carl Meyer of the Hawaii Institute of Marine Biology for 1) The Capture, Tagging and Release of Apex Predators, and 2) Deployment and Downloading of Acoustic Receivers.

Rob Toonen of the Hawaii Institute of Marine Biology (HIMB) provided the Board with an overview of the next five permit applications. He started off by disclosing that their group is made up of conservation biologist with a diversity of expertise motivated by a shared desire to conserve and protect the NWHI for all of Hawaii. Their research goals are to inform management of conservation efforts by the State and other government agencies. Through their research HIMB hopes to understand how regions within the NWHI connected to one another and how the NWHI is connected to the main Hawaiian Islands. Mr. Toonen went over their sampling procedures and confirmed their sampling will be non-lethal. He went on to say that the subject samples would be archived as part of a tissue data bank which will be maintained by the University of Hawaii, while ownership would remain with the State.

Ms. Clark noted this permit is to allow Dr. Carl Meyer to capture, tag and release apex predators, download information from receivers at the NWHI as well as installing additional receivers. Ms. Clark recommended the Board authorize and approve, with stated conditions, a Research, Monitoring and Education Permit to Dr. Carl Meyer of the Hawaii Institute of marine Biology, for activities and access within the State waters of the NWHI.

Dr. Carl Meyer, a Biologist at HIMB testified. He let it be known this research is in direct support of management. He feels in order to provide proper science base management of the fish resources of the Hawaiian Archipelago we need to know something about the movement patterns of these animals. The methods proposed have been developed over the course of fifteen years and are well supported by peer review publications. Dr. Meyers let it be known the methods that have been tried and tested. Dr. Meyer clarified that he would be attaching under water receivers to these animals to track their movement. When questioned by the Board for the need to include the grey snapper in this experiment, Dr. Meyer noted that the grey snapper is a top level predator that is at the top of the food chain as well as a species that is being exploited. Through the tracking of the grey snapper he hopes to answer some questions one being that species exploited in the main Hawaiian Islands are being replenished in the NWHI. Dr. Meyer assured the Board that the frequency of the transmitters used will have no negative effect on other species.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui pointed out during the comment and review period a comment was received from a Native Hawaiian who had concerns regarding the take of grey snapper in that tracking this

commercially important species might reveal habitat data that could be exploited by commercial interest. Ms. Fried asked that the grey snapper be removed from the permit application. She also pointed out a potential conflict of interest in this permit application as the researcher is a recent PhD whose dissertation committee chair Kim Holland is the owner of one of eight commercial bottom fish vessels permitted for commercial extraction in the NWHI. Also Mr. Holland was the only UH scientist to testify against the establishment of the state's non-take refuge during the public hearing in Honolulu. His business associate and agent continues to lobby for the opening up of closed areas, including protected areas at Nihoa and Gardner – two of the three proposed research areas to commercial extraction. Ms. Fried believes the tagging of the grey snapper may lead to increased exploitation by commercial operators and urged the Board to not allow tagging of this specie.

Written testimony received from Stephanie Fried and Isabella Abbott.

Unanimously approved as submitted (Yamamura/DeMello).

Member Yamamura left the meeting.

Item F-6: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Brian Bowen of the Hawaii Institute of Marine Biology, for the Take of Fishes for Genetic Sampling in Order to Study Coral Reef Connectivity.

Ms. Clark communicated that this permit is for the sampling of fish species in the NWHI. She pointed out they spent a lot of time addressing questions and negotiating terms such as the number of each species that can be taken and the number of species found in each area. Ms. Clark recommended the Board authorize and approve, with stated conditions, a Research, Monitoring and Education Permit to Dr. Brian Bowen of the Hawaii Institute of Marine Biology, for activities and access within the State waters of the NWHI.

Brian Bowen stated that the issue of fish connectivity is straight forward – if one island is depleted by human or natural factors we need to know if the population is replenished through larva coming in from elsewhere or if it needs to recover on its own. Mr. Bowen confirmed that he has eliminated the moray eel from this permit until he can be assured that the sample taken will be non-lethal.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui spoke of her concern with peer review science as the samples provided are from completely different ecosystems (warm water).

Don Polaski, Refuge Manager with the U.S. Fish and Wildlife Service spoke of his responsibilities in the NWHI. For the Board's information, Mr. Polaski disclosed that they've received a permit application from the same individuals that are before the Board today to conduct research at the NWHI and Johnston Atoll. At present they've looked at the proposal and is in support of most of the permit requests. He informed the Board they are also concerned with over sampling and have looked into that issue. Mr. Polaski noted their support

of the works of Dr. Meyers, Dr. Bowen, Dr. Toonen, Dr. Rappe and Dr. Gates. He notes the application by Dr. Carl as being a new application and they are still in the discussion stage on what his plans are.

Written testimony received from Stephanie Fried and Isabella Abbott.

Unanimously approved as submitted (Martyn/Schuman).

Item F-7: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Robert Toonen of the Hawaii Institute of Marine Biology, for the Take of Invertebrates for Genetic Sampling in Order to Study Coral Reef Connectivity.

Ms. Clark indicated this permit will allow the sampling of vertebrates throughout the NWHI. She pointed out most of the samples will be non-lethal. Ms. Clark recommended the Board authorize and approve, with stated conditions, a Research, Monitoring and Education Permit to Dr. Robert Toonen of the Hawaii Institute of Marine Biology, for activities and access within the State waters of the NWHI.

Member Martyn left the meeting.

Dr. Robert Toonen testified that the samples taken are those that have been requested by the Bishop Museum collection. He confirmed that 93% of the samples he's taken has been returned to the same location. Dr. Toonen expressed his desire to identify new species in Hawaii that have not been previously described.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui pointed out all state waters of the NWHI are a no take zone, where harm to coral is illegal and where permits are to be issued under a "do no harm" mandate under the precautionary principle in the absence of data. Ms. Fried pointed out the samples are to be "non-lethal" but the applicant fails to provide peer review data on the 100 % survival of the proposed species. In closing, Mr. Fried asked the Board to deny this permit application but should they issue the permit she would like the alien species protocol and a longitudinal study added to the permit requirements.

Cha Smith, representing Kahea requested that the timing of the permits be slowed down so the public can understand the process and the impacts of the research. She believes a clear and objective review of what science is needed and what managers need to do to prevent any impacts on the NWHI and state waters needs to be conducted. She questions who is setting the 'research agenda' and the pressure of putting these permits through a fast pace review without scientific review by the Board. She noted the process is extremely problematic.

Ms. Clark informed the Board that the longitudinal studies of places that were previously sampled is part of the research protocol that have been proposed. Ms. Clark offered to add it to the permit guidelines to reiterate that fact.

Written testimony received from Stephanie Fried and Isabella Abbott.

The Board amended the permit conditions to include the longitudinal studies as part of the permit requirements.

Unanimously approved as amended (Agor/Schuman).

Item F-8: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue Two (2) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to: 1) Dr. Michael Rappe, and 2) Dr. Ruth Gates, both of the Hawaii Institute of Marine Biology, for the Non-Lethal Sampling of Corals to Identify Biological Indicators of Coral Disease and/or Bleaching Susceptibility.

Item F-9: The Division of Aquatic Resources Requests Board of Land and Natural Resources (BLNR) Authorization/Approval to Issue Two (2) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to: 1) Dr. Greta Abby, and 2) Dr. Stephen Karl, Both of the Hawaii Institute of Marine Biology, for the Non-Lethal Sampling of Corals for Investigations of Coral Disease and Bleaching Susceptibility.

Ms. Clark indicated the four above permits deal with coral work. She pointed out the sample list provided in staff's submittal is the sample list for the four permits. Ms. Clark indicated there are a lot of questions pertaining to the permits being issued to Dr. Gates, Dr. Rappe, and Dr. Abby specifically looking at disease and bleaching effects on corals. The four permittees propose to share their samples and use a non-lethal sampling.

Jill Zamzow informed the Board coral growth rates in the French Frigate Shoals, Nihoa and Gardner are between five and twelve millimeters per year which is similar to coral in the main Hawaiian Islands.

Stephanie Fried, representing Environmental Defense and the Northwest Hawaiian Islands Hui pointed out the ultimate goal of these studies are to determine if assessments of microbial community structure can be used as bioindicators for coral health and to predict a coral's susceptibility to disease. Ms. Fried indicated that this question can be answered by studying coral in the main Hawaiian Islands and if the results prove 1) that this sort of research can be used to predict disease; 2) that coral disease prevention will be a core management activity carried out by the State of Hawaii in the NWHI Refuge; 3) there is no threat of inadvertently transferring disease through any lab or research protocol involved in this research, and 4) that the sampling methodology does not have any trophic-level ecosystem impact then and only then should this research be considered for a NWHI Refuge permit. With regards to the 1000 samples of corals to be taken at the French Frigate Shoals, Ms. Fried noted the applicants are focusing their coral testing on a small area of vital importance to endangered species thus their results will be specific to that small site and not all areas so she questions why this testing can not be done in a less fragile area.

Steven Karl, one of the applicants came forward to address the question why the research needs to be done in the French Frigate Shoals. Mr. Karl explained that there is a high variance in the French Frigate Shoals and it is where there is disease and where management issue are most critical.

Greta Aeby, one of the applicants let it be known she started this disease investigation back in 2002. To alleviate some of the fears of the public, Ms. Aeby informed those present the protocols they have instituted voluntary are those obtained from the OIE manual for disinfection protocol. She noted these protocols will become part of the national protocols that are being established by the Coral Disease and Health Consortium. Ms. Abby showed the Board two coral disease she has identified at the French Frigate Shoals in 2003.

Written testimony received from Stephanie Fried and Isabella Abbott.

Unanimously approved as submitted Item F-8 (Schuman/DeMello).

The Board amended the Recommendation Section of Item F-9 as follows

- “1. That the Board authorize and approve, with stated conditions, 1) a Research, Monitoring and Education Permit to Dr. Greta Aeby of the Hawaii Institute of Marine Biology, and**
- 2. That the Board grant conditional approval for a Research, Monitoring and Education Permit to Dr. Stephen Karl of the Hawaii Institute of Marine Biology, for activities and access within the State waters of NWHI subject to the approval of the U.S. Fish and Wildlife Service.”**

Unanimously approved as amended (Schuman/DeMello).

Item D-17: Amend Prior Board Action of November 19, 2004 under Agenda Item D-44, for Sale of Reclaimed (Filled) Land to Alvin and Anne Maeda Revocable Trust and Confirmation, at Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-58:seaward of 17.

Motion to defer.

Unanimously approved to defer (Schuman/Agor).

Item D-1: Issuance of Right-of-Entry Permit to County of Kauai on Lands Encumbered by General Lease S-3832 to Pixar Development LLC, Kapaa Town Lots, Kapaa, Kauai, TMK: (4) 4-5-11:46.

Item D-2: Amend Prior Board Actions of February 25, 2005, Item D-1, Grant of Perpetual, Non-Exclusive Easement to Philip K. Binney and Peter A. Binney for Access and Utility Purposes, Keahialaka, Puna, Hawaii, TMK: (3) 1-3-08:por. of 04 and 12.

- Item D-4:** Lease to the University of Hawaii for Education, Housing, and Related Purposes; Waiakea, South Hilo, Hawaii, TMKs: (3) 2-4-01:por. of 24; 2-4-56:17 & por. of 14.
- Item D-5:** Set Aside to Division of State Parks; Issuance of Management and Construction Right-of-Entry, for Park and Related Purposes at Lalamilo, South Kohala, Hawaii, TMK: (3) 6-2-02:01; 6-6-02:02, 06, 07, 31, 40, 41 & 42; and 6-9-01:por. 01.
- Item D-6:** Consent to Assign Perpetual, Non-Exclusive Easement (LOD No. S-27613), Puuwaawaa Waterworks, Inc., Assignor, to Napuu Water, Inc., Assignee, Puuwaawaa and Puuanahulu, North Kona, Hawaii; TMKs: (3) 7-1-01:por. of 06 and 7-1-04:por. of 18.
- Item D-7:** Amend Prior Board Action – Approval of a Set Aside to the Division of Forestry and Wildlife; Approval of Set Aside to the Division of State Parks; Approval of Natural Resource Management Guidelines and Priorities for State Lands at Puuwaawaa and Puuanahulu, North Kona, Hawaii, TMK: (3) 7-1-03:07.
- Item D-8:** Withdrawal from Governor’s Executive Order No. 2312 to the Department of Education for Kealakehe School; Conveyance by Land Patent Grant to County of Hawaii, Kealakehe, North Kona, Hawaii, TMK: (3) 7-4-19:44.
- Item D-9:** Amend Prior Board Actions of August 28, 1998, Item D-27, Direct Sale of Two Perpetual, Non-Exclusive Easements to Nohona Partners Inc. at Kaumalumu and Pahoehe 1st, North Kona, Hawaii, TMK: (3) 7-7-04:por. of 02 and 7-7-08:por. of 27.
- Item D-10:** Amend Prior Board Actions of October 22, 1999, Item D-19, and October 13, 2000, Item D-21, Direct Sale of Eight Perpetual, Non-Exclusive Easements to Nohona Partners Inc. at Kaumalumu and Pahoehe 1st, North Kona, Hawaii, TMK: (3) 7-7-04:por. of 02 and 7-7-08:por. of 27.
- Item D-11:** Consent to Assignment of Term, Non-Exclusive Seawall Easement Identified as General Lease No. S-5211, Philip D. Gray and Carolyn M. Gray, Trustees of the Philip & Carolyn Gray Living Trust and Mark Van Pernis, Assignor, to Alohi Kai Partnership, Assignee, and Assignment of Easement from Alohi Kai Partnership, Assignor to Ke Alohi Kai Association, Incorporated, Assignee, Kaumalumu, North Kona, Hawaii, TMK: (3) 7-7-24:makai of 07 (formally (3) 7-7-04:makai of 03).
- Item D-13:** Mutual Cancellation of Revocable Permit S-3835 to Tennent Art Foundation and Issuance of a Revocable Permit to Hawaii Preparatory Academy; Auwaiolimu, Honolulu, Oahu, TMK: (1) 2-2-03:94

Unanimously approved as submitted (Agor/DeMello).

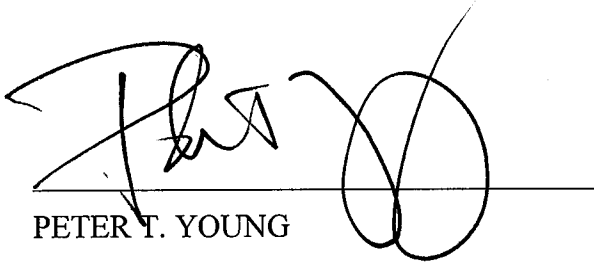
There being no further business, Chairperson Young adjourned the meeting at 1:08 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG

Chairperson

Department of Land and Natural Resources