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

DATE:	FRIDAY, DECEMBER 12, 2008
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 9:09 a.m. The following were in attendance:

MEMBERS

Laura Thielen
Jerry Edlao
Ron Agor
Rob Pacheco
Tim Johns
Dr. Sam Gon

STAFF

Bin Li, ADMIN
Randolph Lee, HP
Dan Quinn, SP
Dan Polhemus, DAR
Athline Clark, DAR
Ken Kawahara, CWRM
Paul Conry, DOFAW
Morris Atta, LD
Sam Lemmo, OCCL
Tiger Mills, OCCL
Gary Moniz, DOCARE

OTHERS

Pam Matsukawa, Deputy Attorney General
Linda Chow, Deputy Attorney General
Don Bryan, Item C-6
Scott Enright, Item C-6
Michael Barton, Item C-6
Jennifer Benck, D-9/D-10
Lisa Hirahara, D-9/D-10
Thaddea Pitts, Item D-12
Michael Barton, Item D-6
Ted Myers, Item E-1
Greg Mooers, Item K-1
Sandra Wilhide, Item K-3
Susan White, Item F-1
Keonipa'a Choi, Item H-1
Jerome Yasuhara/OHA, Item H-1, K-3
Will Zephalack, Item C-6
Alizia Paris, Item C-6
Mike Formby, Item M-1, M-3
Randy Mori, D-9/D-10
Terry Tamble, D-9/D-10
Nancy Burns, Item D-11
Ronnie Grover, Item E-1
William Foulk, Item K-4
Michael Kumukauoha Lee, Item K-3
Mary Emerson, Item D-20
Aulani Wilhelm, Item F-1

Marti Townsend, Item F-1
Bill Chandler, Item K-2

Emily Gardner, Item K-2
Joyce Chandler, Item K-2

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

Item A-1 November 14, 2008 Minutes.

Rob Pacheco recused himself.

Amended minutes were distributed to the Board

Approved as amended (Agor, Edlao)

Item H-1 Request for Final Approval to Adopt Chapter 13-1, Subchapter 7, HAR, Relating to the Civil Resource Violations System, and to Amend and Compile Chapter 13-1, HAR, Relating to Practice and Procedure of the Department

Pahio Resorts, Noa Napoleon, and KAHEA submitted written testimony.

DLNR Administrative Coordinator, Bin Li, described the subject matter and history of holding 2 rounds of public informational meetings on all the major islands, and explained the process. These meetings were well received by the community and that more was accomplished in the meetings rather than the formal public hearings. Some people had concerns, but no opposition. There were a number of meetings with staff and the Department of the Attorney General. The current version addressed most of the people's concerns.

Keonipa'a Choi from Moku 'o Keawe (Big Island) asked whether these rules have any effect on Hawaiian subjects. Chair Thielen said that all DLNR laws and rules would be subject to the constitutional provisions that protect native cultural and gathering practices. Mr. Choi asked that the culture has no legal definition and does this affect their customs. Chair Thielen said that anything that is a legal right would not be affected by these rules. Mr. Choi said then it doesn't apply to Hawaiian subjects. Chair Thielen described if someone wants to use the State boat ramp and doesn't have a trailer sticker they can't use it. It doesn't matter whether you're Hawaiian or from any other ethnic background the rule still applies to you. Mr. Choi asked whether these rules have any extra territorial affect outside of the State of Hawaii or the United States. Where are the meets and bounds of the State of Hawaii? Mr. Choi explained that we are in the Hawaiian Kingdom now, that this is affecting his rights and wants to know whether this violates his constitutional rights, his vested and civil rights from 1839. He cited the 1852 constitution, being vested by the Mahele, civil and penal code that these rights are not violated. There are other rights that are not constitutional. Mr. Choi supports rules against the abuse of Hawaiian resources that these resources are not for foreigners who

have no rights in his country (the Hawaiian Kingdom) and felt that some of these fines are too low. These fines should be quadrupled for violators. Will $600 be assessed to him every time somebody gives him a ticket for fishing or gathering in the mountains? The entire document has not gone out to public hearings nor has the Hawaiian Kingdom been noticed. Mr. Choi reiterated his question whether these laws will have any affect on the Hawaiian Kingdom.

Jerome Yasuhara for the Office of Hawaiian Affairs (OHA) asked that the Board to seriously and carefully consider their comments dated October 6, 2008. Focus on what OHA wrote instead of what staff had written because they misconstrued the meaning and intent of what they are pushing forward. He doesn't want to see any more allegations of enforcement action to OHA's constituents which in their view constitute violations of constitutional, statutory and protected rights that Native Hawaiians have. This proposed CRV system needs more critical analysis and discussion because it is jumping ahead too fast. Mr. Yasuhara described the traffic violation model that this is based on which has various tiers of adjudication. Some punishment could be quite severe in terms of fines. If this is modeled by the traffic violation law, then have the formalities associated with them. Under HRS 10-3, OHA shall be afforded apportion not less than 20% of all revenues.

Member Pacheco asked whether he had a problem with the process that's in place now for violations of the rules. Mr. Yasuhara acknowledged that it's too open ended and it gives too much power to enforcement agencies. He gave examples in criminal law, but here people are left on a lurch where enforcement can cite for anything because there is nothing in the statute that tells you what is allowed to do. Many OHA beneficiaries have reported abuse of enforcement, and OHA wants to see that their beneficiaries wouldn't be unduly harassed and have it set in writing what is considered violation because many of the enforcement actions are considered by OHA beneficiaries violations of their rights. Mr. Yashuhara reiterated OHA wants all the October 6th comments implemented.

Chair Thielen asked Deputy Attorney General, Linda Chow, and Bin Li to come up. There was some discussion that in the judicial process there are a variety of processes that people go through. If there is a violation it could be as simple as a traffic ticket, or misdemeanor, or felony, depending on how serious the charge is. Different types of punishment then will have to go through different systems. She asked to explain whether these rules restrict those different options or require everything to go through one thing or what is the process under these rules. Linda Chow explained that under this system all the violations that come through the system can be brought up to the Board if the disputes persist. The Board in all dispositions is the final adjudicator. Anyone who acts as a hearing officer or administrator only acts on behalf of the Board. It is always the Board who ultimately makes the decision in these cases. When the party receives notice of the violation he is given the options to admit to the violation and comply, admit to the violation and ask for mitigation, or they could ask for a hearing on that violation. Every person who is sent a notice of violation has that same opportunity.

Chair Thielen asked whether the process of coming before this Board doing a contested case is the same process we have currently in administrative actions which Ms. Chow acknowledged affirmatively. Chair Thielen asked if somebody is not happy with the Board decision what happens then. Ms. Chow said if the Board renders a final decision, there is a right of appeal under HRS §91-14 and that would go up to Circuit Court for any Board decision. From there is an appellate avenue of redress. Chair Thielen asked, if someone is issued a citation under these rules and wants to appeal that citation or defend themselves by arguing that they have cultural rights to engage in that act therefore its not a violation of law or that they aren't subject to the laws of the United States, whether they can raise that in this process. Ms. Chow said they can raise that in this process, but there are some arguments that this Board may not be able to address under the rules. If there is a claim that the rules are not constitutional then this Board may not be competent to make decisions then the case would have to go through a court of law. A case will go to court if there is anything that isn't within the Board's jurisdiction. If there is a defense that the Board can within its jurisdiction decide then they will consider that as part of the case. Chair Thielen asked the discussion whether these rules apply to the Hawaiian Kingdom and whether the Hawaiian Kingdom has a separate jurisdiction from the State or whether we're authorized does this, or whether the Board has the authority to rule on any of those arguments or would it have to go before a court. Ms. Chow said it would have to go before a court. Chair Thielen said if these rules were to pass and someone were issued a citation and that person wanted to make that defense they would have to take that through the appeal process to a court of law and they can do that under these rules. Ms. Chow acknowledged that.

Member Pacheco asked whether this system is not creating new possible violations, it is a system to deal with existing rules and laws. Ms. Chow affirmed that these rule amendments only deal with the process. They do not create new violations they just deal with how the violations are addressed once noted. Member Pacheco asked the questions of constitutionality exist now for those same issues for people who have those questions because we aren't creating anything new as far as infringing on someone's vested rights. Ms. Chow said to determine whether a particular action is a violation is not part of these rules.

Member Gon asked about the process, and is concerned with the implementation phase. It is one thing to propose streamlining but when you do that certain procedures are put into place. Unless there is preparation for those procedures then there are the possibilities of all kinds of problems. He explained OHA's example, not limiting it to hearing officers regarding the understanding and knowledge of local communities, Hawaiian history, rights - all comes into play when people on the scene are able to issue a citation. If they do so without full understanding of what those rights are and what the context of the purported violation might be, then there are all kinds of possibility for entering into complex arguments of abuse or proper execution of those procedures. He asked to give him a feel for what the preparatory steps are in the implementation of this in order to minimize those kinds of problems or are they premature for that.

Ms. Chow replied that we're premature on that to some degree because these rules even once passed will not be ready to go right off the bat. There is one more step where the Board needs to adopt a fine schedule for different violations. As far as the preparatory, all the procedural steps that are necessary will be put into place before this program is finally started. As for the preparatory background on the legal framework for the customary and traditional rights, and all those issues when we are talking about a DOCARE officer being there considering issuing a notice of violation, that is a separate issue from these rules. Additional steps will be taken after adopting these rules, and an issue like that is a matter of the department to prepare its officers and other people who are doing enforcement.

Bin Li said that they believe these are legitimate concerns and are mindful of those assertions, and that they will continue to educate their people including DOCARE officers in protecting peoples' rights including gathering rights, and they think the process that they are designing now will afford the people an easy fair venue to assert their rights. If people are cited by DOCARE officers, they could come to them and through this process tell them what is going on and address that. This is not about people getting away with small fines or slamming them with a big fine. This is only to enable the Department to deal with certain kind of violation enforcement which is appropriate to the cases. When they get to the end of designing the schedule they will have a chance to address more substantive issues like native gathering rights by putting in a guideline to tell the public and the Department how they are going to address these issues, how to protect peoples' rights and how to do the process at that point.

Chair Thielen noted that Ms. Chow mentioned that if these rules pass, the next step for the Board is to examine a fine schedule. These rules do not permit the Department to put anything through the civil penalties system. The first step is to come back to the Board and say here are some rules that maybe appropriate for action to go through the civil penalties system. It was mentioned how to phase in this type of operation which has to be done by stepping it up slowly. The idea behind these rules is there is a series of things that maybe relatively minor violations that don't merit bringing before the Board on a case by case basis. So what happens is the Department wouldn't do any action to require enforcement in some areas, and it gives the impression that there is no enforcement at all. One example is the commercial fisheries where fishers are required to file monthly catch reports, and part of the purpose is so that the Department has accurate data to be able to monitor the fisheries. There are a large number of commercial fishers who do not comply with that and it's not worthwhile to bring each of those individual violations to the Board. We may work out with the Board a fine schedule for a past due monthly catch report, but it would be a combination of incentives where people could use their fine to come into compliance or give advance notice. But what they really want to do is small fines to make sure they get those monthly reports to get accurate data. The other example is the trailer stickers for using the boat ramps that's more similar to a traffic violation. They issue traffic tickets in their parks. The next process for the Board is to review what types of violations maybe appropriate for this system and what types of fines maybe appropriate for this system nothing would go into the system without prior review and

approval by the Board. Even in those cases, people can file a request for a contested case hearing.

Member Pacheco asked whether the fine schedule goes out to public meetings by the same process as in the rulemaking process, the Chair said no. Member Gon asked whether there will be a public venue before the Board entertaining finalization of those kinds of things, which the Chair acknowledged.

Member Edlao asked if this was approved today it won't go through until the Board approves a fine schedule, which Ms. Chow affirmed and Mr. Li added that the Board retains full control of the system and the individual cases. If there is a contested case hearing the Boar retains the power to make the final decision unless the Board delegates that power to the Chairperson or hearing officer.

Member Pacheco asked where do our fines go and whether OHA receives a percentage of them. Ms. Chow said it depends where the fines are collected. Different divisions might have special funds which can receive the proceeds of any fines issued. If not it would go to the general fund. The special land development fund has taken some fines from some of the violations. OHA does not receive directly from the general fund or the special fund. Chair Thielen asked whether these rules address where fines go or that is it set by statute. Ms. Chow said that the rules don't address it, and it is set by statute. Chair Thielen said that if OHA wants to raise the issue whether 20% of fines should be included in the ceded land payments then that would be addressed by the legislature.

Mr. Choi spoke about the appeal process where Chair Thielen said that staff could talk to him outside about the appeal process for a different contested case hearing because under the Sunshine Law we as a Board can only talk about the items on the agenda today and what Mr. Choi is talking about is not on the agenda today. A staff member can meet with him afterwards outside to explain the appeal process with him.

Member Agor made a motion to accept staff's recommendation. Member Pacheco seconded it.

Unanimously approved as submitted (Agor, Pacheco)

Item C-6 Amendment No. 4 of Timber Land License No. H-101 Held by Tradewinds Forest Products, LLC.

Written testimony was received and revised attachments were distributed.

Member Johns recused himself.

Paul Conry, Administrator for Division of Forestry and Wildlife, described amendment and history. Tradewinds obtained a clean air permit through Hawaii Department of Agriculture, got their power purchase agreement through Hawaii Electric Light Company, but has not been able to complete county permits and secured financing.

Tradewinds asked to extend their deadlines to complete the power plant over the next two years and to give them one more year to complete permitting and financing. Staff thinks it's appropriate to establish milestones for Tradewinds to meet and compensate DOFAW because of these delays. Plus, there are amendments needed for housekeeping matters. Tradewinds is up to date with payments and Mr. Conry described them. If Tradewinds don't have the permits and financing in one year then pull the plug on them.

It was discussed that the monthly stumpage fee of $25,000 will continue throughout this period.

Don Bryan representing Tradewinds Forest Products introduced Will Zaphalack, a Board member. Mr. Bryan gave some history of Tradewinds reiterating Mr. Conry's testimony about the power purchase agreement, the stumpage fee, and the financing of $9 million dollars. Mr. Bryan accepted staff's proposal with one exception - that staff change the terms and conditions on harvesting non-successful plantations that were established in the 1970s and asked to commence those payments a year out from now because his company doesn't have a boiler right now.

Scott Enright, resident of O'okala, a former Hamakua Sugar cultivation superintendent, a founding and board member of the O'okala Association spoke for himself saying that the submittal is deficient because Tradewinds had met the third milestone by commencing with construction, but there is a contradiction because they don't have a building permit and there is 7-1/2 years of non-performance. Mr. Enright asked the Board to consider the amendment milestones in amendment three (3) before moving to amendment four (4). There are no letters of intent from financiers or interested parties and asked to terminate this land lease. If the Board approves this Mr. Enright suggested they get some substantiating documentation on the claims made reiterating the non-performance.

Alizia Paris, a resident of O'okala, reported that some people don't want to see the mill go in, but a majority of the community wants it for the jobs and to bring families together. Tradewinds fixed up the buildings in the community and the community supports them. There are no hidden agendas and she thinks it's an excellent project for Hamakua.

Michael Barton, a resident of Laupahoehoe and O'okala, read his written testimony which he supports and asked to extend. Mr. Barton said he heard Don Bryan say that he had raised money over the last 7-1/2 years.

Mr. Conry clarified that on page 6 of the submittal to start payment in 2010 instead of 2009 which staff agreed with.

Member Pacheco referred to Mr. Enright's testimony asserting that milestone three (3) was met and asked whether that was correct. Mr. Conry said Mr. Enright is saying no construction began. Tradewinds did site preparation work, upgraded their offices, etc. and staff consulted with the Office of Attorney General who was comfortable with that construction work.

There was some discussion on the contracts and reiterated testimony on the financing.

Member Agor asked whether all Tradewind needs is the building permit. Mr. Conry acknowledged that to complete their engineering and submit it.

Member Gon asked whether there are any competing companies clamoring for establishment of a project at this site. Mr. Conry said that if this project doesn't have all the milestones by December 2009 then the acreage would go into another RFP or staff will determine whether it is appropriate for a biomass interest.

Member Pacheco moved as amended for the replacement stand rental commencement and Member Agor second it.

Unanimously approved as submitted (Pacheco, Agor)

Item M-1 **Issuance of Revocable Permit to GP Roadway Solutions, Inc., Storage of Guardrails, Concrete Barriers, and related Highway Safety Equipment and Supplies at Kawaihae Harbor, South Kohala, Hawaii**

Item M-3 **Issuance of Direct Lease to Mid Pac Petroleum LLC, Kawaihae Harbor, Kawaihae 1st, South Kohala, Island of Hawaii Tax Map Key: 3rd Division, 6-1-03: Portions of 24**

Mike Formby, Deputy Director for Department of Transportation, introduced Glenn Abe, property manager described each item and had no changes.

Unanimously approved as submitted (Pacheco, Johns)

Item I-1 **Request for Approval of an Agreement for Grants, Subsidies, and Purchases of Services between the Board of Land and Natural Resources and the Central Union Church**

Randolph Lee from the Historic Preservation Division requested approval and reported background on Central Union Church and pre-school.

Unanimously approved as submitted (Gon, John)

Item D-9 **Consent to Partial Assignment and Assumption of Rights and Obligations under Grant of Non-Exclusive Easement, WB Kukio Resorts, LLC, Assignor, to Kona Water Service Company, Inc., Assignee, Kukio 1st, North Kona, Hawaii TMK: (3) 7-2-04:04 por. & 7-2-06:17 por.**

Item D-10 **Consent to Assign General Lease No. S-5645, Kukio Utility Company, LLC, Assignor, to Kona Water Service Company, Inc., Assignee,**

Kukio 1st, North Kona, Hawaii, TMK: (3) 7-2-04:22 (formerly 7-2-04:04 por.)

Land Division Administrator, Morris Atta explained each items' background and the reason for two submittals was because Kukio Resorts are retaining some rights and obligations they had to do a partial assignment.

Jennifer Benck and Randy Mori for WB Kukio Resorts, Kukio Utility Company; Lisa Hirahara and Terry Tamble for Kona Water Service Company, Inc. were here to answer any questions.

Member Gon asked whether they agreed with staff's recommendation. Ms. Benck acknowledged that.

Ms. Benck from Carlsmith Ball LLP representing WB Kukio Resorts and Kukio Utility Company explained that initially there was consideration paid to the state when the grants were issued to WB Kukio Resorts and there is no consideration being paid by the assignee Kona Water for either the lease or grant of easement.

Unanimously approved as submitted (Pacheco, John)

Item D-12 Cancellation of General Lease No. S-5640 to the Kona Christian Academy, Incorporated and Issuance of Direct Lease to Makua Lani Christian School for Educational Purposes, Papaakoko, Honokohau, 2nd, North Kona, Hawaii, TMK: (3) 7-4-06:01.

Mr. Atta informed the Board on the background.

Thaddea Pitts of Kona Christian Academy was concerned because her academy wants to dissolve the lease so that Makua Lani Christian School could take it over. It was Ms. Pitts understanding that a piece of legislation would allow the Academy a reduced lease and she asked the Board to consider it.

Mr. Atta said Ms. Pitts is referring to the Board' non-profit minimum rent policy and staff requested that the minimum rent policy apply to this case because Kona Christian is currently paying a higher rent.

Unanimously approved as submitted (Pacheco, John)

Item D-11 Amendment of Grant of Perpetual, Non-Exclusive Easement to Rutter/KW Kohanaiki LLC for Access and Utility Purposes, LOD No. S-28,762, Kohanaiki, North Kona, Island of Hawaii, TMK: (3) 7-3-09: portion of Mamalahoa Trail.

Mr. Atta reported on the background that where the easement was to cross the trail was in error and the need to amend it.

Nancy Burns was here to answer any questions.

Unanimously approved as submitted (Pacheco, Johns)

Item D-6 Rescind Prior Board Action of September 14, 2007 (Item D-6), to Rescind Its Prior Actions of January 10, 2003 (Item D-16), Issuance of a Term, Non-Exclusive Easement to William and Louise Pape for Access and Utility Purposes at Kuwaikahi Gulch, Manowaipae and Kihalani, North Hilo, Hawaii, TMK: (3) 3-5-04:35.

Written testimony from Paul Bryant was distributed.

Mr. Atta explained the background, staff verified allegations from the applicant that the conditions he described do exist, and brought this back to the Board to allow the easement. Testimony from Mr. Bryant reiterated prior allegations claiming that this is another attempt at misleading the Board into planning an easement repeating what was said before. Chair Thielen asked after receiving this information the last time if staff went out to check the site. Mr. Atta affirmed that staff went to see where the road ended and the question whether or not the road was a private driveway was not a public easement and was verified.

Michael Barton, Power of Attorney for William and Louise Pape, presented clearer photos saying that he had the survey map of the easement. There was some discussion on where the road went. Mr. Barton described what happened with the easements, the bad neighbor situation with Mr. Bryant who was the post master holding their mail, Mr. Bryant assaulted Mr. Barton and Mr. Barton's family, and Mr. Barton is cleaning up this mess.

Member Johns wanted to make sure that today's action will rescind the prior 2007 Board action confirming those requirements. Chair Thielen asked what Land Division received because some of these will be as long as the easement exists and whether Mr. Atta received something that has a termination date on record. Mr. Atta said the standard form easement includes those.

Unanimously approved as submitted (Pacheco, Johns)

Item E-1 Annual Renewal of Revocable Permits (RP's) on the Islands of Kauai, Hawaii and Oahu, Hawaii

Dan Quinn for Division of State Parks informed the Board on the background asking to change in Exhibit A the last column on the right should be rent instead of collected revenues. The top six (6) are floating operations along the Na Pali Coast and two (2) commercial are for a gift shop and restaurant at the Wailua Marina. The rest on the Island of Kauai are non-profit organizations for continuing direct negotiations at Koke'e. State Parks staff is working with the Office of Attorney General to get all the recreational leases wrapped up this month.

There was some discussion about a Hapuna food & beverage concession RP and that the Sheehan's Boat yard will not affect these.

Ronnie Grover of Na Pali Sea Tours was here to answer any questions.

Ted Myers, Manager of Na Pali Zodiac Productions, thanked Mr. Quinn and the Board for their annual permit renewal then described previous permit issues. Mr. Myers asked to revisit a permit to Kalalau and Miloli'i in the future because he thinks it's in the State's best interest and that his company is running out from Port Allen for their Nualolo permits.

Mr. Quinn said there is no disagreement. The Board had wanted to take that to bid. There is no permitted operation to take passengers in at Kalalau and Miloli'i has one kayak operation for days only. People could still get a permit to go in on their own.

Unanimously approved as submitted (Agor, Gon)

Item K-4 Conservation District Enforcement File No. HA 09-09 Regarding Alleged Unauthorized Stockpiling of Material by William Cory Foulk and Kona Bali Kai, Within the Conservation District Located Seaward of 76-6346 Alii Drive, Honolua, North Kona, Island of Hawaii, TMK: (3) 7-6-015:023 (seaward)

Sam Lemmo representing the Office of Conservation and Coastal Lands (OCCL) asked to defer this item and referred to a letter from a Carey Lindenbaum which the Board has.

William Cory Foulk for Kona Bali Kai agreed with the deferral.

Deferred (Pacheco, John)

Item K-1 Conservation District Use Application (CDUA) HA-3480 for the Subdivision of One Lot into Two at Ainakea, North Kohala, Hawaii, by Charles Anderson and Terry Harrision, TMK (3) 5-3-006:021

Mr. Lemmo reported on background where part of one of the lots would be in the conservation district describing cases in the past where applicants agreed to file a restrictive covenant that bans any construction within the conservation district therefore this meets the public purpose criteria. Staff's concerns were that this may be precedent setting because it has been done in the past, there are questions about the words in the deed restriction whether or not it will ban any kind of development in the conservation district which he thinks it would, public access, mauka-makai access, lateral access and an issue with the county not executing easements that had been set aside for them, an issue when the cliff erodes, and staff requested the Board approve this application with conditions to address concerns. Mr. Lemmo read condition #3 adding <u>and provides a copy to OCCL.</u> #5 was read and explained.

Mr. Lemmo reported that the Planning Department is not taking the issue to the County Council because of concern with the liability once they take these public access easements. There is a mauka-makai access issue which the county is working on.

Chair Thielen asked whether Mr. Lemmo was referring to the county easement agreement in condition #6 which he confirmed. Chair Thielen suggested specifying in condition #6 that it is a county easement agreement or an easement agreement awaiting approval by the County.

There was some discussion on conditions #5 and #6.

Chair Thielen suggested changing condition #5 the word "[shall]" to "may" to comply with whatever the laws are on public shoreline access and asked what #6 intent was. Mr. Lemmo said the intent was for people to continue using the area while the easement process was on-going. Could say the applicant will not interfere with lateral shoreline access.

Greg Mooers representing the applicants reported that the County had issued an SMA minor permit and it requires developing a public access plan that provides continuous traversable lateral public access. There is no requirement for mauka-makai access in that area. The ranch agreed with Chair Thielen's suggestion for condition #5 and that his applicant needs to come up with a public access plan including continuous lateral access.

There was discussion regarding condition #6. Mr. Lemmo said the purpose of condition #6 is the concern that the County hasn't been executing these. Mr. Mooers was fine with it as is.

Mr. Lemmo summarized condition #3 to add-on the end "and provides a copy to the Office of Conservation and Coastal Lands." Condition #5 changes "[shall]" to "may." Also take the word "[both]" out.

The Board:

> **Approved staff's recommendation as submitted amending condition #3 by adding at the end "and provides a copy to the Office of Conservation and Coastal Land." In condition #5 changing the word "[shall]" to "may" and deleting the word "[both]."**

Unanimously approved as amended (Pacheco, Johns)

Item K-3 Contested Case Hearing Request by Michael Kumukauoha Lee Regarding Amendments to Conservation District Use Permit No. OA-2670 for Construction of a Marina Entrance Channel Located at Honouliuli, Ewa, Oahu, Portion of Plat (1) 9-1-012

OHA's written testimony was handed out.

Mr. Lemmo described background and that the Deputy Attorney General, Linda Chow, is here. Staff will work with the Attorney General's office referring to the recommendation that the contested case hearing not be granted because the amendments are not affecting the size of the entrance channel and will not change the nature, character and extent of activity within the conservation district that had been previously approved on April 26, 2000 under a contested case hearing.

Member Johns asked how does that go to the HAR §13-1-31, A3 requirement. The recommendation that you deny it on the basis it will not affect the size how does that tie in with the criteria under which a contested case be granted or not granted. Mr. Lemmo referred to page 3, 2nd paragraph to obtain standing to be a party in a contested case the plaintiffs must show that he or she had suffered an actual threatened injury as a result of the defendant's action. Member Johns said then Mr. Lemmo is saying the petitioner has no standing because the recommendation doesn't say that. Chair Thielen suggested maybe amending the language to make it clearer but that is the intention. Member Johns said that there is no criteria that says that the test is whether the nature, character and extent of activity was previously approved that is not a decision point for whether or not someone is entitled to a contested case on a potential action before the Board in the conservation district. Chair Thielen said what Member Johns is saying is whether Mr. Lee has standing and the reason he is saying they don't have standing is because of this that the fact he doesn't have standing that's why the recommendation is written.

Mr. Lemmo noted that there is a letter from OHA.

Michael Kumukauoha Lee asked for standing for a contested case hearing. The Attorney General's Office set some standards which he didn't have before and proceeded to describe meeting the first criteria citing marinas cause an anoxic reaction where oxygen is not flowing because there is no wind, temperature, wave action - a dead zone takes place. Mr. Lee described himself as a Native Hawaiian practitioner of seaweed medicine and a member of Ewa limu project teaching people the uses of limu. Mr. Lee asked for a supplemental environmental impact statement. There are 3 scientists who say downsizing the marina takes surface water area away, not allowing the wind to move the waves and churn it. This anoxic reaction takes place when the marina is open to the sea killing all sea life, invertebrates and limu which Mr. Lee uses. Papipi Road was given as an example. Marine life will not go where it's polluted; it is destroying the habitat that he uses for customary practices. Mr. Lee referred to 1993/1994 environmental impact statement for HASEKO where DLNR said there weren't any significant sites in this area describing the discovery of an ali'i wahine burial with 2 nihoa palaoa at the entrance of the harbor. There is a 1927 USGS map of the springs in the area and with building of the marina it cuts off the springs and creates sink holes. In the AG's report if you can't show a loss and a detriment to yourself you can show a remedy. Mr. Lee said he can't show the shrines that was destroyed recommending that, originally, DLNR identified the opaeula pond to be protected, but instead was buried and to do a supplemental environmental impact statement on the anoxicity of the downsizing of the marina. He is not against development, but is against polluting clean water. Mr. Lee could ask the scientist to do a model of this new marina which wouldn't stop the building and the

model will show if there is an anoxic reaction to the building of this downsizing. Mr. Lee described flooding, climate change in Ewa, that his loss would be the polluted waters, if opened, would destroy his customary practices and gathering rights. One remedy for opaeula is sink holes that were buried could be uncovered and a Dr. Robert Richards from the University of Hawaii could bring the pond back. For the ali'i mauka, he is asking for archaeological digs to make sure that other members are not buried there and for the shrine that was destroyed to be rebuilt. Mr. Lee requested to take a remedy to each action specifically identifying a clear and present danger because if we don't do it right the first time it is going to be a bad situation for our ecology and his customary practices. Because the downsizing of the marina will take place the runoff from the existing area will concentrate the water outflow into the basin unlike having the 7 acres it dilutes the amount of pollutants within the confines of the marina itself. There are 3 clear and present dangers to him and his customary practices.

Member Johns asked whether Mr. Lee was arguing that he preferred a larger marina. Mr. Lee said not at all. Whether HASEKO downsizes it again he will still ask for a measure to prove to the Board through standing to show the Board the science whether this water is or is not anoxic. It is a scientific calculation and he has 3 scientists who can test it. Everyone has a responsibility to take care of clean water

Member Gon asked that staff had based this on the burial and not on the marina water condition's affect on the limu and why Mr. Lee didn't include that. Mr. Lee said it was never a condition until the Attorney General's Office spelled it out the criterion and these are his answers point-by-point explaining how long the process took from February 2008.

Sandra Wilhide representing HASEKO was here to answer any questions.

Jerome Yasuhara on behalf of OHA said that they support what Mr. Lee said and through OHA's written testimony dated December 11, 2008 to enter into a contested case hearing. It was noted Mr. Lee has experience with contested case hearings. Mr. Yasuhara noted some lack of uniformity to what the procedure is for standing. This went from application to the Board instead of going through a hearings officer to decipher the facts on where the merit lies on Mr. Lee's request for standing noting that Mr. Lee has gone through Papipi Road and Kaloi Gulch issues.

Member Johns moved to adjourn for Executive Session pursuant to HRS §92-5(a)(4) to discuss the Board's legal rights, duties, privileges, and obligations relating to this matter with the deputy attorney general. Member Gon seconded it.

11:29 am Adjourned for Executive Session

11:49 am Reconvened

Member Agor was disturbed by the fact that the petitioner disclosed new issues at the last minute talking about due process and that the other party didn't have privy to the issue Mr. Lee raised today.

Member Johns moved to approve staff's recommendation and Member Edlao seconded it to go into discussion.

Member Johns was concerned that on the basis of the documents that were filed and the record up to the most recent submittals it appears staff's recommendation is supportable. The question is what is characterized new information supporting the petition, what do we do with that? After the petition was due new arguments are made, the question is how to balance rights brought up by the petitioner against the process itself and the rights that are protected by the process which includes the applicant as well. He echoed Member Agor's concern as expressed before he made his motion.

Member Pacheco suggested taking this back for the petitioner to amend his petition. Member John preferred that instead of granting standing because staff hasn't had a chance to evaluate this new information or arguments and nor did the CDUA applicant address it. He couldn't grant standing merely on the petitioner's testimony and OHA's letter. Member Gon agreed and asked to figure out what proper motion would be.

The Board had questions on whether or not or how the petitioner would re-file his petition. Chair Thielen said if there was an opportunity to amend the petition to provide the information given today and staff, AG and other party time to evaluate whether they would have standing. That would be the process to provide amended information to this request for a contested case hearing.

There was Board discussion whether to defer. Chair Thielen said to be fair it would need to be consistent with the timetable for people to file a petition which is 10 days from the date of the hearing and it would be best that the Board could give some guidance on what is contained in that petition because the Board doesn't want to be in a situation coming back to a hearing a month from now and say the recommendation doesn't have standing here and have 3 or 4 other issues. There has to be some certainty by the Board, the petitioner and HASEKO on what is expected. Member Johns said you mean limit the examination of standing to the issue raised today. Chair Thielen replied she thought that was fair. Member Gon said it has to be based on the specific motion that was under consideration by the Board at the time the contested case was brought forward.

Member Johns and Member Edlao withdrew the previous motion to approve.

Member Johns moved to deny staff's recommendation which was to deny standing and to instruct staff by the Board's action to waive the 10 day requirement for filing of a petition to allow the petitioner to amend his petition filed on January 29, 2008 to address the specific issue regarding the water quality attached to the shrinking of the marina within 10 days and the Department will determine how that will be evaluated whether in this process or in another process which will be up to the Department and the Chairperson to decide to allow adequate opportunity for the petitioner to explain his argument and to allow time for those (staff and AG) who want to respond at that time to get sufficient information to make their recommendation. Member Pacheco seconded it.

Chair Thielen clarified that if the petitioner files an amended request for a contested case hearing it was suggesting that the request go through the regular process. She summarized that the minutes will come out in 10 days and that the petitioner has 10 days to file his amended petition including the specific issue raised today about the water quality impacts related to the reduction in size of the harbor.

Denied unanimously (John, Pacheco)

12:14 pm Chair Thielen departed. Member Johns covered as Chairperson.

Item D-20 Grant of Term, Non-Exclusive Easement to James Campbell Company, LLC, for Encroachment Purpose, Nanakuli, Waianae, Oahu, TMK: (1) 8-9-008:001 portion.

Mr. Atta reported on background.

Mary Emerson representing the James Campbell Co LLC was here to answer questions and agreed to staff's conditions and recommendations.

Unanimously approved as submitted (Gon, Agor)

Item M-4 Issuance of a Sublease to Hoomaikai LLC., a Hawaii Limited Liability Company for a Gift Shop and Related Retail and Office Uses at the No. 1 Capitol District (formerly the Hemmeter Building), Honolulu, Oahu

Linda Chow, Deputy Attorney General, was here to answer any questions.

Unanimously approved as submitted (Edlao, Pacheco)

Item D-16 Amend Prior Board Action of January 25, 2008 Item D-4 Authorize a One-Year Holdover for Grant of Easement No. S-5182, Lahaina Yacht Club and Grant of Term, Non-Exclusive Easement to Lahaina Yacht Club for Maintenance and Repair of Existing Concrete Pillars and Improvements Purposes, Lahaina, Maui, TMK: (2) 4-5-1: Seaward of 5.

Lahaina Yacht Club's presentation was distributed.

Mr. Atta informed the Board on the background recommending approval.

Lahaina Yacht Club representative agreed with the recommendation.

Unanimously approved as submitted (Edlao, Pacheco)

Item F-1 **Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Conservation and Management Permit to the Monument Co-Trustee Representatives of the U.S. Department of the Interior, U.S. Fish and Wildlife Service; U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and State of Hawai'i Department of Land and Natural Resources, for Access to State Waters to Conduct Conservation and Management Activities.**

Dan Polhemus, Administrator for Division of Aquatic Resources (DAR), distributed the 2007 Outcomes of Permitted Activities report to the Board, some for the public, and said that it is posted to the website. This is the annual request for an authorization and approval of a Papahanaumokuakea Marine National Monument Conservation Management Permit to the Monument co-trustee representatives which is the annual management permit that requires them to permit themselves as well as anybody who goes up there. It is a comprehensive permit for all lands and waters in the monument which runs from January 1, 2009 to December 31, 2009. It is intended to cover all activities necessary to effectively co-manage the monument. This includes broadly: field station operations, operating vessels and aircraft, sustenance fishing, maintenance of personal health and fitness for staff in the monument, conducting surveys and monitoring to evaluate status and threats of targeted species and habitats, habitat mapping, carrying out existing species recovery and restoration plans, removal of marine debris, emergency responses, cultural and historical resource identification protection, particular maritime archaeology, and targeted outreach and education activities providing coordinated agency management of the monument ecosystems as a whole. This was reviewed by the scientific community, scientific review supports acceptance of the application, and no concerns were raised. Comments were received from the Native Hawaiian community; the cultural reviews support the acceptance of the application, and no concerns were raised. The proposed activities are in compliance with the National Environmental Policy Act.

Hoku Johnson, one of the permit coordinators for the Monument, described how applications go to agencies for scientific and cultural review then it goes to OHA who will forward it to the native Hawaiian community.

Athline Clark from DAR said that the initial permitting review process will be the same.

Mr. Polhemus said that this permit aligns with the Monument Management Plan which is in the final proofing stage.

Ms. Clark referred to the Board briefings in July and September 2008 where the September briefing had changes made which doesn't have to go back to the Board for a final draft.

Mr. Polhemus reported its NEPA compliant, DAR staff opinioned that the applicants have valid justifications for this application, and recommends approval with

contingencies which he highlighted. The Monument Management Board has reviewed this application and approves it.

Member Johns was concerned whether public comments were received or not and Mr. Polhemus reminded that a year ago the Board wanted a posting process which staff has established and staff will note this in future submittals.

Member Gon wanted to get a feel for the magnitude of the trends of the management presence over the last two (2) years and what is anticipated in the future. Susan White, Fish & Wildlife Superintendent for Papahanaumokuakea, spoke on the operations and the number of people visiting the area. There was more discussion on the number of people on ships and on land referring to tables on page 10 in the report. Aulani Wilhelm for NOAA appreciated the feedback. Connecting the submittal with the management plan would be an important tracking method and the report would reflect those objectives. Mr. Polhemus pointed out ceiling numbers and actual numbers for research collection. There was discussion and reference to page 7 where agencies (including the Land Board) and other staff, if deemed necessary, be permitted to visit.

Marti Townsend representing KAHEA passed out her written testimony and was concerned with the format of the permit application and the broad scope of the co-managers permit reiterating concerns on the number of people visiting. KAHEA supports this report, but advocated that the monthly reports on page 22 be published. Ms. Townsend read her written testimony and asked to limit the scope of permitted activities to time sensitive and emergency response then require additional permits or permit amendments with an environmental review.

Mr. Polhemus noted that construction is only at Midway where the Land Board has no authority over. Sustenance fishing is prohibited in State waters. There was some discussion about sustenance fishing checked on the permits which are for people living at Midway only.

Ms. Wilhelm clarified that coring is drilling into and not collecting cores for management purposes. Drilling is for installing mooring buoys or attachment of temperature gauges. Coring is collecting sediment cores.

There was discussion about the management plan, but it isn't completed and hasn't been released.

There was some discussion on selling which is prohibited by special condition #1. And there was discussion about policies with State and Federal agencies.
Member Gon expressed that he appreciated KAHEA's testimony.

Member Pacheco moved and Member Edlao seconded it.

Unanimously approved as submitted (Pacheco, Edlao)

Item B-1 **Request Board Approval of a Memorandum of Agreement Between the County of Kauai and the Department of Land and Natural Resources for the Purpose of Identifying the Duties and Responsibilities to be Borne by Both Parties Regarding DLNR's use of the Kipu/Maluhia Firing Range on the Island of Kauai**

Gary Moniz for Division of Conservation Enforcement had no changes.

Unanimously approved as submitted (Agor, Gon)

Item K-2 **Conservation District Use Application (CDUA) OA-3452 Request for an After-the-Fact Permit for the Construction of a Driveway and Associated Grading, as well as for the Stabilization of an Existing Cut on the Hillside, at Keaalu, Kaneohe, Koolaupoko District, Oahu, by Joyce and William Chandler, TMKs (1) 4-4-017:111and 35.**

Mr. Lemmo reported on background and history. Staff recommended approving the concrete driveway because the engineer said it would be harmful to take it out, the gunite wall, completed placement of gravel, additional catchment wall, and Mr. Lemmo listed items not approved.

Chairperson Johns asked whether there was an enforcement case which there is none and if staff looked at the soil erosion, drainage and visual impacts where Mr. Lemmo replied that staff had looked at the impacts and will still make the recommendations.

Emily Gardner representing Joyce and William Chandler agreed with the recommendations, but sought approval to park their vehicles on the gravel portion of the property.

Mr. Lemmo noted that the work was done without authorization with the intent to create a parking area and Mr. Chandler finally admitted that. Mr. Lemmo refused to acknowledge that Mr. Chandler be allowed to use it as a parking area because it circumvents the whole purpose of OCCL being here. Or, if that is Mr. Chandler's intent tell him to take it out, remediate it, and re-vegetate the slope don't build a cut wall at the apex of the driveway which will further allow Mr. Chandler to use the area for parking. Mr. Lemmo cannot condone or agree to any wording that would allow Mr. Chandler to use this as a parking lot.

Ms. Gardener said that all Mr. Chandler wants to do use is it for their two (2) vehicles.

Member Gon said can't you see that this is the point of contention here and irritation on a violation of conservation use district and he shared Mr. Lemmo's irritation over abuses of the conservation district with a long history, fines included. The solution is an after-the-fact permit as suggested by Mr. Lemmo. This issue should be put behind us and don't ask for conditions that request approval of an unapproved use of the conservation district.

Ms. Gardner said to her this is obviously meant to park cars, the Chandlers went through the process but not the right way, but they did pay a hefty fine with the understanding that they could file this after-the-fact conservation district use permit and leave the improvements intact to park the vehicles. Mr. Lemmo said that there was never any deal made that the Chandlers would obtain anything. They were advised to either remove the improvements or file an after-the-fact CDUP it was at the discretion of the Board. Mr. Lemmo explained that using conservation land above the home for parking is not consist use of conservation land for this particular site. Now Mr. Chandler is using a circumvented process where he is trying to use it as a parking area and failing to disclose what his intentions were.

Ms. Gardner feels this is reasonable, it is not a public parking lot, and she doesn't understand why this is a problem. Chairperson Johns explained the problem is leaving the improvements in to protect the resource and so we might as well use it for parking. The other alternative was it should have never been built and whether to take it out or leave it in, but it doesn't mean Mr. Chandler can keep it in to use for that purpose. Taking it out would solve it.

There was some discussion about how Mr. Chandler made the assumption that he would be approved to use his improvements after filing a CDUA which is a mistake because it is not a guarantee. Mr. Lemmo reiterated protecting the resource and that it is not about the parking. Ms. Gardner didn't understand how two (2) cars would impact it. Chairperson Johns said it's a matter of rewarding bad behavior. If Mr. Chandler came to OCCL at the beginning to ask to build this they would have said no, don't put it in, but now Mr. Chandler put this in without asking and now he is coming back saying now its in, now staff has to allow the parking. Chairperson Johns wouldn't let him do that.

Ms. Gardner apologized because she came on later and that the Chandlers were inexperienced handling this on their own which is inexcusable, but it is what happened. It was the Chandlers' understanding that if they filed a CDUA they would be allowed the parking. Mr. Lemmo reiterated being forced into this situation.

Bill Chandler apologized and said that he tried to be up front with this. Staff never told them at the settlement that they could have the improvements, but you can't use them. If they knew they would have proceeded with the law suit had they known that. Mr. Chandler asked to be allowed to park two (2) cars and explained the parking problem.

Joyce Chandler described the history and the process saying that the second violation occurred without their knowledge or approval. The intention was never a parking lot, but a driveway to access their property reading the letter from their previous attorney in 2003. Mrs. Chandler apologized for what has happened and wants this resolved.

Mr. Lemmo amended his recommendation to read "...including the associated grading, grubbing, and gunite wall, and for the completed laying of gravel,..." also deleting "and for additional work to gunite the cut at the apex of the driveway to create a catchment wall," pointing it out the gunite in the photos with some Board discussion.

Ms. Gardner reiterated her previous testimony and that the Chandlers are willing to work with Mr. Lemmo.

Member Agor moved to approve staff's recommendation as submitted. Member Gon seconded it.

Chairperson Johns explained to Ms. Gardner if they wish to challenge today's action they must announce the contested case hearing by end of day today and file the petition within 10 days with OCCL.

Approved as submitted (Agor, Pacheco)
Chairperson Johns opposed.

Item C-1 Request to Conduct a Public Hearing Regarding Withdrawal from the Poamoho Section of Ewa Forest Reserve for Set Aside to the Proposed Poamoho Natural Area Reserve, at Poamoho, Island of Oahu

Administrator for Division of Forestry and Wildlife (DOFAW), Paul Conry noted that a new page 3 was handed out earlier to go forward to public hearings and apologized for the error.

Member Gon expressed that he was please with this.

Unanimously approved as amended (Gon, Pacheco)

Item C-4 Memorandum of Agreement Between the Division of Forestry and Wildlife and the Honolulu Fire Department

Mr. Conry alerted the Board to an issue that there will be a revision to the MOU when the AG's look at numbers 9 and 10 and will work with the court council.

Item C-2 Approval in Concept for the Re-designation of the Kapapala Koa Management Area, TMK (3) 9-8-001:014 Comprising Approximately 1,257 Acres, to the Kau Forest Reserve, Kau District, Hawaii

Item C-3 Approval in Concept for the Re-designation of the Makua-Keaau Public Hunting Area, TMK (1) 8-3-001:009 & 018, Comprising Approximately 584 Acres, to the Makua-Keaau Forest Reserve, Ohikilolo Valley, Waianae District, Oahu

Item C-5 Approval to Conduct Public Hearings to Amend Hawaii Administrative Rules Chapter 13, §13-122, "Rules Regulating Game Bird Hunting, Field Trials and Commercial Shooting Preserves," and §13-123, "Rules Regulating Game Mammal Hunting."

Item C-7 **Request to Amend Prior Board Action or June 13, 2008 Under Item C-3: "Request Approval of Contract with Patrick and Sheila Conant to Participate in State Forest Stewardship Program".**

Mr. Conry said no changes to the rest of the items. No public testimony.

Unanimously approved as submitted (Gon, Pacheco)

Item D-5 **Forfeiture of General Lease No. S-4453, Jonathan P. and Mary Nani Spies, Lessee Lot 24, Panaewa Farm Lots, 2nd Series, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:08.**

Mr. Atta asked to withdraw this item.

Withdrawn (Pacheco, Gon)

Item D-13 **Final Approval of the Acquisition of County Lands and Set Aside to the Department of Education for Addition to the Existing Naalehu School Campus, Kaunamano, Kau, Hawaii, TMK: (3) 9-5-09:15.**

Mr. Atta noted a typographical error to the date from December 12, 2008 to December 14, 2008.

Unanimously approved as amended (Edlao, Pacheco)

Item D-1 **Forfeiture of Revocable Permit No. S-7282, Lara Butler dba Keapana Horsemanship, Permittee, Wailua, Kawaihau, Kauai, TMK: (4) 3-9-02: portion 20.**

Item D-2 **Issuance of Revocable Permit to Richard Abigania, Kapaa, Kawaihau, Kauai, TMK: (4) 4-5-15:17 & 30.**

Item D-3 **Consent to Assign General Lease No. S-5436, Minnie H.E. Kaawaloa, Assignor, to Jesse K. Kaawaloa, Assignee, Lot 36, Kalapana Section, Kikala-Keokea, Puna, Hawaii, TMK: (3) 1-2-43:36.**

Item D-4 **Consent to Assign General Lease No. S-5445, Robert P. Keliihoomalu Sr., Assignor, to Primo Puulani Keliihoomalu, Assignee, Lot 3, Kapoho Section, Kikala-Keokea, Puna, Hawaii, TMK: (3) 1-2-43:45.**

Item D-8 **Set-Aside of an Easement to County of Hawaii for Emergency Road Purposes, Puako, South Kohala, Hawaii, TMK: (3) 6-9-001:017 por. & 6-9-006:051 por.**

Item D-14 **Issuance of Right-of-Entry Permit to Department of Land and Natural Resources, Division of Forestry and Wildlife on Lands Encumbered by Revocable Permit No. S-7054 and Revocable Permit No. S-7271, Kapapala, Ka'u, Hawaii, TMK: (3) 9-8-01:03, & 13.**

Item D-15 **Consent to Lease of Lands under Governor's Executive Order No. 2958 to Kihei Youth Center, Waiakoa, Kula (Kihei), Maui, TMK: (2) 3-9-006:011 por.**

Item D-17 **Amend Prior Board Action of September 14, 2007, Agenda item D-10, Grant of a Perpetual, Non-Exclusive Easement to Keehi Memorial Organization for Seawall, Drainage Channel, Landscaping and Gazebo Structure Purposes, Situated at Keehi Lagoon, Honolulu, Oahu, TMK: (1) 1-1-03:004 (seaward).**

Item D-18 **Consent to Assign of Grant of Non-Exclusive Easement No. S-5201, Makena Barrett White, Assignor, to Geraldine Joy Sarsale & Elizabeth Antonio Sarsale, Assignee, Amend Grant of Non-Exclusive Easement No. S-5201; Makiki, Honolulu, Oahu, TMK: (1) 2-5-003:069.**

Item D-19 **Amend Prior Board Action of March 14, 2008, Item D-6, Grant of Term Non-Exclusive Easement to Sarajean A. Tokunaga, Trustee, for Seawall and Filled Land Purposed, Kaneohe, Oahu, TMK: (1) 4-5-047:seaward of 116.**

Item D-21 **Grant of Term, Non-Exclusive Easement to James Campbell Company, LLC, for Encroachment Purpose, Nanakuli, Waianae, Oahu, TMK: (1) 8-9-008:001 portion.**

Item D-22 **Grant of Perpetual, Non-Exclusive Easement to Board of Water Supply for Drainage and Flowage Purposes, Aiea, Ewa, Oahu, TMK: (1) 9-9-009:013 (portion)**

Mr. Atta said he has no changes. No public testimony.

Unanimously approved as submitted (Edlao, Pacheco)

Item D-7 **Grant of Term, Non-Exclusive Easements to The Nature Conservancy for Educational "Respecting Coral Reefs" Sign Purposes, Puako, Lalamilo, South Kohala, Hawaii, TMK: (3) 6-9-01:02 por. & 6-9-06:03 por.**

Member Gon recused himself. There were no changes.

Unanimously approved as submitted (Pacheco, Edlao)

Item L-1 **Appointment of Olinda-Kula Soil and Water Conservation Director**

Item L-2 **Approval for Award of Construction Contract - Job No. F54B659A, Wailua River State Park Opaekaa Falls Overlook Site Improvements, Wailua, Kauai, Hawaii**

No questions and no public comment.

Unanimously approved as submitted (Edlao, Pacheco)

Item M-2 **Amendment No. 1 to State Lease No. DOT-A-06-0001 Application for Additional Space Resort Air, LLC Honolulu International Airport**

Item M-5 **Issuance of a Direct Lease Smoky Mountain Helicopters, Inc. Port Allen Airport**

Item M-6 **Issuance of a Replacement Lease U.S. Department of Commerce National Oceanic and Atmospheric Administration Lihue Airport**

No questions and no public comment.

Unanimously approved as submitted (Pacheco, Edlao)

Item N-1 **Briefing by the staff of the Commission on Water Resource Management (CRWM) on the September 25, 2008 Decision by the CWRM to Amend Interim Instream Flow Standards for the East Maui Surface Water Hydrologic Units of Honopou, Hanehoi, Piinaau, Waiokamilo, and Wailuanui.**

Ken Kawahara, Deputy for Commission on Water Resource Management, introduced Ed Sakoda – Chief of Stream Protection and Management Branch, Dean Uyeno – Section Head for In-Stream Use Protection Section, and Chu Ching – Hydrologist. Mr. Kawahara showed a power point presentation that was presented to the water commissioners Sept. 24th & 25th at Haiku, Maui. Map of eight (8) areas, Timeline/History, Balancing Needs, and Stream Flow. Ed Sakoda spoke on Interim IFS Process and Adaptive Management. Mr. Uyeno talked about Hydrology, Habitat Availability, General Considerations, Rationale, and Wailua Nui Hydrology Mr. Kawahara continued with Discussion Outline, Assessment Summary, importance and impacts. Ms. Ching described how each stream is different and using ground water flow as the base.

The Board questioned the quantitative impacts to native habitat, sugar, agriculture. Mr. Kawahara said that the public was asked to submit data and noted that a lot of the diversions EMI had was built a hundred plus years ago explaining the low and high flows and diversions at Wailua Nui.

Mr. Uyeno related Adaptive Management proposals, taro farmers were hesitant, East Maui Cultural Study, enough water to farmers and fishes, General Strategies - un-registered diversions, impacts, evaluation, monitor, Amendments from the Water Commission, and progress reports.

Showed Akaku film from the Sept. 24th and 25th meeting.

Mr. Kawahara said that all this is on the CWRM website. Mr. Uyeno said that all the EMI 27 streams, petitions, meetings and current issues are listed.

Adjourned. (Gon, Edlao)

There being no further business, Chairperson Thielen adjourned the meeting at 3:03 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 H. Thielen
Chairperson
Department of Land and Natural Resources