

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

DATE: THURSDAY, JUNE 10, 2010  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:07 a.m. The following were in attendance:

**MEMBERS**

Laura Thielen  
David Goode  
Jerry Edlao  
John Morgan

Ron Agor  
Rob Pacheco  
Dr. Sam Gon

**STAFF**

Paul Conry/DOFAW  
Randy Kennedy/DOFAW  
Dan Quinn/PARKS  
Tanya Rubenstein/DOFAW  
Meghan Statts/DOBOR  
Michelle Jones/DOFAW  
Francis Oishi/DAR

Morris Atta/LAND  
Matt Ramsey/DOFAW  
Scott Fretz/DOFAW  
Ed Underwood/DOBOR  
Bob Nishimoto/DAR  
Curt Cottrell/PARKS

**OTHERS**

Pam Matsukawa, Deputy Attorney General  
Dotty Kelly, D-18  
Wilford Ho, D-18  
Pat Borge, C-5  
Dr. Charles Fein, C-4  
Neal Mitsuyoshi, D-22  
Marti Townsend, D-22, F Items  
Lieutenant Colonel Mitsayoshi, D-22, C-3  
Richard Gronna, J-2

Rep. Chris Lee, C-6  
Burton Greene, D-18  
Richard Lee Fale, D-18  
Gary Murie, E-4  
David Longacre, D-8  
David Festerline, D-22  
Kat Brady, D-22, C-3  
Rick Calvin, C-3  
Bernard Morry, J-2

Bruce Lenkeit, J-1  
Janet Mandrell, J-1  
Chris Winn, F-3  
Michael Stat, F-1  
Yvonne Izu, D-10  
Gerald Takase, D-21

Dave Cooper, J-1  
Randy Kosaki, F-2, F-5  
Steve Karl, F-2  
Darcy Young, M-1, M-2  
Randall Roe, D-4

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

A number of written testimonies were submitted, but some could not be retrieved the morning of the Board meeting due to a computer error with the e-mail.

**Item A-1      April 19, 2010 Minutes**

**Item A-2      May 13, 2010 Minutes (TO BE DISTRIBUTED.)**

**Approved as submitted (Agor, Gon)**

**Item C-6      Request For Approval to Enter Into a Project Partnership Agreement  
With the U.S. Army Corps of Engineers for Construction of the  
Kawainui Marsh Environmental Restoration Project, Kailua, Oahu.**

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) related some background on this request that the Division has been working with the U.S. Army Corps of Engineers, City and County of Honolulu, partners in the community and the legislature for the past 15 years to bring this project to life. All funding are approved, all environmental documents are in and the lawyers are in agreement. He recognized Engineering Division, Dave Smith who is the Oahu Branch Manager for DOFAW and Chris Lee representing the Legislature who are here. This is an agreement to build the wildlife sanctuary at Kawainui Marsh. Chuck Burrows, Ron Walker, Donna Wong and the Kailua community were recognized and supports this. The Board has been instrumental in this project.

Member Gon said he shares Mr. Conry's enthusiasm in this agreement which will benefit the wildlife sanctuary and the State.

Chair Thielen recognized Chuck Burrows and his volunteers for restoring the public area.

Representative Chris Lee who represents Kailua and Waimanalo testified that it is an honor and shares the enthusiasm described by Mr. Conry. Mr. Lee supports this project and asked the Board to approve this request.

**Unanimously approved as submitted (Morgan, Gon)**

**Item D-18     Set Aside to City and County of Honolulu for Park Purposes, Hauula, Koolauloa, Oahu, Tax Map Key:(1) 5-4-014: 003.**

Mr. Atta conveyed that the community wanted their own park with a ball field and a number of written testimonies have been submitted.

Dotty Kelly-Paddock representing Hauula at the Koolauloa Neighborhood Board testified that 140 signatures from members were received in support and she explained that the current facilities are sub-standard. The 500 children in the area have no field to play sports and asked the Board to consider that.

Brew Rudd was present, but didn't have anything to add.

Burton Greene, a resident testified in support wanting an opportunity to play sports in the area.

Wilford Ho representing the Parks and Recreation testified that he appreciates the Board's consideration of this request that his Department understands the parks in the Hauula area are sub-standard for the present and future population. The Parks and Recreation and the community are ready to move forward to have the kids move in this fall. It was asked by Board member Goode whether they are ready to maintain the resources and Mr. Ho said they are committed and they have the resources.

Richard Lee Fale, Chairman of the Koolauloa Neighborhood Board testified that he had submitted his written testimony in support noting that he lives in Hauula and their community suffers from high alcohol and drug abuse problems along with crime which are related to their youth not having productive areas to focus their energy into. Mr. Fale related his own family experiences and asked for the Board's support.

**Unanimously approved as submitted (Morgan, Gon)**

**Item C-5     Request for Approval to Extend Access Restrictions to Portions of 'Ahihi-Kina'u Natural Area Reserve for a Period of Up To Two Years to Protect the Natural Resources of 'Ahihi-Kina'u Natural Area Reserve**

Randy Kennedy representing DOFAW reminded the Board that this is a continuation of the restriction that the Board approved two years ago. The Advisory Board met and concluded that the restriction should continue for another two years or until the Management Plan is implemented. Staff recommends approval of the request. He introduced Matt Ramsey, Chief Ranger of the 'Ahihi-Kina'u Natural Area Reserve and Pat Borge, Advisory Board member.

Mr. Ramsey confirmed there is not a lot of illegal entry as questioned by Board member Pacheco, but there has been a mix of visitors and residents who don't see the signs or ignore it. Staff is at the Reserve from sunrise to sunset, 7 days a week. Member Gon asked whether there is a problem with people coming in before sunrise and Mr. Ramsey said there is 3 miles of coastline and it is difficult to be everywhere at once. A majority of the people meet up with the ranger who informs them of the restriction and are not reported to DOCARE (Division of Conservation Enforcement). If the rangers find people within the closed area and have passed several signs that is when the rangers call DOCARE who have responded 99% of the time in person or contacted these people individually.

It was asked by Member Gon what the Management Plan status is. Mr. Ramsey reported it will be done in about a month which will take time to implement because it has to go to multiple levels within the Department. People are wary of seeing closure signs, but people are all for greater protection of the area. He explained when staff implemented the closure people think complete access or complete closure and a lot of people are for a facilitated access whether by a permit system or guided tour, but staff failed to get that across where you have to have a restriction or closure in order to implement that which is the reason people opposed the restriction. They didn't understand a restriction is necessary in order to facilitate access to the area. People are looking forward to managed access to the area.

Mr. Borge testified that people would like to see these two trails mauka closed permanently and use it only for educational purposes not for people to make money by taking hikes. The compromise is giving the people 'Ahihi Bay. He asked the State and County to work out the road issue and suggested giving the rangers more power to cite people without taking the DOCARE officer away from somewhere else. The fishermen reported that this has been the best year due to the closure of the area and Mr. Borge wants it permanently closed.

Member Edlao commented that Mr. Ramsey is knowledgeable and an asset on Maui, but will be moving to Oahu.

**Unanimously approved as submitted (Edlao, Gon)**

**Item E-4      Request for Permission for the Soka Gakkai International - USA to  
Construct Rest Area for Peace Circle at the Millennium Peace  
Garden, Diamond Head State Monument**

Dan Quinn representing Division of State Parks described where this request is on the attached map which is part of the Master Plan of the park. The Division had money to build the trail, but not the rest areas where this group came forward to build the first rest area and the monument. Staff recommended approval with the listed conditions.

It was asked by Member Agor the length of the trail and Mr. Quinn said about a half mile.

Gary Murie testified his group is honored and supports this project.

**Unanimously approved as submitted (Morgan, Pacheco)**

**Item C-4 Request for Approval to Release for Public Review the Habitat Conservation Plan for the Construction of the Advanced Technology Solar Telescope at the Haleakala High Altitude Observatory Site, Maui, Hawaii and Accompanying Incidental Take License**

Mr. Kennedy reported that this project has the potential of taking endangered species - Hawaii petrel - to minimize, mitigate potential impacts of building this facility. It conducts predator control on 300 acres at the summit of Haleakala.

Member Gon asked whether the Science City already comply with rules like no lights at night and Scott Fretz, DOFAW staff, confirmed that.

Dr. Charles Fein testified that he is the consultant for the environmental permitting process for this project and also the preparer of the Draft Habitat Conservation Plan (HCP). He is here with representatives from the National Science Foundation who is the applicant.

Member Gon asked whether there is consideration for mitigation on the effects of the surrounding alpine habitat. Dr. Fein explained that the sub-alpine habitat 300 acres has been surveyed for botanical species and the term is depole. There are fewer plants as you go lower and that area is outside of the University's property. He described the measures used to prevent invasives and preserving the botanical habitat. As for invasive invertebrates, there are none at that site and are more common in the National Park. Mr. Fretz noted that the HCP includes early detection and prevention for any arthropods. Dr. Fein said there is monitoring.

**Unanimously approved as submitted (Goode, Morgan)**

Chair Thielen noted the first four items are all community partnerships to help the area.

**Item D-8 Sale of Remnant to David R. Longacre, Jr. & William C. Foss, Jr., Co-Trustees of the David R. Longacre, Jr. and William C. Foss, Jr. Trust, Hakalau Homesteads, South Hilo, Hawaii, Tax Map Key:3<sup>rd</sup>/2-9-04:37.**

Mr. Atta reported this was formerly a flume right-of-way.

David Longacre testified that he looks forward in obtaining this land to run his fruit orchard and do some reforestation.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item D-22      Termination of Revocable Permit No. S-6445 to the Kulani  
Correctional Facility, Department of Social Services and Housing,  
Issuance of Revocable Permit to State of Hawaii, Department of  
Defense, Panaewa, Waiakea, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/  
2-4-49:13 por.**

Mr. Atta communicated it was discovered by Land Division that the original revocable permit (RP) issued to Department of Social Services and Housing (DSSH) was inappropriate given the different agencies using the area. The use hasn't changed, but the appropriate permittee has changed and this action was to correct that discrepancy. Also, representatives from DSSH and State DOD are here for questions.

Member Pacheco asked for clarification whether Item C-3 is related to this item and Mr. Atta confirmed that. Member Pacheco also asked whether DOD is going to run a youth program out of the old Kulani facilities which will be leased to them and will continue to use this parcel for support as it was done for Kulani. Mr. Atta said he thinks so, but there were a lot of comments which haven't been determined.

David Festerling, Deputy Director for Administration for Public Safety testified that Kulani hasn't been operating since October 2009 and they are under a DOD MOA where they would use the Correctional Facility for a period of 25 years; however, if the need arises for a correctional facility they would give DOD a years notice. The item before the Board is a staging area that the Correctional Facility used where vendors and employees parked their car and be bused up to the Correctional Facility. Public Safety no longer needs this property for Kulani and that is why they are requesting to terminate the revocable permit with DSSH and issue it to DOD.

Member Pacheco asked whether the facilities are DPS lands. Chair Thielen explained that DLNR serves as the Land Bank for the State. Frequently, the land use may be transferred to a particular agency for a particular purpose. When that ends the land comes back to the Land Bank or go to another agency for a particular purpose. Also, they are pairing this with another agenda item regarding the Natural Area Reserve.

Marti Townsend representing KAHEA testified in opposition of the piecemeal transfer of government lands comparing it to Mauna Kea. She is concerned that DLNR doesn't have a long term vision for this property and why there isn't a plan to remediate it by incorporating it into the NARS and asked to defer this decision until there is a comprehensive plan. Also, that DOD doesn't have the resources and the implications in 20 years.

Kat Brady testified that she is the Coordinator of Community Alliance on Prisons which is a community alliance working to improve conditions of confinement, improve the quality of justice in Hawaii and to promote smart justice policies. She related the issues and problems with closing Kulani Correctional Facility referring back to a previous Board meeting item regarding the Army Corps of Engineers. That land is treated like a commodity and she finds it disturbing that this property is treated piecemeal reiterating

that there is no long term vision. Ms. Brady questioned why go through the transfer when DOD may not like the assessment the property may transfer back. She had a list of questions regarding Youth Challenge, facility maintenance plan, conservation activities, no plan in place, the Legislature and Federal Government hasn't allocated funds, archaeological studies, public access and cultural practices. Ms. Brady implored the Board to ask for the entire plan before issuing anything.

The Board suggested moving to the issue of the adjacent lands where Chair Thielen recommended staff present Item C-3 which is for the upper portion of the lands and hold action on Item D-22 to give a bigger picture to the Board members.

**Item C-3      Request to Conduct a Public Hearing Regarding an Extension of Puu Makaala Natural Reserve, TMK (3) 2-4-008-009 (POR), South Hilo, Hawaii**

Mr. Kennedy conveyed this is for a designation of 166 acres of conservation land (not the facility areas) to the Puu Makaala Natural Area Reserve (NAR) which would afford long term protection of an area of outstanding habitat quality, biodiversity and where significant management actions have already happened. Over the last 10 years work with Public Safety through the Tri-Mountain Watershed Partnership and the NARS Program fenced all of that conservation land. This area is being managed as high a level as any Natural Area Reserve and because it is maintained as a NARS it should be designated for the long term as a NARS. He introduced Tanya Rubenstein who for many years was the Coordinator for the Tri-Mountain Watershed Partnership and was responsible for the fencing of this area.

Chair Thielen asked staff to go over the map for the Board members. Mr. Kennedy said that during long term negotiations with Public Safety they wrote a letter in support of this designation on the condition that DOD potentially could use the facilities are in approval and the Department of Defense gave them a letter in support along with Land Division and the NARS Commission where there is a lot of public support.

Member Pacheco asked whether the color coded DOD roads and property is DPS now which was confirmed by staff. The Department got land from another state agency and under a legal agreement that was done a long time ago and he asked whether it was allowed under statute or policy that a state division could take DLNR lands that they aren't going to use and give it to another state agency. Chair Thielen said ultimately, it would come through this Board if that were to change – currently, the entire white parcel is conservation district use under DPS. Both DPS and DOD agree that the white portions on this map, the areas external to the facilities could move forward for discussion to be placed in the NAR. This is something the NAR Commission and staff would be interested in taking the white areas and placing it in the NAR. What is before the Board in Item C-3 is a request to begin that process by taking that out for public hearing and should that go through a successful process there would have to be a sub-division or segregation of that area from the yellow portions.

It was questioned by Member Pacheco if this goes to public hearings and for whatever reason this land should be incorporated in the NARS is there language that would prevent that from happening. Mr. Kennedy answered negatively that it would have to go back to the NARS Commission because they approved this map and present the next map to them for consideration.

Member Pacheco asked Ms. Rubenstein whether the facility could be used as a conservation camp or for school groups or other paid things to generate revenue. She said that it's a possibility, but the expense of running the facility is remote and she would have to defer to DPS because she doesn't know the operations of the facility.

Member Gon asked what the nature of the transfer of relationship was now that DPS has phased out of Kulani and he supposed they left the Tri-Mountain partnership and is there any indication that DOD is entering to be a member of the Tri-Mountain. Ms. Rubenstein confirmed that DOD has expressed an interest in the Tri-Mountain Alliance or Partnership and are willing to allow on-going management activities to continue. Partnership staff and DLNR staff go there regularly to do management actions on the land and there haven't been any problems.

It was questioned by Member Pacheco with Kulani shut down and DPS has its land whether there is no trigger that this land automatically comes back to DLNR and DPS could keep this land even if they aren't operating a prison there. Mr. Atta asked this is the land around the prison area which was confirmed by the Chair. Mr. Atta explained that all their lands have the provision if the agency is no longer using it for the purpose it was set aside that it should be returned to DLNR, the Land Bank and for the disposition based on the Board's discretion. A cancellation of the Executive Order would do it. Chair Thielen said any transfer in the disposition of the management of these lands would come back through the Land Board and is under discussion, but in the meantime there has been a long term interest by the NARS to get these exterior areas for the NAR which is a separate issue from what will happen to the facilities, with who is going to manage it.

Chair Thielen asked for clarification with the lower property located in the agriculture sub-zone and not in the conservation zone referring to Item D-22 map. Mr. Atta confirmed that explaining that this property is a significance distance away from the Kulani site located in a sub-division along Stainback Highway. He reiterated Mr. Festerling's testimony that this is a staging/parking area for Kulani and what is being proposed is continued use of this site for similar purposes.

Member Pacheco wondered why DOD needs this RP now as opposed to later after other parts are approved. Lieutenant Colonel Mitsayoshi, Chief Engineer with (State) DOD testified reiterating the 25 year DOD MOA and why they wanted to immediately move there was PSD closed operations and someone needs to continuously maintain and occupy the Kulani site or there will be significant deterioration of operations. Currently there is personnel running the maintenance, security and maintaining access with DLNR. The long term goal is to open a Youth Challenge Academy scheduled to open in January 2011. The MOA has been in existence for seven months.



Member Pacheco asked if a state agency gives another state agency use of a property it has to come back to the Board. Chair Thielen explained for the upper area, Kulani site would have to come back to the Land Board and the two agencies are conferring which happens frequently when land is no longer used for a particular purpose. There maybe other land agents interested in the land. There is some consultation to work out some of the terms and bring that back to the Land Board. There is interest between all the consulting agencies agreeing that this external area could be considered for a Natural Area Reserve and to move forward with those public hearings simultaneously to finalize the consultation about the core facilities. Because the MOA has been signed and State DOD is helping to manage and maintain that area now there is an interest in transferring that staging area which is under an RP.

Member Pacheco asked for clarification reiterating the above that eventually the land will transfer from DPS to DOD with a Board action. Lieutenant Colonel Mitsayoshi confirmed that was correct noting that the requirement for that MOA is attached to funding. Without a certain commitment of the land they would not be able to get Federal funding to continue to maintain the land and move forward to get the school started by January. Member Pacheco asked whether that was because the RP doesn't allow and can't operate under the MOA. Mr. Atta explained under the set aside as the managing agency DPS can enter into agreements with other agencies to do certain things and that is how DOD can go in there while under DPS management jurisdiction and is allowed to do things on the land. Revocable Permits are different. They are issued to a specific agency and there's no provision allowing for assignment, delegation of duties and you have to identify the party using it. It is a temporary month-to-month RP which is specific to the user. Item D-22 is a housekeeping item because the current RP is issued to an agency that is not using the property and this action updates the RP with DOD who is using the property.

Member Pacheco wanted to be clear that the final reassignment will come back to the Board from DPS to DOD for the conservation area. The Chair said and, when they come back to the Board after the public hearings if there is support for the white areas on the map to go into the Natural Area Reserve there has to be a subsequent or demarcation of the area for the Natural Area Reserve which would have to come before the Board regardless of who ends up with the yellow area facilities because if it went into the NAR those portions would fall under the NARS and DLNR. The Lieutenant Colonel said that DOD is working with DOFAW and Fish and Wildlife to designate the boundaries to deem areas that qualify to become part of the NARS and directly impact the DOD operations. They are identifying that to have agreement on both sides. After Member Pacheco's inquiry the Lieutenant Colonel explained what is the State DOD - under it are the main divisions Army National Guard, Air National Guard and State Civil Defense and attached are the Office of Veterans Services and the Youth Challenge Academy.

It was asked by Member Morgan how does youth enter the Youth Challenge Academy. Rick Campbell, Director of the Hawaii National Guard, Youth Challenge Academy testified relating some background about their program for at-risk-youth in the State of Hawaii who would not complete their high school tenure which is a volunteer program

funded by State and Federal monies and all employees are State employees. He related the percentage that graduate, go on to college, enter the work force or go into the military. The program is currently at Kalaeloa and this will be a second program that will be run through the Hilo Community School for adults which is a competency based program to get a GED. Because it has been difficult to enter the workforce due to the economy many students try for military, but the standards have increased to enter needing some college education. About 300 apply and about 150 are not accepted. Chair Thielen related DLNR's Youth Conservation Corp Program. Mr. Campbell noted that Kulani offered a lot of vocational training which the competency program fits in – horticulture, auto shop and woodworking.

Member Pacheco commented that DPS couldn't afford to run that facility with the budget and DOD can. Chair Thielen said that would be a future Board item if the underlying Executive Order is to change it has to come back to the Board. Getting back to Item C-3 which is to begin the public hearing process for the NAR for the white areas in the conservation district surrounding the facilities and Item D-22 which is to extinguish the existing RP and establish a new RP for the staging area down in the sub-division, agricultural district from DPS to DOD.

Kat Brady came up to testify on Item C-3 apologizing for earlier and said they strongly support expanding the NARS area that this is a pristine forest that needs to be protected.

Ms. Townsend supports this.

Member Pacheco suggested for the future when there are items that are connected, but are in two different divisions create a cover letter or something to explain this because when the public sees this they see two separate things. It would help the Board to discuss these items in totality which helps the public to understand and to find a way to do that. Member Gon made a suggestion to place the items in sequence to be discussed which is before them today. Chair Thielen said when staff did the Recreational Renaissance they used "H" for Admin and they could do that for connected items.

Member Pacheco commented that he understands the need for maintenance up at Kulani and moved to approve Item D-22. Member Morgan seconded it. All voted in approval.

For Item C-3, Member Pacheco moved to approve it. Member Gon seconded it. All voted in favor.

Chair Thielen commented that area is astounding and suggested the Board members go up to see it.

**Item D-22      Unanimously approved as submitted (Pacheco, Morgan)**

**Item C-3      Unanimously approved as submitted (Pacheco, Gon)**

**Item J-2      Denial of Request for Contested Case Hearing by Attorney Richard Gronna on Behalf of Bernard Morry**

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) conveyed that staff received a petition for a contested case hearing from Mr. Gronna on behalf of Mr. Morry whose mooring permit had expired and the renewal process had not begun prior to the expiration date. In the past, DOBOR sent out courtesy reminder letters to people letting them know that their permit is about to expire, but last September they sent out a letter and posted it in their harbors informing people that they will no longer be sending out courtesy reminder letters because of the cost. They did print at the bottom of each billing statement when your mooring permit would expire. Unfortunately, for Mr. Morry he did not initiate the process prior to the expiration of the permit and according to the rule the permit automatically shall expire and it is offered to the next person on the wait list. Staff is here to determine whether a contested case hearing is warranted in this matter and upon consultation with the Attorney General's Office (AG) they said there is lack of standing to grant a contested case hearing on this matter.

It was asked by Board member Pacheco whether staff received Mr. Morry's information from his doctor and Mr. Underwood said he received it this morning. There is no provision for staff to waive that. The mooring permits have to be renewed prior to their expiration. The process has to have begun where staff receives the application, get the vessel inspected or surveyed which is good for two years. Member Pacheco asked whether the principle habitation permit is a separate permit and it is per Mr. Underwood which is similar to the recreational mooring permit that staff issues.

Member Pacheco asked whether there is an eviction process under State Law from a principle habitat. Mr. Underwood said he doesn't believe so and read HAR § 231-4 that there is no property interest in a live aboard permit. Deputy Attorney General Pam Matsukawa noted there is a landlord tenant relationship in the live aboard permit between DLNR and the permittee.

Member Goode asked whether there have been others who didn't renew their permit and Mr. Underwood confirmed that. Those accounts were closed and the permit was offered to the next person on the list. It was questioned by Member Goode whether people have appealed for more time. Meghan Statts, Oahu District Manager for DOBOR explained the only way for an extension is for a permittee to start his inspection prior to the expiration date. If someone says they can't do their inspection prior to the expiration date there are no extensions. She gave an example if someone came in the day before to start the inspection they are allowed a 30 day provision, but in this case nothing had started prior to the expiration date. Member Pacheco asked whether there is any grace period or notification process – the permit is automatically terminated. Ms. Statts confirmed that it is automatically terminated.

Member Morgan asked what happens to the boat. Mr. Underwood explained they can go on a temporary mooring permit for a certain amount of time depending on the harbor and the boat has to vacate the harbor once they've used up that time. Staff has considered a

grace period, but what happens when they come in after the 1 week grace period. They are going to still be in the same position.

Richard Gronna, counsel representing Bernard Morry testified that he was here for the determination on the part of the Board to renew the application of the use permit even though Mr. Morry inadvertently failed to re-up his application. He referred to HAR § 231-2 which is the application and HAR § 231-5 where he didn't agree with staff pointing out from 231-2(b) he read "in the process of the use permit nothing contained here and shall restrict the Department's power to waive the requirements of the section as the circumstances may warrant." It is his view that this gives the Board the ability in certain circumstance to review the application process and waive a procedural defect. Mr. Gronna explained that Mr. Morry is a long time resident of the Ala Wai who usually pays his mooring fee a month in advance and what happened was the Harbor Master's office didn't remind him about the use permit renewal and Mr. Morry didn't have any indication to abandon his use permit or move his vessel. When people abandon their use permit they have a desire to vacate the slip which is not the case here. They are contesting that there is a provision which does allow discretion on the part of the agency to renew the use permit in the event where there might be some underlying circumstance in the part of permit holder who might inadvertently miss the deadline. When you default you can contest with the courts to set aside a default. It isn't like Mr. Morry is living on land, this boat is his principle abode where this is also the circumstance of terminating his place of living. When the notice of vacate went out there was a list of places Mr. Morry could go to seek a residence. Under 231-5, after the first sentence it says "a permit will expire if it isn't renewed by the end of the year" it also doesn't disqualify you from renewing your permit even if it may have come up afterwards. "No use permit shall be renewed unless the conditions and covenants of the original issues including the requirement of prompt monthly payment of charges and advance have been met." They don't have a situation here where that wasn't done. Mr. Morry inadvertently lost track of his requirement to provide the harbor master with his intent to renew. Mr. Gronna is sure that if Mr. Morry went into the Harbor Master's Office and they gave Mr. Morry the form he would promptly fill it out. Sometimes when we rely on State agencies when they set out a course of conduct we sit and wait for them to follow through with it and we sometimes inadvertently forget to do it. The downside is the impact that this will have on Mr. Morry and their position is there is some discretion on the part of the agency, the Department to renew his license asking that this Board take that into consideration and that there is good cause to allow Mr. Morry to have his use permit reissued.

Bernard Morry testified relating some background information that he lives off of social security, how he had some lost money and lost his son. He was never late with his payments and is friendly with the staff at the Harbor Master's Office who told him 3 weeks ago that these are the rules and apparently he had broken that rule. The slip fees are being doubled and the live aboard fees will be tripled which he can't pay on his social security which causes him a great deal of stress resulting in the doctor giving him medication that causes him to forget things. Mr. Morry always got a renewal notice and he takes care of it immediately. When he came in to pay his rent in April the Harbor Master's Office had no explanation and said his permit is expired and he has to take his

boat out. Mr. Morry asked for a fair hearing and for the right thing to be done to allow him to spend his last years on his boat at the Ala Wai otherwise, he'll be homeless.

Member Pacheco asked whether Mr. Morry pays his monthly fees in advance and Mr. Morry said he pays it every month, not in advance and has never been late.

Member Pacheco moved to go into Executive Session in order to consult with their attorney on questions and issues relating to departmental permits, and questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities. Member Goode seconded that.

10:50 AM EXECUTIVE SESSION

11:15 AM RECONVENED

Chair Thielen reminded the Board that this is a recommendation to deny a petition for a contested case hearing.

Member Morgan said this is a difficult situation and from the Board submittal point of view it is a relatively simple decision based on no standing according to the Attorney General's Office. The difficult part is not being able to stay in the slip, but you are not out, you don't have to sell your boat and may have to move the boat several times. It isn't undue hardship or as easy as Mr. Morry would like it. Member Morgan made a motion to accept the recommendation to deny a contested case and Member Goode seconded it.

Member Pacheco agreed this is a tough one because we do have rules where you don't have a choice but to follow them and he would also have to accept staff's submittal. He encouraged the Division to work closely with Mr. Morry to make sure he is on any wait list or any other options to him and for the Department to work with Mr. Morry to get him back to a situation to where he was. Mr. Underwood said what staff can offer is to have Mr. Morry on the temporary mooring permit for the Ala Wai good for a 120 days and after that he would have to move to Ke'ehi as the next place because he could live there as a live aboard as well and staff will do what they cant to get him on a temporary mooring permit there and during this time he highly recommends getting back on the wait list. Ms. Statts has offered all the vacant slips out once and she is on her second round of offers where staff is dropping people off the wait list because they are not accepting the offer. The wait list is moving along and if Mr. Morry comes up quick enough he will be offered a slip. Mr. Morry said he isn't on the wait list because of the higher rates which he can't afford. Chair Thielen said she understands what he is saying, but even the existing rates are increasing and even if the permit were reinstated Mr. Morry would still face an increase. Mr. Morry didn't agree saying people who have been there a number of years are paying 20% per year over 5 years. New people coming in from the list pay the new double rate. Staff suggested he go on a temporary slip rate which is \$35/day and Mr. Morry asked why he is being penalized. He agreed he made a mistake, fine him, but to throw him out. Chair Thielen explained that the Board discussed the ability to change the

rules from the way they are written now to provide that option, but they don't have that option with the rules written now.

There was some discussion regarding reinstating Mr. Morry's permit, but the title before the Board is the contested case hearing. Chair Thielen said that the Board had some recommendations with their counsel and they are directing staff to work with Mr. Morry within the existing rules and look at amending the rules so that they have other options available to them in the future. The Chair asked for the vote and all voted in favor.

**Unanimously approved as submitted (Morgan, Goode)**

**Item J-1      Update on DOBOR's Proposed Hawaii Administrative Rules  
Amendment Package**

Mr. Underwood reminded the Board that staff came before them August 14, 2009 with amendment package A and B. B was the mooring fees. Subsequent to the meeting staff went through the public hearing process and the mooring fees were adopted and are in place now. Simultaneously, staff worked on A which focuses on all 3 parts of their rules. They went out to meet with the community to get input, the rules are on their website, they did form advisory panels that met twice and staff is still getting input from members of those advisory panels. One of the changes is getting out of approving operator permits which is being worked on. They've added some definitions to the parking rules. They've added language regarding significant others which was brought about by the ACLU and they are aware there are some grammatical errors, but the package with the AG's Office is being reviewed are the rules in Exhibit A and no more rules will be added at this time unless the Board wants to direct staff to add the one they went over. Once the AG's Office approves it then staff wants to begin the amendment process on that rule package. Staff will have to come back to the Land Board after going to the Small Business Regulatory Board and to a public hearing.

Chair Thielen noted that Exhibit A isn't in the submittal and the Board Secretary said that is all staff gave her, but it was posted on the DLNR website. Deputy Attorney General Pam Matsukawa said that there needs to be some re-writes, anyway and she thought it would be better if she worked with DOBOR to get those re-writes done. The Board members in order to make an informed decision should at least have those to make a decision, at least substantively and they don't even have those. Chair Thielen recommended deferring on this item and let the AG's Office work with DOBOR on the re-write to take into consideration some of the comments that were received and put it on a future agenda item where the Board members will get the exhibits and that way they can understand the testimony they are going to receive as opposed to getting it without having seen the exhibit. Then they can have some discussion between DOBOR and the AG's Office about whether to include a re-write of that one provision they were just looking at to provide some options. The Chair wasn't sure whether people still wanted to testify since the Board hasn't seen the rule package. One individual spoke saying he waited to testify since this morning, the Chair asked people to be concise since there will be no decision made today.

Bruce Lenkeit is a live aboard at the Ala Wai who related his personal background and who wants to live with his girlfriend on board his boat, but the rules don't allow that. There have been conversations with Mr. Underwood, the AG's Office and the Civil Rights Commission where you cannot discriminate against a significant other and DOBOR agreed. In their new definition on Section 13-230-21 which Mr. Lenkeit distributed is a good definition, but when you get down to 13-231-26(e) on who is eligible – a spouse can live aboard, but it doesn't address the significant other. At a previous Board meeting it was approved to rule where a significant other could be on a habitation permit and based on that DOBOR allowed his girlfriend to be on his habitation permit, but you can't park there.

Chair Thielen summarized that what Mr. Lenkeit wants in these amendments is to address the principle habitation permit as well as the other issues – eligibility. Staff will take into consideration Mr. Lenkeit's comments wanting both habitation and parking.

Dave Cooper testified that he had owned a few boat yards, ran a few marinas and has his boat at the Ala Wai, but he lives in the Ilikai. He wants the public to be part of the process during the re-write between Mr. Underwood and the AG's Office so that the changes are consistent. His written testimony was submitted. Chair Thielen said the Board has that and the AG's Office is looking over their comments of the draft for consistency and legality. Staff will publish what the re-writes are before they come back to the Board and also submit them to the Board members and if he has additional comments he may bring them forward at that point. Going out for a public hearing is the first step of the process. Especially if there are non-substantive changes just to make things more consistent those can be worked into that process. The written comments will be shared with the AG's Office as well as DOBOR staff as they go through the next round of draft.

Janet Mandrell asked whether the Board received her written testimony and they did not. She testified that she sat on the two advisory panel meetings and is familiar with all the versions and she related the changes between September 2009 and May 2010. The fee package today was not supposed to have the commercial in there, but makes it inconsistent with the submittal. Her concern was when the AG's Office signs off on the rule package there is no way to change it then it goes to the Governor and the public meetings should start earlier. It was suggested by Chair Thielen for Ms. Mandrell to provide her written comments on the draft rules because now is a good time for staff to get them in to the AG's Office to consider and Ms. Mandrell agreed. She noted that the 1996 rule changes have never been rolled into the draft rules today where she stressed having DOBOR incorporate them and to make the language understandable for the public.

Member Pacheco asked how many people participated at those meetings. Ms. Mandrell said at the September meeting she was the only one along with 3 other DOBOR employees. At the second meeting she contacted the 9 members where 5 didn't know about this meeting and there is a problem with notifying people.

Member Morgan moved to defer and Member Agor seconded it.

Member Pacheco inquired whether there was a process to roll back in previous changes. The Chair recommended that Board members who looked at the testimony that has come in and think are good suggestions to give your indication of that to Ed Underwood and the Chair. It would be a good indication to staff on what you're going to be looking for in the draft when it comes back from staff and the AG's Office. Even if the Board hasn't seen the draft they have all the testimony and you should identify the sections that need attention. Same as what we are asking the public to do by giving your input directly to staff on this. The vote was taken and all approved.

**DEFERRED (Morgan, Agor)**

**Item J-3      Approval for the Award of Contract IFB 10-009-11**

Mr. Underwood conveyed this is for a contract to perform services in the harbor on Oahu.

**Unanimously approved as submitted (Pacheco, Edlao)**

**Item F-1      Request for Authorization and Approval to Issue a  
Papahānaumokuākea Marine National Monument Research Permit  
to Dr. Ruth Gates, University of Hawaii, Hawaii Institute of Marine  
Biology, for Access to State Waters to Conduct Coral-Endosymbiont  
Research Activities.**

Bob Nishimoto representing Division of Aquatic Resources (DAR) presented Item F-1 which is to identify robust paleogeographic indicators of coral diseases and bleaching susceptibility which is an indication of any kind of stress in the Northwest Hawaiian Islands (NWHI). A maximum of 40 coral colonies will be sampled from both French Frigate Shoals and Pearl and Hermes for a total of 80 samples. The sample from each coral would be less than 1 cm which is less than parrot fish feeding on the coral. The sampling poses no significant threat to the coral colony. It is in accordance with Chapter 343. Staff recommends approval of the permit with conditions attached.

Chair Thielen said that the Board members are more familiar with the format now after an extensive briefing at a previous Land Board meeting and she suggested walking through Items F-2, F-3, F-4 and F-5 first because that would be most efficient. The Board agreed.

**Item F-2      Request for Authorization and Approval to Issue a  
Papahānaumokuākea Marine National Monument Research Permit  
to Stephen Karl, University of Hawaii, Hawaii Institute of Marine  
Biology, for Access to State Waters to Conduct Temperature  
Monitoring of Coral Reefs Research Activities.**



Mr. Nishimoto reported that this project will be done at French Frigate Shoals and Pearl and Hermes Atoll which is to recover data loggers currently have in the field at these sites. The applicant proposes to sample 3 square cm samples of coral from no more than 50 individuals of lace coral and lobe coral at each of 5 reefs for a total of 250 of each species per atoll. It was found that these coral are clones of the same parent. Staff recommends approval of the permit with conditions attached.

**Item F-3      Request for Authorization and Approval to Issue a  
Papahānaumokuākea Marine National Monument Research Permit  
to Christopher Winn, Hawaii Pacific University, Oceanic Institute, for  
Access to State Waters to Conduct Water Analysis Research  
Activities.**

Mr. Nishimoto conveyed that the applicant will collect water samples from various depths and locations within the Monument to analyze and characterize the carbon chemical make up. Staff recommends approval of the permit.

**Item F-4      Request for Authorization and Approval to Issue a  
Papahānaumokuākea Marine National Monument Research Permit  
to Dr. Randall Kosaki, National Oceanic and Atmospheric  
Administration, Papahānaumokuākea Marine National Monument,  
for Access to State Waters to Conduct Surveys of Deep Coral Reefs.**

It was communicated by Mr. Nishimoto that Item F-4 is similar to previous items where Dr. Kosaki proposes to explore and document the biodiversity of the Monument's deep coral reef which includes characterizing the fauna presence and absence of alien species in those reefs. He'll use diver survey and video recorders. Divers will look for the prevalence of alien species – snowflake coral and red algae and collect specimens if found. There will be no more than 12 samples collected this year.

**Item F-5      Request for Amendment to Papahānaumokuākea Marine National  
Monument Conservation and Management Permit PMNM-2010-016,  
Previously Approved to Dr. Kelly Gleason of the National Oceanic  
and Atmospheric Administration, Papahānaumokuākea Marine  
National Monument, to Add Additional Artifacts for Recovery.**

Mr. Nishimoto explained that this is to collect additional artifacts from an unidentified whaling shipwreck at French Frigate Shoal where he described who or where this ship came from. When this ship is identified it will be eligible for the National Register of Historic Places. Staff recommends approval of the amendment with conditions attached. Board member Gon asked what the total run of years is on some of these projects – is it open ended, continued year after year, run a 5 year course, 8 year course – is there any indication of that.

Dr. Randall Kosaki, Deputy Superintendent with NOAA's Papahānaumokuākea explained some are finite projects giving Dr. Karl's project as an example which is a 1 or

2 year project. His project is on-going and could be open-ended where his staff is hoping to establish a baseline of zero and monitor that to see if it stays zero. The other part of his project is looking for new fishes and new species in the NWHI giving the example of deep coral reefs that have never been dived on before resulting in a lot of things never seen before and when they go back later those things diminish. They've increased the number of known fishes by 10-15% which is a significant bump up for known biodiversity. If they go back to those spots this year they may find 1-2% and next year a half percent which may not be worth doing. They are going to hit islands that they haven't been to before and this exploratory phase will continue for the next 2 or 3 years then transition to a monitoring program for these deep reefs from sampling for specimens to data.

Dr. Kosaki was also here for Dr. Kelly Gleason on Item F-5 who couldn't be here. Last year they found one harpoon tip which they sampled, but during the last cruise they found 4 more and these are the potentially diagnostic artifacts Dr. Gleason was looking for from this wreck. He related information regarding the two brothers associated with this wreck noting that as more wrecks are found they may ask for more permit requests.

Christopher Winn testified that he anticipates his work for Item F-3 will continue beyond his lifetime. The nature is not clear at this time because the methods and technology is evolving over time. They are trying to establish the baselines for the carbon conditions in the surrounding Hawaiian chain and this is an issue for the future. As the ocean continues to accumulate carbon dioxide what is added into the ocean changes the pH of the ocean which has potential impacts to the organisms in the sea. Mr. Winn's intention is to establish this properly to continue in the long run and they started this last year.

Dr. Stephen Karl, a researcher from HIMB testified that their project began 5 years ago and this is the end of this project (Item F-2). It was to understand how coral reefs were constructed from a genetic basis so that when they become deconstructed from damage or disease there is a perspective to mitigate that. They worked with the Monument so they can provide management based on science and he hopes to continue working on the management. They will have summary reports, semi-annual public presentations and there will be publications which he will send to the Board members.

Michael Stat testified that he is a researcher on Item F-1 with Ruth Gates for the past 5 years. Some of those projects will close at the end of this year which is to understand the baseline diversity and to look for indicators that impact the marine ecosystem. They are at the point where they've developed tools and the on-going work is applying those tools to look at the impacts of thermal stress, climate change, etc which will transition to monitoring.

Marti Townsend representing KAHEA commended staff's efforts on the permitting process which are well done, but still had recommendations for improvement which she distributed. But, she wanted to highlight that the ships are still not being permitted properly and she's concerned that when the next crop of ship permits come up there isn't an environmental assessment done or an exemption that allows ship operations to be

exempted from the EIS rules. Staff is making a good effort which is an indication of things to come and she looks forward to working with staff to improve on these suggestions.

A motion was made by Member Pacheco to approve Items F-1, F-2, F-3, F-4 and F-5 as submitted. Member Agor seconded them. All voted in favor.

**Unanimously approved as submitted (Pacheco, Agor)**

**Item M-1      Modification No. 1 to Lease No. DOT-A-98-0019 U.S. Federal Aviation Administration Lihue Airport**

**Item M-2      Modification No. 2 to Lease No. DOT-A-06-0016 FAA Agreement No. DTFWP-07-L-00043 U.S. Federal Aviation Administration Kona International Airport at Keahole**

Darcy Young representing the Federal Aviation Administration testified that she wanted the Board to understand the urgency of getting these modifications through because of funding issues as well as improving these facilities where she described the challenges of getting funding and related some background on the Keahole Airport.

**Unanimously approved as submitted (Gon, Agor)**

**Item D-10      Grant of Term Non-Exclusive Easement to O. Joachim and Inge J. Granzow, Trustees of the O. Joachim Granzow and Inge Granzow Family Trust Dated June 1, 1990, and Joachim Wilhelm Granzow and Christian Lars Granzow, for Seawall Encroachment Purposes, Waiohuli-Keokea Homesteads, Kihei, Maui, Seaward of Tax Map Key:(2) 3-9-012:004.**

Mr. Atta said that this is a standard request and that Yvonne Izu was here to speak on this item.

Yvonne Izu representing the Granzows requested to work out a payment plan in the event that the appraisal comes in at an amount that is difficult for them to do a one time payment on.

The Chair asked if this was within staff's authority and Mr. Atta said the Board would have to grant that. Land Division doesn't have a problem with it.

There was some discussion on a deferral, but Ms. Izu doesn't want to do that and would rather work out a payment plan. The Board suggested and agreed to revising recommendation 3.D. by adding after the word conditions "including payment as". Mr. Atta suggested since the property is up for sale and there are other alternative payment

structures that they could negotiate like having them coming out of escrow or other ways of getting this resolved and making that language as flexible as possible subject to Chair approval. Chair Thielen suggested changing the above to "including means of payment" and the Board would delegate that to the Chair to work with staff which the Board members agreed to.

**The Board:**

**APPROVED AS AMENDED.** The Land Board amended the submittal by changing staff recommendation number 3.D. to read as follows: "Such other terms and conditions, such as the means of payment, as may be prescribed by the Chairperson to best serve the interests of the State." Otherwise, the Land Board approved staff's recommendations as submitted.

**Unanimously approved as amended (Pacheco, Morgan)**

**Item D-4      Grant of Term, Non-Exclusive Easement to Randall C. Roe and Jilda V. Loomis for Vehicle Access Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-09: 54.**

Mr. Atta conveyed that this is for a driveway that encroaches onto State land and there is a standard \$500 fine attached to it.

Randall Roe testified that he didn't have anything to add and he agreed with the conditions as questioned by Member Gon.

**Unanimously approved as submitted (Agor, Gon)**

**Item D-17      Amend General Lease No. S-5904 for Private Noncommercial Pier Purposes; Stevan M. Bailey, Lessee; Kahaluu, Koolaupoko, Oahu; TMK (1) 4-7-030:seaward of 018.**

Mr. Atta said this was a correction to the lease because the area of the pier changed.

**Unanimously approved as submitted (Morgan, Pacheco)**

**Item D-21      Denial of Request for Contested Case by Ms. Margaret Wille; Denial of Request for Joinder in Requestor Margaret Wille's Formal Written Request for a Contested Case Hearing by the County of Hawaii.**

Mr. Atta reminded the Board that this is from a previous agenda item involving the Lalamilo Estates and the road reservation that was specific for the Waimea By-Pass Highway. The County wants to use the reservation for a different road, but due to the specific nature of this dedication staff can't do that. There is a County representative here to speak.

Gerald Takase testified that the County assumed that the Board wasn't going to make a decision at the December 2009 Land Board meeting, but they did. The County is appealing to the Board that it is still being used for the Waimea By-Pass Highway rather than being a State entity it will be a County entity. They read the language of the reservation that talks about the State of Hawaii assigning successors and they feel that the County has become the successors in many cases in dealing with State roadways that the State no longer wishes to pursue where the State turns over to the County and the County has been accepting more of them. In this case, the State has recognized the new alignment where they will make a new Waimea By-Pass about 5 miles out of town and run from the Mamalahoa Highway all the way down to Kawaihae. The roadway in this instance was a much shorter jog, about a mile in length to by pass the critical intersection of Lindsey Road and Mamalahoa Highway. The County started proceeding once they learned the State was looking at a new alignment back in 2007 where they appropriated money and are in the environmental review process now. The County is committed in going forward. They have been working with the owners in the area trying to recognize their position as farmers. The By-Pass itself would become an agricultural set back area. Unfortunately, based on the action of this Board they can build up to that area pushing the County over another 100 feet and will have to move 200 feet into Parker Ranch land. This is the reason why they are here and the County wants to join in Margaret Wille's case. The County has the same concerns as the Board in protecting the farmers, but they also have the concerns of the greater Waimea area. They are committed to this project and asked the Board's consideration.

Mr. Atta noted that Ms. Wille did send in a request to defer this matter, but it's the Department's perspective that they see no reason why they should defer or delay this matter because the finding was she had no standing.

It was communicated by Member Pacheco that Ms. Wille is not one of the Lalamilo farmers; she doesn't have any land interests in the area and is part of the general public who wants this by pass which Mr. Atta confirmed.

There was some discussion over whether the County submitted a petition for a contested case hearing at the last Board meeting on this matter and they did not. Ms. Wille did and now the County is requesting to join this contested case. A Board member asked whether there is a statutory limit on joining and Mr. Takase said that procedurally this is all they could ask for to get back into the case. Chair Thielen explained that Ms. Wille submitted a petition and the County did not, but the guidance from the AG's Office is neither has statutory standing for a contested case hearing.

Mr. Takase referred to written testimony submitted at that last Board meeting by Department of Planning and Department of Public Works outlining Mr. Takase's oral testimony today that they are still planning to use the right-of-way and they've expended money to implement the plans. Member Pacheco confirmed that the County wanted to transfer the set aside from the State DOT to the County. But, the ruling from the Board's counsel was because of the restricted language on the set aside you couldn't do that. That set aside is gone and is now a road reservation. Mr. Atta confirmed that the Board action

authorized removal of that reservation, but couldn't say whether or not it was removed from their deed. Mr. Takase said that because this matter is pending it hasn't been done yet.

The Chair noted what they have is the County wants the Board to reconsider the decision and the County's position was made on record when that original decision was made. It was noted by Board member Goode that he asked whether anyone was here from the County (at the last meeting on this) and no one was. The letter from Department of Public Works said the connector would be located through or in the vicinity of the subject road reservation and that language led the Board to say its not here, it might be in this vicinity, but not exactly here which was why the Board sided with the request before them. Mr. Takase said they have been working with the land owners and are willing to move the road away from them and the County wants some kind of concession that the land owners won't hold the County to another 100 feet set-back.

Chair Thielen said that the County has the authority under their jurisdiction to condemn land if they want to. For her as a Board member, the County gave the Board a written document and did not come to the meeting. They knew these farmers were coming to advocate the removal of the roadway easement. The Board went through a deliberative process and made a determination. The County didn't file for a contested case hearing at that time and now seek something she isn't sure is under their rules to join on to someone else's where the attorneys are saying you don't have standing for a contested case. You may or may not be putting the roadway in and it may or may not be in this area. You are in negotiations with the farmers and what you are asking the Board to do is to give you leverage in that negotiation. She questioned why they wouldn't be using their County's authorities for public purposes to negotiate with them directly if that is where you want to put the roadway. Mr. Takase acknowledged the County can. It's a matter of condemning 200 feet more rather than a 100 feet.

Member Pacheco noted another issue - he agrees with the lot owners that they were told years ago that DOT had no intention of using that reservation and many of the owners have proceeded to use that reservation where some had buildings on the reservation area. It is problematic for the Board. Chair Thielen said that what is problematic is if this went to a contested case hearing all those land owners would have to go hire an attorney and they came to the last meeting representing themselves before the Board. She thinks the County has avenues to proceed if they want to proceed with the roadway.

It was questioned by Member Pacheco whether DOA was requiring a larger set back of 800 feet and Mr. Takase said would put it to Lindsey Road.

There was some discussion about the County joining this item. The Chair reiterated the AG's guidance that there is no property interest for Ms. Wille. Mr. Atta said that in order to join in a contested case you must have a contested case hearing. What we have is a denial of that and there is no contested case to join.

Chair Thielen pointed out recommendation A and B.

Member Pacheco made a motion to approve and Member Agor seconded it.

**Unanimously approved as submitted (Pacheco, Agor)**

**Item C-1      Extension of a Memorandum of Understanding (MOU) between the Department of Land and Natural Resources' Division of Forestry and Wildlife (DOFAW), and the Koolau Hunter Volunteer Group (KHVG), to Facilitate the Management of Public Hunting in Portions of the East Maui Watershed and the Koolau and Makawao Forest Reserves.**

**Item C-2      Authorization for the Chair to Sign a Memorandum of Understanding with the Student Conservation Association**

Mr. Kennedy said there were no changes that these were standard MOUs and he recognized Michelle Jones with YCC (Youth Conservation Corp). The Chair acknowledged YCC's work.

**Unanimously approved as submitted (Pacheco, Gon)**

**Item E-1      Request for Approval of Annual Renewal of Three (3) Revocable Permits at Ahupua'a O' Kahana State Park for Residential, Agricultural and Pasture Purposes**

**Item E-3      Request Approval of and Issue New Revocable Permits for Use of State Parks Lands on the Islands of Kaua'i, O'ahu, and Maui**

**Item E-5      Request Approval to Enter into Memorandum of Agreement between the Department of Land and Natural Resources and the National Park Service to Repair and Stabilize Archaeological Sites Damaged by the October 2006 Earthquakes; Lapakahi State Historical Park, North Kohala, Hawaii Island, TMK: (3) 5-7-001:002**

Mr. Quinn conveyed he had nothing to add and that for Item E-5 the National Park Service will help to rebuild Lapakahi State Historical Park if they are able to lock up the money by the end of fiscal year. And, staff will have all the RPs expire at the end of this calendar year so that when they come back it will be once like Land Division.

**Unanimously approved as submitted (Morgan, Gon)**

**Item E-2      Requesting Approval to Set Entry Fees at Select State Parks, Monuments, Recreation Areas and Waysides and to Authorize the Chairperson to Conduct an Invitation for Bids, Concession Agreement or Other Public Process Such as a Request for Proposals and to Award or Enter into an Appropriate Agreement or Permit for Either Entry or Parking Fee Collection.**

Curt Cottrell representing State Parks briefed the Board reminding them that last year during the Recreational Renaissance staff got rule approval, went through public hearing, the Board approved it, it was signed by the Governor to charge entry fees, but pursuant to our administrative rules the Land Board sets the entry fees. What staff needs now is greater flexibility and the data looks good generating \$26,000 since March in parking revenue off of the Pali. Staff will be going to Maui to do public meetings on Iao Valley parking. The fees before the Board replicate the parking fees, but for entry fees they will charge a \$1 per person fee giving the example of Akaka Falls because of the small footprint of the parking lot where most tour buses park outside and people walk in. The parking fees are working seamlessly at the Pali where there are 2 machines – one for rental cars and one for tour companies. All the tour companies do is enter a code or swipe a card and they are billed at the end of the month. Staff is looking to replicate the same system across the state; however, they do need the flexibility to charge either a parking fee or a entry fee, but they will not charge both. Koke'e would more likely be an entry fee.

Chair Thielen asked he doesn't have for Oahu, Nu'uaniu Pali and there was a request from the taxi drivers for the option to drop people off and catch the walk-in to give either or. She suggested listing Nu'uaniu Pali to keep the option available as he goes through working out the kinks with Diamond Parking in the event he does an RFP that he could do an either or. The Chair reassured the Board members that it is one or the other and it's not double dipping where Mr. Quinn said he would like the Board to consider doing that. Mr. Cottrell read the policy set by the Board that it's not in the list, but it is in the description. The Chair wants to make it clear in the recommendation instead of identified park locations they should list which ones with proposed entry fees. She suggested in the recommendation striking [at the identified State Park locations] and adding list the parks under Hawaii, Maui, Kauai, Oahu Nu'uaniu Pali and Kaiwi. Mr. Cottrell suggested saving Kaiwi for a future Board discussion based on some covenant that came with the acquisition of that property that render the application of parking fees less recipe driven than what they have. The Chair said it wasn't mentioned earlier. She thinks that's fine. The Board approved and set entry fees which maybe placed in lieu of parking fees at the following park locations which gives them the option to do either parking or entry fees. Giving Makena as an example we may not want to do parking fees because people will park all over the road causing traffic problems where Member Pacheco noted that was done the last time and the Chair confirmed that. She did want to make it clear in the recommendation by listing the parks.

It was questioned by Member Edlao whether there will be public hearings where Mr. Cottrell said not hearings that the Board directed staff prior to set up the charge. Staff would go to each island to have a public informational meeting. Some points were mentioned about Makena and Iao by Member Edlao. There was some discussion about the length of time spent at Iao.

Mr. Quinn displayed the new editorial section from the Honolulu Star Advertiser. Also, Member Agor asked whether the Diamond Head Trail will have bicycles and they do. It's a multi-use path.



A motion was made by Member Morgan to approve amending staff's recommendation by deleting [at the identified State Park locations]and adding list the parks under Hawaii, Maui, Kauai and Oahu Nu'uanu Pali. Member Gon seconded it.

**Unanimously approved as amended (Morgan, Gon)**

**Item F-6      An Informational Briefing on the April 20, 2010 Closure of the State's Bottomfish Fishery**

Chair Thielen explained to the Board that this is for future action, but is not an action item.

Francis Oishi representing DAR reported on the results of the recent fishing year where staff came to the Board on April 8<sup>th</sup> to ask approval to close the bottom fishery on or about April 20<sup>th</sup> where this was the anticipated date that the total annual quota was to be reached. The 2009-2010 quota was set at 254,050 lbs. by the Federal/NOAA Fisheries. Staff got the Board's approval to close and the Federal Fisheries closed on April 20<sup>th</sup> as well. About May 28<sup>th</sup> the total amount of fish that came in was 208,000 lbs. of bottom fish was harvested during the year which is about 80% or 18% shy of what the total was set at. In setting the date, the State and Federal Fisheries relied on reported catches and they have to estimate about when they will hit the total. By March 31<sup>st</sup> it was reported that they had reached 85%. After the closure staff discovered a computer error and what resulted was a duplication of some of the reports for January and February where the closure came earlier than what it should have been. That computer error has since been fixed and additional measures are in place to screen for duplicate records, but the 208,000 lbs. is correct.

Chair Thielen pointed out that staff is trying to estimate in advance when to hit the tack and do this in a public meeting where in the pass they went over the tack, but the fishing wasn't closed. People may have complaints about this, but they have fixed the computer glitch and since it went over 10% over the past 2 years its evens it out. There were some discussions where it comes close to the 3 year total. Mr. Oishi said that some fishermen may not feel that way. Member Agor said he would get Mr. Oishi in touch with a Kauai fisherman who doesn't agree with the closure.

**Item L-1      Certification of Election of Hana Soil and Water Conservation District Director**

**Item L-2      Approval to Execute Supplemental Contract No. 1 to the Agreement for Professional Services, Contract No. 43971, for Job No. 8-HW-M, North Kona Well Sites Planning and Land Acquisition, Kona, Hawaii**

**Item L-3      Certification of Election and Appointment of West Oahu Soil and Water Conservation District Directors**

**Unanimously approved as submitted (Agor, Morgan)**

- Item M-3**      **Authorization of Bill of Sale to the Water Board of the County of Hawaii for Water Line System Improvements constructed on the County of Hawaii's Property known as the Kynnersley Tank #1, North Kohala, Hawaii, Tax Map Key: (3) 5-4-2:8**
  
- Item M-4**      **Amendment No. 14 to Lease No. DOT-A-92-0018 Restaurant and Lounge Concession Lease Host International Inc., Honolulu International Airport**
  
- Item M-5**      **Lease of Office Spaces to United States of America, General Services Administration, Acting for and on behalf of U.S. Drug Enforcement Administration, at Honolulu International Airport**
  
- Item M-6**      **Amendment No. 1 to Premises Lease No. DOT-A-09-0059 Avis Rent-A-Car System, LLC, Hilo International Airport**
  
- Item M-7**      **Amendment No. 1 to Retail Concession Agreement No. DOT-A-09-0002, DFS Group L.P. Honolulu International Airport**

**Unanimously approved as submitted (Morgan, Agor)**

- Item D-1**      **After-The-Fact Assignment of Sublease of General Lease No. S-3852, Nextel WIP Lease Corp. dba Nextel Partners, Assignor, to TowerCo LLC Assignee, and the Consent to the Five Year Extension of Sublease to TowerCo LLC, Waimea, Kekaha, Kauai Tax Map Key: (4) 1-2-02: por. 06.**

It was questioned by Board member Morgan why the rent went down so much. Mr. Atta said he questioned that too and they haven't gotten an answer back.

Member Morgan motioned to defer and Member Goode seconded it. All were in favor.

**Deferred (Morgan, Goode)**

- Item D-20**      **Forfeiture of Revocable Permit No. S-7282, Lara Butler dba Keapana Horsemanship, Permittee, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 3-9-02 : portion 20.**

Mr. Atta conveyed that Lara Butler did send in a check, but it was after the cure date and staff hasn't cashed it yet. Staff's recommendation was going to be the same because Ms. Butler has a long history of delinquencies and problems with her lease where the Humane Society went in charging her for animal cruelty with many of the horses she had stabled there and she is currently under investigation for that. The Humane Society physically removed the 100 or so horses from the site hoping she will relinquish them. Eventually the check will be cashed because the recommendation authorizes staff to keep everything they've received and apply to delinquency.

Member Pacheco asked whether Ms. Butler is running a commercial operation on the land and is the rent minimal or a percentage. Mr. Atta confirmed the commercial operation and that the rent is a minimal amount because this is all ag pasture that staff doesn't collect a percentage on pasture leases. The rent is nominal, but Ms. Butler has extreme difficulty keeping up with that where staff has to keep going back to her to issue an NOV. Staff just issued another one for an insurance issue because they discovered it was proof of pending insurance. Mr. Agor said the land can be irrigated where more farmers are looking for land and Mr. Atta noted this is part of the Kalepa lands that staff is in the process of transferring to ADC.

**Unanimously approved as submitted (Agor, Pacheco)**

- Item D-2      Cancel Land Office Deed No. 27347 to Vern W. Bishop and Laverne S. Bishop and Issue a Grant of Perpetual, Non-Exclusive Easement to Laverne S. Bishop, and Kauai Island Utility Cooperative for Access and Utility Purposes, portion of Kalaheo Homesteads, 1st Series, Kalaheo, Kauai Tax Map Key: (4) 2-4-01:5.**
- Item D-3      Amend Prior Board Action of May 13, 2005, Item D-1, RE-SUBMITTAL – Withdrawal from Governor's Executive Order No. 2375 and Reset Aside to County of Kauai, Department of Water for Water Tank Purposes; After-the-Fact Grant of Perpetual, Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes; and Issuance of Immediate Construction Right-of-Entry to County of Kauai, Department of Water; Kalaheo Homesteads, 1st Series, Koloa, Kauai, Tax Map Key: 4th/2-4-4: portion 5.**
- Item D-5      Amend Prior Board Action of August 24, 2007, Item D-1, Set-Aside to Board of Water Supply, County of Kauai for the New 0.5 Million-Gallon Water Storage Tank, Accessory Facilities, Drainage Purposes, Kapaa Homesteads, 1st Series, Kawaihau, Kauai, Tax Map Key: (4) 4-6-003:010 and 12.**
- Item D-6      Rescind Prior Board Action of May 12, 2006, Item D-6, Consent to Assignment of General Lease No. S-5142, Cynthia Lee Kuahuia Baeza to Larry Patrick Kuahuia.**
- Item D-7      Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation the Reeds Bay Mooring Area, Waiakea, Hilo, Hawaii, TMK: (3) 2-1-06: Seaward of 77**
- Item D-9      Rescind Prior Amended Board Action of September 9, 1988, Item F-1-f, for Issuance of a Revocable Permit to William G. Fisher for the Development of a Freshwater Spring at Waipio Bay, Haiku, Maui, TMK: (2) 2-9-007:017.**

- Item D-11**     **Grant of Term, Non-Exclusive Easement to Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable Living Trust Dated February 27, 2003 for Seawall Purposes, Lahaina, Maui, Tax Map Key:(2) 4-5-003:025 Seaward.**
  
- Item D-12**     **Amend Prior Board Action of February 9, 2007, Item D-6, for Grant of Term, Non-Exclusive Easement to Thomas R. Brayton and Christine D. Brayton for Seawall Purposes, Lahaina, Maui, Tax Map Key: (2) 4-6-003:Seaward of 005.**
  
- Item D-13**     **Issuance of Revocable Permit to Oahu Hawaiian Canoe Racing Association for the Molokai Hoe Race Event at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portions of: 021.**
  
- Item D-14**     **Cancellation of Governor's Executive Order No. 2089 and Reset Aside to the City and County of Honolulu for Beach Park and Police Station Purposes; Rescind Prior Board Action of October 22, 1999, Item D-16, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-6-001:015 and 019.**
  
- Item D-15**     **Set Aside to City and County of Honolulu for Public Access Purposes; Amend Prior Action of October 8, 2004, Agenda Item D-13, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-021:portion of 054.**
  
- Item D-16**     **Amend Prior Board Action of August 11, 2006 (Agenda Item D-6), Sale of Remnant to Michael C. Davis and Michelle L. Davis, Halekou-Waikaluakai Homesteads, Kaneohe, Oahu, Tax Map Key: (1)4-5-077:059 (Portion)**
  
- Item D-19**     **Amend Prior Board Action of May 13, 2010(Agenda Item D-21), Issuance of Revocable Permit to Envisions Entertainment and Productions, Inc. for Aerial Fireworks Display at Honouliuli, Ewa, Oahu, Tax Map Key:(1)9-1-057:seaward of 29.**

Mr. Atta had no other changes.

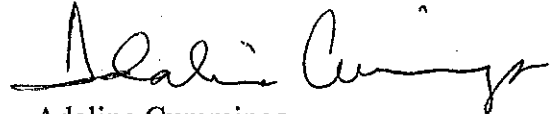
**Unanimously approved as submitted (Pacheco, Gon)**

The Board may go into Executive Session pursuant to Sections 92-4 and 92-5(a)(4), Hawaii Revised Statutes (HRS), in order to consult with its attorney on questions and issues relating to departmental permits, Chapter 343, HRS, and personnel matters, as pertaining to the Board's powers, duties, privileges, immunities and liabilities.

**Adjourned (Pacheco, Goode)**

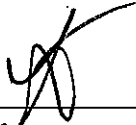
There being no further business, Chairperson Thielen adjourned the meeting at 12:52 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



Laura Thielen  
Chairperson  
Department of Land and Natural Resources