

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

DATE: FRIDAY, SEPTEMBER 9, 2011
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:11 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
Ron Agor
Rob Pacheco

Jerry Edlao
David Goode
Dr. Sam Gon

STAFF

Paul Conry/DOFAW
Dr. Bob Nishimoto/DAR
Ed Underwood/DOBOR
Barry Cheung/LAND

Russell Tsuji/LAND
Sam Lemmo/OCCL
Scott Fretz/DOFAW

OTHERS

Linda Chow, Deputy Attorney General
Paul Hauret, M-6
Colonel Doug Mulbury, C-4, C-5
Mike Lee, C-4, C-5
Deborah Ward, C-4
David Henkin, C-4, C-5
Peter Peshut, C-4
Marti Townsend, C-4, C-5
Dr. Julie Taomia, C-4
Bill Rogers, C-4
Kali Watson, D-8
Tony Rutledge, D-7
Duane Fisher, D-7

Patti Miyashiro, M-1, 2, 3
Mike Beason, M-6
Colonel Frank Tate, C-4, C-5
Hank Fergerstrom, C-4, C-5
Joe Estores, C-4
Pono Kealoha, C-4, C-5
Alan Ho, C-4
Kapuakililikoa, C-4, C-5
Kerry Abramson, C-4
Lenny Rapozo, D-2
Julius Asam, D-8
Gwen LeBlanc, D-7
Dan Luck, F-1, F-2

Kristen Pylman, F-2
Dave Cooper, J-1

Jim Dittmar, K-1

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

Item A-1 July 8, 2011 Minutes

Member Gon and Member Goode recused from this item.

Approved as submitted (Pacheco, Edlao)

Item A-2 July 22, 2011 Minutes

Member Gon recused himself from this item.

Approved as submitted (Agor, Goode)

Item A-3 August 12, 2011 Minutes

Item A-4 August 26, 2011 Minutes

Items A-3 and A-4 were not ready for this Board meeting.

Item M-1 Request for Waiver of Performance Bond Requirement, Harbor Lease No. H-05-24, Unit FV8, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Island of Oahu

Item M-2 Request for Waiver of Performance Bond Requirement, Harbor Lease No. H-03-18, Unit FV2, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Island of Oahu

Item M-3 Request for Waiver of Performance Bond Requirement, Harbor Lease No. H-03-17, Unit FV1, Domestic Commercial Fishing Village, Pier 38, Honolulu Harbor, Island of Oahu

Patti Miyashiro representing Division of Transportation (DOT) – Harbors Division clarified that the actual agenda proposal for items M-1, M-2 and M-3 are on the last two pages of the submittal. Staff is asking for a waiver for a portion, but asked for a reduction in the performance requirement from an annual amount to equal a quarter. It's a waiver, but only a partial.

Chair Aila asked whether the Deputy Attorney General Linda Chow had any concerns and she did not.

Unanimously approved as submitted (Agor, Gon)

Item M-4 **Acceptance of Non-Ceded Land from the United States of America, and Subsequent Set Aside to the Department of Transportation, Airports Division, Situate at Kalaeloa (Formerly Known as Naval Air Station Barbers Point), Honouliuli, Ewa, Oahu, Tax Map Keys: (1) 9-1-13:33 and 46**

Item M-5 **Amendment to Prior Board Action of May 13, 2010 under Agreement Item M-3, Regarding Issuance of a Right-of-Entry to Hawaiian Electric Company, Inc. to Conduct Engineering Studies, at Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key No. 1st/9-1-14:24 (portion)**

Ms. Miyashiro said that HECO (Hawaiian Electric Company) asked for additional time because the project manager has changed and asked for additional time.

Paul Hauret representing HECO testified in support of staff's submittal.

Item M-6 **Issuance of Revocable Permit to Celco Partnership dba Verizon Wireless, at Kawaihae Harbor, Kawaihae 1st, South Kohala, Island of Hawaii, Tax Map Key No. 3rd/6-1-03:34 (portion)**

Ms. Miyashiro conveyed that this was for a request for a cell tower for a month-to-month permit while staff is working on the Kawaihae Harbor Development Plan and Verizon agreed to this.

Mike Beason representing the applicant testified he was here to answer any questions and he was fine with staff's recommendation.

Item M-7 **Consent to Sublease Statewide In-Bond (Duty-Free) Concession DFS Group L.P. to Island Shoppers, Inc., Honolulu International Airport**

Item M-8 **Authorizing the Department of Transportation to Dispose of Parcel 01, Farrington Highway, Project No. FAGH 35-B (1), Tax Map Key (1) 6-7-10:01**

Item M-9 **Vanguard Car Rental USA, Inc. dba Alamo Rent-A-Car Amendment No. 1 to Concession Premises Lease Agreement No. DOT-A-09-0065, Hilo International Airport**

Unanimously approved as submitted (Pacheco, Gon)

Item C-4 **Request Acceptance of the Final Environmental Assessment for Short-Term High-Altitude Mountainous Environment Training and Issuance of a Finding of No Significant Impact for the Proposed Project**

Item C-5 Issuance of Right-of-Entry No. FW-2011-H-02 to United States Army Garrison Pohakuloa 25th ID (L), 25th Aviation Brigade, for Short Term High Altitude Mountainous Environment Training at Mauna Kea Forest Reserve, Hamakua, Hawaii, TMK (3) 4-4-015:001 portion and Mauna Loa Forest Reserve, North Hilo, Hawaii TMK (3) 3-8-001:001 portion.

A number of written testimonies were distributed to the Board members.

Chair Aila said the next items are C-4 and C-5.

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) said they will take up C-4 first and indicated that this is a request for the Board to accept the final assessment for the short term High Altitude Mountainous Environment Training on the Big Island, a 30 day helicopter training period on Mauna Kea and Mauna Loa. Also, staff asked the Board to authorize an issuance of a finding of no significant impact for the project which is restricted for 30 days in the month of October. There is a provision for weather and for the Chair to extend a little longer to meet that one month of training. The project involves helicopter training flights for Army aviators who will take off from Pohakuloa and climb to an altitude of 2,000 feet and will fly to high altitude landing sites on Mauna Kea and Mauna Loa then touch down and take off to 500 feet and to 2,000 foot elevation over the forested portions of Mauna Kea. The proposal is the Army needs two hours of training per each pilot and they anticipate that to be about a 180 flights occurring during this one month period. The Army has put together an environmental assessment (EA) that looked at different combinations of the six landing sites as their preferred alternative. They also looked at a combination of fewer sites and other high altitude locations in the state and other training on the mainland or not do any training at all as an action alternative. The environmental impacts that were assessed and some of staff's concerns were impacts to the native species, particularly the State's critical habitat where staff had the Army do surveys for both wekiu bugs and endangered sea birds that could potentially use the area. They did surveys and found there weren't any threatened or endangered species in those areas. The landing sites are up on the high altitude in heavily disturbed areas above the tree line. Staff didn't see any impacts to the environmental components up at the high altitude landing sites. The Army was asked to look at the cultural impacts and they did some surveys of the previously disturbed sites where the impacts were for a very short duration – one month is what this environmental assessment covers. The analysis for the landing zones as far as environmental impacts of previously disturbed sites and impacting the biological resources will be very short term. High altitude, very minor impacts they anticipate and they won't be affecting critical habitat for endangered birds of Mauna Kea. As far as disturbance of peace and solitude from the HAMET, the impacts on the cultural and structural significance of Mauna Kea are expected to be a short duration and should not obstruct or curtail practitioners' activities. The HAMET disclosed to the public that these landing sites are touching down for a very short period. The Army will be providing public notice on when the activities will be scheduled again. They are not building anything, they are not constructing anything, and they are not changing any terrain conditions or anything. They are just

touching down and landing. The Army is not building any structures for this activity in the conservation district. Because of that staff thinks given the short duration and the sporadic use there is no significant impact to the qualities of the mountain that make them a significant cultural place for Native Hawaiians. Due to the limited duration staff concluded that the project will have no significant impact on the environmental and cultural resources and acceptance for the short term HAMET Final Environmental Assessment and the issuance of a FONSI for the project is appropriate. Staff recommends the Board accept the Final Environmental Assessment and authorize the Chairperson to go ahead and approve the issuance of the finding of no significant impact, the FONSI and authorize the Chairperson to publish that in the Office of Environmental Quality Control/The Environmental Notice. Pua Aiu, Administrator for the State Historic Preservation Division (SHPD) is also available to answer any questions for the Board.

Member Gon asked about the map accompanying item C-5 regarding the section that goes up onto the high altitude flank of Mauna Loa and to describe that. Mr. Conry said that the Army is here and could answer that. For Mauna Loa, staff agrees with the Army's finding through their environmental assessment.

Commander Doug Mulbury, Commander of U.S. Garrison - Hawaii testified indicating that it was his staff who prepared the environmental assessment conducting both the cultural and natural resource analysis that led to the finding of no significant impact. With me is Colonel Frank Tate, Commander of the 25th Combat Aviation Brigade. It is his soldiers that require this training and we are requesting a right-of-entry.

Member Gon asked whether there was a reference in terms of what it might include that it did mention night time flights. Col. Tate confirmed that and said high altitude mountainous environment training is something that just the 25th Aviation Brigade is conducting. It is something that the Army mandates that all of our aviation brigades conduct based on the lessons learned from 10 years of war in Afghanistan. The Army has experienced several tragic accidents as a result of a lack of understanding of the impact of high altitude on our rotary aircraft and our ability to conduct these kinds of landings. As a result they mandated this type of training be done which was conducted in these LZs (landing zones) in the past. Particularly on Mauna Loa that one of the LZs still has a wind sock demonstrating initial intent was to be a landing zone there. This training has proven over the last several years to be life saving training and critical to the survival not just to the crew on the aircraft, but to the thousands of soldiers that we will move in Afghanistan over the next year. That is why we (the Army) appreciate the Board considering our request to do the training.

It was questioned by Member Gon to clarify the scenarios and the contingencies during the course of finding of no significant impact and whether contingencies for failure of aircraft enroute to LZs or were they more focused on the LZ activities because he noticed that part of the flight path moves through part of the Palila Critical Habitat on its way to the Mauna Kea LZ? One never hopes for any failure of equipment, but that would be the scenario in which to have potential adverse affects. Col. Tate said absolutely, both of the aircraft types that they will be training with the USH 60 Blackhawk and the CS7 Chinook

which are dual engine aircraft with multi-functional systems and back-ups and redundancies. Our period of transit over the habitat is brief, a couple of minutes and the Army has self imposed a 2,000 foot flight restriction to trade off altitude and air speed if they did have engine failure to move out of that area. We have never in Hawaii at the 25th Combat Aviation Brigade ever had a dual engine failure. Not saying it isn't impossible it just never occurred. He would say there is virtually zero chance that they would ever need to land in the habitat. Currently, there are no flight restrictions over the palila habitat either by FAA or the State. Numerous aircraft – civilian and military fly over that habitat routinely, but because they are cognizant of the concern about that for this particular action the Army has placed this restriction of 2,000 feet to even further limit any potential impact to the habitat itself.

Member Gon asked whether they had any contact with the U.S. Fish and Wildlife Service. Commander Mulbury confirmed both Fish and Wildlife Service and DOFAW.

Member Pacheco asked in the preferred alternatives where alternative 1 is to use both Mauna Kea and Mauna Loa sites what draw backs would they have in just using the Mauna Loa site versus Mauna Kea. Col Tate explained that the Mauna Loa LZs has a very gradual slope where you get the altitude, but what you don't get as much of is the affects of the winds and weather that greatly affects rotary wind in mountainous terrain. Mauna Loa is seen as the crawl stage in the development and training of the air crew, much easier LZs to land in and Mauna Kea is more like traditional Afghanistan mountainous terrain to include the pu'u areas where you get the swirling winds and the affects to the handling of the aircraft. Losing that significantly degrades the quality of the training and the level of preparation where you are able to get these air crews prior to their arrival in Afghanistan. We prefer to have both mountains to gradually give experience to their new aviators. The experience on Mauna Loa for both the change in altitude and performance then move to Mauna Kea with its winds and other conditions. Once these new aviators get to Afghanistan they will fly with experienced aviators to progress and learn. But, this gives them the foundation that they need to operate safely upon arrival in a combat zone.

Member Pacheco asked to tell them about the previous use of these areas as LZs. Col. Tate said prior to their deployment to Afghanistan and Iraq the Army did a similar type of training in these LZs where there were additional LZs in the past and they limited the LZs to the areas with the least potential impact either culturally or environmentally to preclude any potential incidence that can occur.

Member Pacheco asked when was the first LZs used. Col. Tate said their first permit was in 2003 when they began using those LZs before each of the three deployments that they had since then. Commander Mulbury said he wanted to add there were two occasions in the last six months where they sought permission from the Chairman to conduct the first set of flights during the March/April timeframe where State representatives were on those flights to finalize their (the Army's) data collection and to show that they can do this with no impact. After the Commanding General met with the Governor in July he offered up another opportunity which was taken advantage of by 20 individuals in July using those

same LZs to demonstrate the short duration of low impact and there were no negative situations associated with these flights whatsoever.

Member Gon asked whether the 2003 permit came before the Land Board. Commander Mulbury said no, it did not. Back in those days they requested a right-of-entry permit and that permit was approved and for whatever reason it did not require going before the Land Board.

Chair Aila noted that one of the points brought up over and over in the written testimonies was because of the recent publicity of the Marine helicopter crash and the potential for radiation and asked whether the two helicopters have the same type of mechanism that monitors the structural integrity of the blades. Col. Tate said no sir; there is no radioactive material in either helicopter.

Member Edlao asked when the deployment would be for Afghanistan. Col. Tate said it was announced this week and we will be deploying in January of the coming year. They will be loading boats in late November and by then they will be largely complete with any training they needed to do which is why they request the month of October.

Mike Lee, a Papa Kilo Hoku (Hawaiian Astronomer), Kahuna Lapa'au (Hawaiian medicinal practitioner) distributed his written testimony to the Board members and testified that his written testimony has all the background on the Hawaiian Gods and customary practices on Mauna Kea. He has outlined the la'au that are important to us (Hawaiians), the limu (seaweed) in Lake Waiau, all the declaration under penalty of perjury of the background of his lapa'au, articles of his lapa'au, the First Circuit Court ruling on his behalf of the long term cumulative affects on his cultural practices in a specific case, the meaning of petroglyphs taught to him, and all the sacred sites and springs on Mauna Kea. Mr. Lee related the importance of the springs and mitigation under 106 in consulting with Native Hawaiian practitioners recognized in the First Circuit Court is important and is not taking place here. The reason for doing a broad stroke here is because in case this temporary opening becomes a much larger and greater opening later on that he wanted to put this testimony on the record to refer to Section 106 in the future to assist the Board members in making an informed decision for best practices. Mr. Lee said the military can't mitigate against crashes and what affects that would be to Native Hawaiians because he hasn't been asked under Section 106. If you don't know where the springs and aquifers are how can you protect them? Treasures stay hidden and that is why they are bringing this up even though they don't like to do it, but if they are under threat we need to assess them. You need to check it out. Under Article 12, Section 7 of the State Constitution, the State has the right to regulate our cultural practices, but not over regulate our cultural practices or regulate us out of existence. The material is for the DLNR's use and to assess in this process. Mr. Lee related having family members in the military and he wants his family protected, but he is concerned as a cultural practitioner for best practices. They want to work together to assist everybody where it needs to be. After the Chair's inquiry, Mr. Lee was opposed because he doesn't think the military has followed through with the EIS, a further step that he didn't think there was a time rush because they have been to war for 10 years and this is not the only place with a

high altitude fly over training in the United States. Yes, we want our people trained, but we want to do the right thing under the law which is what due process is about. Under the law Section 106, Article 12, Section 27 they haven't done the right thing, yet. It's not following the law in the best interest of vetting out all the information the Board needs to make the best decision.

Member Pacheco asked for the source of his information. Mr. Lee pointed out in his handout and said Auntie Alice Holokahi from the Mahi clan who is part of his family and one of his teachers that the Mahi clan is keepers of Mauna Kea where he related some background on this family. Member Gon said he may have more questions and Mr. Lee said his contact information is included in his packet and would be happy to assist in this process at any time.

Hank Fergerstrom testified that he is a taro farmer and Lono practitioner representing Na Kupuna Moku O Keawe (Big Island) and they are in opposition to granting the permit to the U.S. Army Garrison Hawaii for the proposed HAMET training on Mauna Kea as well as the acceptance for the EA and FONSI. He read his written testimony that they did submit comments to the EA and FONSI describing their concerns and that the U.S. Army Garrison Hawaii failed to address them. The Army Garrison is circumventing the State process by not applying for a State conservation district use permit (CDUP). They are negligent in following through with their own process described in their manual Section 1-7-4 entitled "Public Involvement" which he read. Mauna Kea and Mauna Loa are part of the conservation district, public land trust and are ceded lands. These mountains are sacred to the Hawaiian people and other Pacific Islanders with great cultural sensitivity to how these lands are used. We are concerned with the finding of the FONSI by DLNR staff. Mr. Fergerstrom referred to the Endangered Species Act that there are native plants found only in this area as well as the palila bird. He urged the BLNR to decline acceptance of the EA and the special use permit and to instead consider the CDUP process. He was concerned that questions brought up by the public in the EA were not answered. Mr. Fergerstrom has relatives in the military and this is not anti-Army, but pro-Hawaii and pro-protection of sacred spaces. Mauna Kea and Mauna Loa are temples or churches that hold an ambiance. This practice of attack helicopter training is inconsistent (with the use of the two mountains). This should not happen without further study in a full EIS.

Chair Aila asked are there conditions in which spiritual can be mitigated. Mr. Fergerstrom said that is a hard question. It's hard to mitigate without knowing what sites there are. In Hawaiian religion, you must be trained in the proper protocol and there is much that is hidden for a reason. It is heart wrenching for practitioners to reveal secrets that have been placed in our care to persons who are not the same Native Hawaiian religion or race as to how they are to practice this religion. It would be an issue with the First Amendment. Go through a full EIS and CDUP process to serve both the community and the military. The Chair said the reason he asked was because the concerns weren't being fully shared which makes it hard for us as Board members to fully consider what those concerns are. Mr. Fergerstrom said until their concerns are addressed it is hard to

forward that information through, but they look forward to that opportunity to provide that.

Member Gon said the process for cultural assessment and environmental assessment in Hawaii is a young thing and there is no real standard set in order to consider cultural impacts and asked to clarify what items of the cultural assessment he thought needed improvement or lacking all together. Mr. Fergerstrom said that all three assessments were done internally with the military or a government official's office and not with any Hawaiian practitioners like himself who has the information. The information provided is barely skimming the surface that they are not going to give out their information unless they are invited into the room and would like to help with this.

Member Pacheco asked whether he was correct to assume the people on the cultural advisory group are not cultural practitioners. Mr. Fergerstrom acknowledged he would say that. They may be culturally knowledgeable in some things, but our culture is tied to our religious belief, our spirituality. There are reasons why a rock is placed here or why burials go in certain places or why herbs go in certain places. The use of the word "kaohi aumakua" irks him when describing an area because kaohi is the boundary. It is not just an ahupua'a. There are six kaohis around Mauna Kea which are boundaries Hawaiians consider levels of human participation. These kaohis are the boundaries between the kuahiwis and the area of po at the summit of Mauna Kea. It is hard to separate Hawaiian culture and religion from the aina (land). The aina is not just the land, but is that which produces life. Unless we allow ourselves to reach out and find the essence or the kaona of the words that are being utilized it will be hard for you to make determinations that are satisfactory to myself as a cultural practitioner.

Member Pacheco asked with the history of use at Pohakuloa Training Area over the 60 plus years and all the military activity that has happened there, how do you see these 30 days of activity with limited touch down on the ground having significant impact with what has already been going on over there? Mr. Fergerstrom said that he has a big problem with the entire Pohakuloa Training Area in the first place. Historically when it was put there it was illegal to practice Hawaiian religion and that did not come by until 1978 with the Native American Religious Freedom Act. Our ability to protect these areas and provide information that would be useful to you (the Board) has not been available. Mauna Kea is the male and Mauna Loa is the female. The Pohakuloa training area is the womb of which new life comes from. Any addition to this harm is more insult to injury. As Hawaiian practitioners we continually tried to reach out to you, but have been looked at as not being significant and will try to change that. They are Hawaii and this is their land.

Deborah Ward, Conservation Co-Chair of the Sierra Club, Hawaii Chapter testified from her written testimony and requested that the FONSI be denied relating U.S. Fish and Wildlife's correspondence that the determination does not adequately assess potential impacts to palila and the palila critical habitat from the proposed training. The Sierra Club recommends that the BLNR request that both a State and Federal EIS be conducted concurrently to address the cumulative impacts of the proposal. The public comments

from the three public EA were not appended to the document. Also, the petrel birds are on the brink of extinction in its only home. These military maneuvers into areas set aside for protection calls for a comprehensive management plan (CMP). The Sierra Club asked that the Right-of-Entry permit be denied and a CDUA (conservation district use application) be required. Alternatives 1, 2 and 3 cannot meet all the criteria for the use of the conservation district and recommends alternative 5 since all the helicopters needed for that training are already on the mainland. She cited BLNR's responsibility for making informed decisions and one of the criteria pertaining to substantial adverse impacts to natural resources. The endangered palila and 'Ake'ake or band-rumped storm petrel was described to be fledgling in October referring back to the alternatives and colonies have been found nesting within 350 feet of a Mauna Loa LZ. The public was denied to verify or comment on the conclusions for the Memoranda for Record (MFR) in the draft EA. Also, some of the comments in the MFR and draft EA and what was said today contradict each other giving the example of whether the Army will have night flights and they confirmed that they will today, but it says otherwise in the MFR or draft EA. The Sierra Club requested consultation, but the Army never provided it. Ms. Ward described the other uses of the Mauna Loa and Mauna Kea conservation districts – spiritual, hunting, caving, hiking, cultural practices, observatories and access to the National Park. The other pleasure is the silence and isolation where she related an article regarding helicopter noise and how disruptive it is. Its cumulative affects the sacred lands for decades. The draft EA falsely implies the areas already have noise from tourist helicopter flights where one Waikoloa helicopter tour company said otherwise. They were concerned with staff's submittal appearing to contradict with the final EA regarding the flight elevation to be a 1,000 feet rather than 2,000 feet and the increase in noise. Also, the Army be allowed to post sentries at intersections near LZs and the EA does not describe what those access restrictions are proposed by BLNR saying only BLNR can impose them. All public access should be assured at all time. The Sierra Club asked the Board to deny approval, request a CMP, an EIS that addresses cumulative impact and a CDUA for this and future requests. Ms. Ward has a son in the Army and recognized the BLNR has a tough choice, but the palila could become extinct in this life time and she asked to take this into consideration.

Joe Estores testified he is a kupuna and was approached by other kupuna to make a statement. He is a Master Army Aviator having flown in Vietnam, Korea, Europe, Pohakuloa and all over the islands. He trained the returning pilots from Vietnam to become instructors at the Army Helicopter Training School. He spent 20 years in the Army retiring as a Lieutenant Colonel. He is a different kind of kupuna. Looking at this document it is unfinished, it's a work in progress, it does not answer enough questions for the specialists, the technicians, the experts and the cultural practitioners. There are many questions still to be answered. As I look through the statements in the book when you refer to a survey and conduct a survey using equipment to be used in this operation was there a survey conducted using the Chinook aircraft which has a tremendous down wash compared to the Blackhawk? Was a survey done using a full load of troops or equipment? Were these surveys properly conducted? I don't see it in the book. I fear for the future of our young pilots if we don't prepare them properly. I flew in a lot of high altitude mountainous areas with many load configurations. I know the skills you need to

develop. I know the training and I support that. When I look at the terrain of these LZs I have flown in mountains and have been affected by the shear, down draft, up draft, turbulence and all of that. I'm not sure if these LZs give that kind of experience for our pilots and moments of terror to have to recover from. There is no mention of pinnacle climb which is a very important part of mountain training. You can't do pinnacle training in any of these LZs because they aren't configured for it. What I'm basically saying is if we are using this as preparation for very critical skill for survival and for protection of our crews then I don't think we are giving our crews the right environment for training. I must tell you when I was on active duty as a young captain with the 25th Aviation Battalion I was responsible for the gun platoon and even before people knew we were in Vietnam I was given the task of preparing the training, aerial gunning training range at Makua. At that time I did not even know my Hawaiian history. I did not know enough of my own culture to know that I was setting up a destructive operation in one of our prize valleys. I did it because I was wearing the American flag. I did it because it was needed in Vietnam. I sling loaded the targets and dropped them in the valley and we started shooting them up. Incidentally, I have been away for the last 44 of the 50 some years so when I came back and learned my cultural history I had to go back to Makua Valley where as a child my grandmother took me to Makua Cave for her aumakua. I'm very familiar with these training areas. I had to go back to Makua and ask forgiveness for what I've done many years ago in ignorance to what I was doing to my own culture. I come to you today as a kupuna with a voice. We need to do it pono. We need to do it right. We need the training. The crew members need vital training to make sure they don't cause any fatalities or accidents. We need to give them the best we can. We should not rush through this and we should do it properly in a pono way. As a kupuna I say lets do it right because as I read the book there are too many things. It appears to me we've taken the Environmental Protection Agency's (EPA) templates of where you do assessments and tried to put this on top of Hawaiian culture. It's unique, it's different, and you are not asking the right questions in your template. The spirituality, the cultural things are not imbedded in the EPA formats so go address that. I'm available for consultation. I support what the Army is doing. My fellow aviators are very dear to me and I want them to have the best training and training sites that they need to go to war and to come back home.

Member Pacheco asked what was pinnacle training. Mr. Estores explained it's when you try to land a helicopter on a slope like this (showing with his hands). While he was with the 25th he went up to the pinnacles of the Ko'olau (mountains) where the only thing that could go up there are goats. Showing with his hands how you can land a helicopter on a pinnacle. If you land this way one side of the mountain is the windward side where you have the up drafts and turbulence. The other side of the mountain you have the down drafts. This type of training is critical for high altitude mountainous training and is not in any of the books or pictures he has seen. We are not giving them (the crew) with enough or quality training. I was Chief of Methods of Instruction at the helicopter school in Savanna, Georgia. I trained the combat, seasoned helicopter pilot coming back from Vietnam to make them instructors to be able to teach at the school. I am very concerned about quality of training - standards, safety and performance. When we do pinnacle that is another check mark in our qualifications to make sure we are doing things right.

Member Gon asked in the range of skills that needs to be accomplished in the course of high elevation flight training would pinnacle be one of 20 and the majority be seen to this. Mr. Estores acknowledged that many have been covered. Slope landing is another. I have never flown in Afghanistan, but I have flown in mountains – the Alps of Europe. Give them the best environment for training. I'm not too sure we have it in this particular case.

David Henkin, an attorney with Earth Justice testified that they did submit written testimony and testified that the Army has put the Board in a difficult position because there is limited time, but it is the Army's obligation to comply with Hawaii law in a timely manner and to answer all the questions during the State's and Federal processes. If they failed to ensure that what they are requesting to do was thoroughly evaluated as required by the Hawaii Environmental Policy Act and consistent with the purposes of the conservation district, you need to deny the request by rejecting the EA and the FONSI. It is the Army's fault if it's inconvenient to do the training elsewhere and for putting you and the people of Hawaii in this position. Mr. Henkin directed the Board to table 2-1, page 2-33 of the EA referring to the alternatives that alternative 5 is a reasonable alternative which is the one this Board should select. Deny the EA, FONSI and right-of-entry because they (the Army) haven't done their homework. Also, the Army did not consult with the U.S. Fish and Wildlife where he read Commander Mulbury's letter which said no. Mr. Henkin described the correspondence between Fish and Wildlife Service and the Army and what the palila core habitat was. There was a disagreement between the two agencies regarding the noise level that would disturb palila which is considered "take." He reiterated the concerns of a fire risk on Mauna Kea and the likelihood of a crash happening. The Army has not considered other alternative flight paths to avoid the palila core habitat which is another violation of State law. If the Board allows the Army to "take" or harm palila it is the State's responsibility under the law. Mr. Henkin requested rejecting the right-of-entry.

Member Gon asked if an EA is not accepted a right-of-entry should not be given and Mr. Henkin acknowledged that.

Member Goode asked whether a Federal EA and FONSI were done. Mr. Henkin acknowledged that, but at that time the Army was saying they weren't going to go over core palila habitat. Member Gon asked whether he had access to the Federal EA and Mr. Henkin said he did not. Bill Rogers for the U.S. Army Garrison spoke saying that the EA that they submitted to the Board is a Federal NIPA EA as well. Mr. Henkin asked it was not accepted. Mr. Rogers said Commander Mulbury signed off on it and they completed their Federal NIPA EA. They considered all the public's comments and had to reduce the proposed action due to the time and we signed the FONSI on the other three. Mr. Henkin said they have now done a Federal EA that fails to consider the impact properly, fails to consider alternatives and is in violation of Federal law and State law. Mr. Rogers explained the problems of one alternative route to the other and they chose to fly at 3,000 feet which is the decibel of his voice in this room. Mr. Henkin said the Army cannot unilaterally make a choice which of the feasible alternatives it wants to accept or reject based on considerations like the NAR or housing which is the job of the EA. In regards

to the 3,000 feet he referred to 4-35 which talks about noise impacts, but nothing about 3,000 feet and the EA needs to provide that information otherwise they wouldn't know. Fish and Wildlife says if it's above 60 decibels it will disturb the birds and cause "take." At 2,000 feet it is 77 decibels in the Chinook. At 1,000 feet it's 83 decibels in the Chinook. It doesn't say in the EA that the decibels fall at 3,000 feet which is another flaw where they say they are going to mitigate it. It doesn't say it will stay at 3,000 feet weather permitting and staff's submittal says 1,000 feet or lower if it's bad weather and even the Army admits that is a significant impact. With Mr. Rogers testimony it highlights the fact that this document is not done and suggest it be rejected. If the Board grants anything it can't be on Mauna Kea and should be on Mauna Loa and to reject these.

Pono Kealoha testified with emotion that he opposed this process that this is genocide and to stop all of this where Chair Aila asked him to speak on the agenda item before us.

Peter Peshut testified he is a scientist with the U.S. Army Garrison at Pohakuloa who manages the Natural Resources Program and is the co-author of many of the documents in the EA. In regards to consultation with U.S. Fish and Wildlife, Mr. Peshut attended a Fish and Wildlife Section 7 Consultation Course. Consultation takes many forms and there are four levels that an agency could use in engaging with Fish and Wildlife or action. The first level is a determination of no affect which is in this case is the Army for HAMET through their homework determines that their opinion would have no significant affect on threatened, endangered species, habitat, species of concern and it is their prerogative to go to that level and have a determination of no affect. The next level is where Fish and Wildlife and the proponent (Army) will discuss a not likely adversely affect and in that case Fish and Wildlife would have to concur and puts them in a project agreement with the proponent. Next is the written correspondence that establishes an informal consultation before the written correspondence that establishes formal consultation. Beginning in November 2010 through June 2011, the Army consulted with the Fish and Wildlife Service in length. Dr. Jeff Zimpher was the liaison for Pohakuloa and was a biologist at the Fish and Wildlife Service, but has since left in June 2011. Based on our knowledge of the conditions in the field and the species present with work done several years ago and with their 20 biologists the documents produced was pieced in aggregate with a lot of people. Mr. Peshut manages the program and is the only civilian there and had to sift through 120 pages of dense technical material in order to get you the answers today. In their conversations with Fish and Wildlife Service they acknowledged that if we (the Army) wanted to make a determination of no affect then it was our prerogative to do that. We based that determination on what we already knew and went out and got more information. There were hundreds of hours on the ground doing fieldwork by competent biologists. They brought that data back to their office, evaluated it, literature search which is all part of a normal systematic approach in a scientific effort to produce a set of documents that continually told us that we could stand by "determination of no affect." By making that "determination of no affect" it doesn't mean at all that we are wrong based on whatever views have been expressed here. "Determination of no affect" would remain valid until some affect was shown or some take was shown. It doesn't mean an affect will occur and we are taking a route in order

to avoid it. We stand by that based on the field work that they did. I am a scientist by trade and I work hard to remain objective and impartial. The data that returned from the field for every one of their field investigations regarding HAMET continually supports that the affect will be no significant affect to threatened endangered species, critical habitat as far as species are concerned in the area. They did look at birds protected under the Migratory Bird Treaty Act as well, general habitat conditions, general density and vegetation and we put together what we feel is a broad fair reasonable picture of what is actually on the ground up there at these LZs. He does have copies of all the technical materials and cds are available. A great deal of consultation was made with Fish and Wildlife. Noise and its affect on wildlife is very open ended, very inconclusive discipline. Mr. Peshut's staff did a great deal of literature review and as scientists they look at work previously done in their area, what they personally know, they plan a field campaign to gather more data on the issue at hand and also we rely on the scientific literature. Scientists are constantly challenging and correcting each other. They had to rely on the literature regarding noise because there is very few studies done on noise on wildlife in Hawaii and very few studies that could have been remotely be conclusive for noise affect on wildlife in general because species are all different individuals within species are all different. Because the Army has to co-exist for this training I had to balance what we do know, what does the literature support and what is reasonable and fair from a scientific perspective. He related his Memorandum for Record, Hawaii Aviaphonic Surveys for HAMET EA having to do with military aircraft noise and other types of noise on birds. The Journal of Acoustical Society Volume 1 and 2 – conclusion was military aircraft noise has no detectable influence on bird reproductive performance – none which was a gnatcatcher in California. Our literature review continually supported the 60 decibel threshold where 80 decibels maybe some impacts might occur, but nothing conclusive on that either. Mr. Peshut cited other studies on other birds that he did speak with Fish and Wildlife at length on the 60 decibel and they appreciated all the work they did on this. He read an article on NIPA reduction of construction noise on endangered birds not to exceed 60 decibels. Fish and Wildlife placed the 60 decibel rule as a benchmark that it might be too low which is normal human conversation at a yard distance and 80 decibel is a lively dinner party. He read another article that there are long standing myths of what birds can and cannot hear, but birds hear less well than many mammals including humans. Acoustic deterrents are generally not affective where birds habituate to them and ignore them completely. Birds can't hear the noise from wind turbine blades as well as humans can. Another article on construction noise affects to petrels at Haleakala National Park established 83 decibels within 80 meters of nesting burrows. At Mauna Kea and Mauna Loa there are no nesting birds within 2000 feet of the LZs. We feel we did a lot of homework and made good judgment as scientists based on the literature and the precedence set. The likelihood of a crash is very low because that is what the historical record shows. The habitat encircles Mauna Kea because it is continuous forested habitat around 7,000 to 10,000 feet. The flight paths that they were criticized for that went over Mauna Kea State Park and near the NARS those routes were over forested habitat and happened to be unoccupied at the moment for whatever reasons. It wasn't an issue in December than why is it an issue now because the fire that started in that habitat with the easterly winds blow generally very strong on Mauna Kea why the fire would progress westward into occupied critical habitat, but the fire wasn't the issue.

It's not a matter on whether it's occupied or unoccupied, it's the likelihood of whether there is going to be a fire and a crash. We don't feel that there is going to be "take." As a scientist and his experience with the Endangered Species Act "take" would have to be demonstrated if that occurred and we are claiming there will be no "take." An aircraft strike with birds is an insignificant probability that there is history of two air strikes for all Army flights for the past decade in all of Hawaii. "Take" of the palila wouldn't be take, but a form of harassment and wouldn't be direct mortality. The 80 decibel based on the literature is a reasonable line to draw and we don't feel there would be "take." As for harassment which is "take" under the Endangered Species Act, but doesn't feel there is take because there are no birds within the 2,000 feet buffer and no breeding colony. There may be a rare fly by of a petrel through the saddle and that frequency is undeterminable. There have been a couple surveys done of petrels and the density is extremely low of animals in flight. It would take years to produce an exhaustive study on the density of fly bys and might still be inconclusive. In reference to the letters Ms. Ward spoke of regarding a recommendation for consultation was a recommendation and their position with the Army is the determination of no affect is their response to that. They don't need to initiate consultation and will stand by that.

Member Gon asked to clarify Mr. Peshut's contact at the Fish and Wildlife Service and whether it was in the Hawaii office. Mr. Peshut confirmed that Dr. Jeff Zimpher who now works at one of the park units in Kona.

It was asked by Member Gon whether during the course of research did they consult with any of the Palila Recovery Team. Mr. Peshut answered absolutely and their names are in here and documented.

Member Gon queried that that the Fish and Wildlife Service requested consultation, but you chose not to engage in that. Mr. Peshut said that it was a recommendation.

Member Pacheco asked in the Fish and Wildlife Service letter there was also mention a question of survey techniques and was that provided to them. Mr. Peshut said absolutely, that was based on a comment in the first December 2010 EA. At that time they wrote their determination of no affect based on aggregate knowledge amongst staff and work already done in the past. They did a biological assessment of the LZs in 2007 and they've been to the Mauna Loa LZs many times where they are desolate places in terms of vegetation and habitat that would support any kind of wildlife. There were a lot of comments where one was the methodology as to our survey techniques, results, etc. They decided to do a formal scientific approach rather than relying on documents and knowledge that they had. Their methodology, how far apart transects were, what they used, who they contracted with, the distances of their buffer zones for the bird survey for noise are all documented with what they did it, why we did it and how the evaluation support our position. All of that was provided to Fish and Wildlife Service, Office of Mauna Kea Management, DOFAW, Pacific Island Ecosystem Research System and one more.

Member Pacheco asked when this document published. Mr. Peshut said this one is April 2004. They published a series of MMFRs between the end of March and the beginning of June. There are seven technical documents here that support what they based their conclusions on for HAMET as far as biological resources go.

Member Pacheco asked to explain to him more clearly the process of declaring no affect or affect. From what he understood from what Mr. Peshut said looking at the information at hand you can determine no affect and that would negate any movement forward of any NIPA activity or sister agency activity until something did happen and that would trigger it. Mr. Peshut said no, not NIPA. The determination of no affect is the prerogative of the action agency that they have done their homework and have looked into this in an objective, impartial, scientific way and our documents we have determined there will be no affect. That puts us in a position of accountability, but it doesn't put Fish and Wildlife in a position of saying we didn't do the right thing. It is the Army's prerogative to say based on the data we determine we will not have affect and will not engage in a higher level of consultation process. The consultation handbook says there is very few actions should go to a full blown consultation with Fish and Wildlife Service. His impression here in Hawaii is many of them do, but normally things are taken care of at a much lower level. Our determination of no affect is our opinion and we are certainly held accountable to that. If some affect happens down the road certainly the Army would be in a difficult position. The not likely to adversely affect would be a higher level of consultation where we would claim the same thing, but Fish and Wildlife would formally concur with us. That would give us an increased level of confidence that if there was an affect we would have another agency that supports us. In scientific work no one knows absolutely anything and that is just the nature of science in the natural resources. With the best of our ability with a great deal of technical documents and a lot of work in the field we determined no affect. Fish and Wildlife can make a recommendation, but we have chosen to stand by our determination of no affect.

Member Pacheco said he is somewhat familiar with the biological and culture resources management of the PTA and it's very extensive and asked if there has been a process in the past where there has been formal consultation by Fish and Wildlife Service over an activity the Army has done the biological resource report. Mr. Peshut replied absolutely and said they are currently regulated under two biological opinions. The first was issued in 2003 for the general use of the installation for military training activities and that opinion is in full force and affect and we comply with it. There is the 2008 biological opinion which added a couple plant species that they didn't know they had until later and the nene goose. Our program at PTA works extensively with Fish and Wildlife Service, funded \$5 million dollars a year, staff of 50 people, he manages the program, PTA has extensive conservation activities summarizing the above and that they have the best intact dry land forest habitat in the world.

Member Pacheco said he had trouble reconciling the August 22nd letter about the noise levels and one of the points was which he read regarding no determination of noise on the flight path. Mr. Peshut agreed and explained that the LZs are a geographic point, a 100 to 150 feet square from the center. The 80 decibel contour of the aircraft in use is 2,000

feet. Horizontally all of the LZs were surveyed for birds to 2,000 feet from the center of the LZs as well as 2,000 feet vertically.

Member Pacheco asked in your determination of no affect and a sister agency comes back with this letter to initiate consultation. Mr. Peshut said that the determination of no affect was presented in each of the three EAs. That comment from Fish and Wildlife came only within the last 30 days which took him by surprise and was answered by Col. Mulbury and Mr. Rogers. As they did more work with each comment the data continued to say the same thing. We feel as a competent scientifically based agency our determination of no affect will stand up to scrutiny and they will defend it and they chose not to initiate formal consultation. But, consultation continuously occurred between them and Fish and Wildlife Service. The noise issue was resolved in the April 2011 EA by Dr. Zepher who thanked them for providing the references and Mr. Peshut thought the noise issue was resolved.

Member Pacheco asked for a copy of Appendix B of the Final EA to read right now and Mr. Peshut provided.

Member Gon asked to confirm to him whether the flight path goes over core palila critical habitat. Mr. Peshut confirmed that saying in the current EA it does describe the percent of the remaining population and that the flight paths are in that vicinity.

Chair Aila said he had a question regarding the Mauna Kea access on the posting of the guards at the LZs and whether traffic would be allowed. Col. Tate explained there is no requirement from the Army to post any access restriction whatsoever relating that in the past they used to post soldiers at the access roads to warn anyone who came up about the helicopter activity. If they find any human activity at an LZ they will fly to another LZ. There is no reason to either limit access or interfere with any activity occurring in the LZs. Over the years they haven't encountered any civilian activity at the LZs and will not impact their ability to train.

Alan Ho testified relating his cultural heritage as a warrior with Kamehameha and as a Native Hawaiian part of an organization of Hawaiian civic clubs – the Native Advisory Counsel that submitted written testimony and was formed to assist the Army in facilitating issues within the public. There was a comment that this is the Army's kuleana, but it is our kuleana. We are at war reminding the audience why we are at war for. Mr. Ho was one of the soldiers that benefited from Uncle Joe's pinnacle training. They are not here to ask you how the Army should conduct their helicopter training referring to the rigorous process that the Army has already done and both Federal and State are saying they need more information to help assess this continuing activity. This is the not the first time and reiterated the benefits of this training to the new pilots. I think it is indicative that your staff having gone through the submittals and having to reach the determination in concurrence with the application says the genuiness of the Army's application and the rational for your supporting that EA and hope the issuance of the right-of-entry permit.

David Henkin testified on questions of Section 7 of the Endangered Species Act lies with the action agency (the Army) where the action agency is obliged to ensure that its actions will not jeopardize or push to extinction or adversely modify critical habitat. The action agency initially determines if there is any type of affect on any endangered species. If there is “may” affect a species then they must consult with Fish and Wildlife Service who under the law are the experts regarding endangered species and effect of Federal actions on them. He gave an example of no affect and reiterated the need for consultation regarding a “may” affect. Mr. Henkin related various levels of affect and types of consultation. The Army is saying 100% certain no affect which is illegal under the Federal Endangered Species Act as made clear by the Fish and Wildlife comments and is a violation of State laws that require full disclosure. The Fish and Wildlife said to consult with them, but cannot force the Army to. Mr. Peshut told you today it that he received the August 22nd letter from Fish and Wildlife for consultation and he says he didn’t know why that happened. Mr. Henkin referred to earlier letters commenting on the December 2010 Draft EA that the Army is confused because it says they will not go over occupied habitat, but it shows on the map that they will. They recommend a re-evaluation of both the determination of no effect and the no significant finding pursuant to NIPA which is why the August 22nd letter from Fish and Wildlife. He reiterated the concern for fire risk.

Marti Townsend representing KAHEA – The Hawaiian Environmental Alliance testified in opposition of the right-of-entry permit for the HAMET exercises that it is a bad process. The regulations for issuing a right-of-entry permit, HAR § 13-104-4(5) there are no standards provided that it’s to the discretion of the Board to issue a permit. She reiterated previous testifiers’ concerns that these are conservation lands and encouraged the Board to reference the CDUA requirements for issuing a permit for lands in the conservation district. Criteria #4 for a CDUP does not allow substantial impact and she thinks the potential for impact is great here. It does not warrant issuing this permit. The process is flawed that the final EA must be provided to the public first through the EOQC bulletin which hasn’t happened. The cumulative impact analysis was insufficient because as staff referenced that this activity was sporadic and demonstrating a piecemeal permitting process. The risks are considerable and they found the cultural analysis offensive and insufficient for Mauna Kea. There is a lot of material and people who can consult on the significance of Mauna Kea. The frustration you are hearing from people is what does it actually take to protect Mauna Kea where the Army could conduct this training elsewhere. As shown by the exchange earlier by the NIPA preparer and the Earth Justice representative demonstrates how incompatible this proposed activity is and shouldn’t be doing it here. Increase cost, increase inconvenience are insufficient justifications for extinction of the species, and contamination of drinking water on Hawaii Island.

Kapuakililikoia from the Waianae Valley Hawaiian Homestead testified as previously stated that Mauna Kea is part of ceded lands that the Native Hawaiians can only take so much. She reiterated and summarized previous testifiers’ comments that these are conservation lands, the Army has not done their due diligence, the two uncles who did training of pilots are still here, what is left of this species (of palila) will be no longer, and

the brother who shared his genealogical documents which is proprietary. I am imagining within this process that his proprietary information is kept confidential because it takes a lot for somebody to bring out what is known as sacred. She referred to how the American process continues to step on the Hawaiian people as well as other native peoples on the continent and the desecration. Also, this meeting should be on Moku o Keawe (Big Island). The government has displaced the hearings affecting the people who are going to be impacted the most by making these decisions on Moku o Oahu. It is intentional disregard. She appreciated the Board for taking on this extra kuleana and the military because they deserve to be taken care of. We don't believe they should be properly adequately trained to minimize the losses or determination of no affect, but until it happens then there is the affect. You are not going to die until you die and then there is the affect. Like others they support the military, but the Native people of this aina (land) Mauna Kea and Mauna Loa is the not the place for it. The people will continue opposing it teaching their children what is pono (right) and how they are going to reconcile it.

Dr. Julie Taomia, Archaeologist for the Army at Pohakuloa Training Area (PTA) testified that the Army does recognize that Mauna Kea is an important and sacred place to Native Hawaiians. She reiterated previous testimony that previous training was allowed in the past at the high altitude, the literature review for all 3 EAs on Mauna Kea and Mauna Loa, did outreach with their cultural advisory committee whom she named, consulted with Kahu Ku Mauna which is the advisory for the Office of Mauna Kea Management, consulted with Kealoha Pisciotta who represented Mauna Ka Aina Hou and listened to comments of other people as well. The comments are general, it's on Mauna Kea as a whole, is considered important and significant, but there wasn't any specific references to cultural practices that takes place at the location in the vicinity of the training either on Mauna Kea or Mauna Loa and makes it difficult to evaluate what affects it would have on the aina. Most of the cultural references were to Lake Waiau and Pu'u Poliahu in the Science Reserve. In the current EA the flight paths would take them away from those areas. Their staff did conduct archaeological surveys at all the LZs where they did find some mounds on Mauna Kea within the area of potential affect under Section 106. We do not have confirmation of what those mounds were for and are constructed on the pu'us. Nothing was found on Mauna Loa since the LZs are on relatively recent lava flow.

Col. Tate testified that the Army has never denied that there are other places in the world or on the continental United States where this training be conducted and they talked about some of the reasons why they wanted to do it here. There is a cost issue which is a concern with the Nation's debt issue, but the biggest issue is the cost to the soldiers and his families. This has been termed by some today as an inconvenience. We are in the longest war in our nation's history and related his experience with being in the military for 6 years, 3 of them deployed overseas (Iraq, Afghanistan, Bosnia) and when they are home with their families they are going through intensive training to go back for combat again. They respect the concerns about these training areas which is why they chose the routes that had the least impact as possible, but they are also conscious of the impacts on their men and women and their families. I don't agree with the characterization that it is an inconvenience.

Kerry Abramson, Environmental Attorney for the Garrison testified to clarify on standards supporting what was said earlier that they did the research, spoke to all the scientists and the Army concluded no affect which is up to the Army to make that determination. May affect is always a possibility there maybe affect, but there needs to be literature or analysis to determine quite possibly there could be an affect. We didn't come to that conclusion and if we came to the conclusion of no affect we are in no obligation to formally or informally consult with the Fish and Wildlife Service. Also, the standard of no significant impacts based on the EA and by stating there is no significant impacts acknowledging there maybe some impacts and they recognize that. It is up to the Board to determine if there is a significant impact. There is a difference between no impacts and no significant impacts pointing out the request is for only 20 days, 10 hours a day that this activity is temporal in nature that there are impacts, but none rise to the level of significant impacts.

Member Pacheco asked whether he would disagree with Mr. Henkin's assertion that the definition of no impact and no affect that there is a 100% chance of no impact. Mr. Abramson said absolutely disagree with that. In the example Mr. Henkin gave, there is absolutely an impact there. The impact is so speculative in nature somewhere down the line there will be some impact, but we don't look at it like that. When we say no impact we are saying from the studies we've done nothing was suggested that says will harass or kill the birds there is nothing to suggest that. We are operating 77 decibels at 2,000 feet and they went beyond that to approach 3,000 feet to appease the Fish and Wildlife Service. After they received that letter their staff contacted Fish and Wildlife Service to discuss that with them. They went back to the technicians and pilots and asked if they could fly higher than 2,000 feet and they state we'll try to approach 3,000 feet to lessen any impacts that may or may not be there. Nothing has shown us that there will be any impact to the palila birds and it's more than just a guess. Of 10 years worth of flying there haven't been any crashes that resulted in any wildfire. They aren't saying it can't happen. It hasn't happened in the last 10 years and there is nothing to suggest an impact, no affect. The Army had done its due diligence and has engaged with the Fish and Wildlife Service for the past 10 years who does the biological survey and are in affect right now at PTA. The Army embraces what the Fish and Wildlife brings, but they don't have to take their opinion as their own. There expects declared no affect and that is what they have done here.

Member Goode said that the no affect isn't something we can take up here except in the context of the entire FONSI and Mr. Abramson acknowledged that to be correct. You can take the EA, considered all the alternatives, all the information to determine if there is a significant impact. Whether they violate the consultation shouldn't be a concern of the Board, but the State should rely on the action of the Army and if the Army came to the correct conclusion you can concur with us that there is no affect on the ESA and whether there is significant impact you can take consideration of that too.

Member Goode asked whether he looked at the conditions proposed and Mr. Abramson acknowledged that. Member Goode asked on the item C-5, conditions 3 and 4 says 1500 feet, but what he heard today it's a minimum of 2,000 feet and if conditions are

appropriate to go as high as 3,000 feet. Mr. Abramson said as far as the Federal finding of no significant impacts was signed and he was sure the State one would be consistent asking to correct him that they plan to stay as high as they can shooting for 3,000 feet. Member Goode said if this condition were to reward say a minimum of 2,000 striving for a minimum of 3,000 for quiet conditions related to visibility, etc. warrant 3,000 feet we could re-write it and asked whether they could go with something like that. Mr. Abramson said correct and that is what they did on the Federal side.

Member Goode said on condition #4 of the right-of-entry that flight paths over forested areas should be at least a 1,000 feet as a source of testimony from a number of folks. Same here it could be 2,000 feet or when appropriate it could go up to 3,000 feet. Col. Tate said that it is not an issue and would be happy to execute 2,000 feet.

Hank Fergstrom testified reiterating his previous testimony that as Hawaiians this is their temple and is part of that environment that they keep leaving them out as the practitioners.

Mike Lee testified that this leaves him no choice as a practitioner and distributed some photos of Poliahu flying and described what she looks like asking at what point are we forced to put her schedule of flights out. He asked at what point do we have to expose our religion to you people with the harassment and where does that lead to here. Do we have to open our treasure trove of what we hold most sacred and dear? Do you do that to the Vatican? How far before we are respected? When do we get to be put on the Endangered Species List? Why are we forced to give out what is huna to us and show you what is Poliahu and define our religion? When do we get the dignity and respect that other religions are afforded and protected? When are we recognized before they are for real? He has family buried at Pu'u Poliahu. Mr. Lee referred to a chant regarding various astronomical/historical events. He asked how much sir?

Chair Aila said he does not have the answer to his question. There is a process that we are dealing with right now. There is an EA out there that doesn't have this information and they can't respond to it. Mr. Lee said you have to understand that we are nomadic and we don't stay on one island. Chair Aila acknowledged that and said we understand.

Member Gon made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Agor seconded it.

12:25 PM EXECUTIVE SESSION

1:00 PM RECONVENED

Chair Aila let it be known that Mr. Lee consented that his documents and photos be part of the public record.

Member Pacheco asked that there was a Federal EA that was accepted. Mr. Rogers said it was December 2010 where they put out an EA and a draft FONSI with input from the community members and the public where they received input and tried to address that in the revised EA in 2011.

Member Pacheco noted that there were comments from testifiers that there was no response to their comments. Mr. Roger explained in the NIPA process they take the input from the public and agencies and incorporate that into the document citing an example of crashes resulting in spills and potential contamination of the officers. That will be addressed in the appropriate section of the document which was put back out in the April version. When they were asked to comply with the substantive requirements of Chapter 343 they have copies of the Final EA that responded to every comment. The comment period has ended on August 27th and they mailed letters out to people who commented.

Member Gon commented that we are working on item C-4 and not item C-5 and Mr. Conry acknowledged that.

Member Goode asked the 2,000 feet and 1,000 feet on the right-of-entry of C-5 is currently before us at 1,000 feet and generally is that like a standard. Mr. Conry said it is standard permit conditions that the branch drafted the permit from the past and staff uses that. Also, they will go with what is proposed in the EA which is not going to go below 2,000 or maintain 2,000 or higher and staff could add that to be consistent with the project description. When staff drafted the permit they were coordinating with the Branch and that is the conditions they used. The 2,000 is okay with staff and to keep it consistent with the project which addresses item C-5.

Member Pacheco indicated he had some comments for the Board and it is a difficult decision with the EA, FONSI and the whole process for him. He wants to support our troops in training. The tight time frame, any decision made, any kind of public process to respond to that or challenge it, and the activity has to happen quickly. I had no problem with the FONSI if it was the Mauna Loa LZs relating the previous concerns with the palila core habitat that he knows the area well, the winds there, the bird densities where the birds move up seasonally, and breeding. If there were a crash and a fire there are dip tanks up there. He spoke of a previous fire east of Mauna Kea State Park that was intentionally set and the amount of acreage burned in that habitat would have a deleterious affects on that bird population. Since he started visiting the area the bird population was 6 thousand and dropped to a thousand. It is a big issue taking this EA and declaring a FONSI with the Mauna Kea land use and flying over that core habitat. I could support a right-of-entry with alternative 3 on the LZs or alternative 5, but he wasn't sure how he could reconcile the FONSI with that including the activity over the core habitat.

Member Agor said he supports the FONSI that it is for 20 days and we can't go through life thinking something may happen or there is no progress. The process may have been sloppy, but for such a short term project the FONSI is appropriate. It's got nothing to do

with the time frame and went through the process and he agrees with the finding of no significant impact.

Member Gon acknowledged the good conservation work at Pohakuloa Training Area and the need for the training at high elevation, but at the same time I feel there is inadequate consideration of any advice from the Fish and Wildlife Service, the partner agency on the assessment of the impact. I feel there has been inadequate assessment of the cultural resources and the impacts on those resources and the cultural practitioners that use those resources. I feel there has been an incomplete assessment of crash scenarios within the critical habitat. I feel there has been an appropriate dismissal of flight paths and options outside of the critical habitat. My leaning is not to accept the finding of no significant impact.

Member Goode sympathized with everyone who had spoken here today, but is leaning with Member Agor that anything can happen but it's for a limited time and that the EA is good for these 20 days. Outside of these 20 days you can't do it and this is it that they would have to come back with another EA or an EIS would be appropriate if they plan to do this more. Looking at the short duration he agrees with the FONSI

Member Edlao said this is one of the most difficult situations/decisions he had to make reiterating what Member Agor said on what may happen then nothing will happen that it is for a short period of time and wished a full EIS had been done if they decide to do this again in the future. The importance of training our troops properly to put their lives on the line for our freedom he can support this one FONSI.

Member Agor made a motion to approve staff's recommendation on item C-4 and everybody knows on item C-5 I'm going to push for the elevation of 3,000 plus feet. Member Edlao seconded that.

Member Pacheco said thinking what no significant impact means to me is the potential actions and likelihood and while the chances are slim there are benefits and risks for him that risk is really hard to quantify what the loss of that training would mean as far as risk for the troops in relation to putting it against the potential risk of losing a species. It is a line I am not willing to cross. Unfortunately we don't have more time to vet this, but assuming it will come back again and have a much more thorough full EIS process whether this goes forward or not I'm sure it will be before the Board again.

Member Agor said he really took Member Pacheco's concern to heart and appreciated the process to get to it. We are talking about a flight of 2 minutes, 3 minutes over the habitat. Member Pacheco said he understands that he goes across that road a lot to the habitat and he knows the tour industry, the flight industry and somebody gave testimony that there are flights going across that area on a daily level and he agreed. Those situations and those choices are sitting before me and that is my choice.

Member Gon said he wanted to react to his desire to push this out fully through an EIS context and learning that sequential, small EA consideration is not the way to look at

activities in this place that we need a much more comprehensive and full look at what's going on. I want to also point out that although the environmental and endangered species aspects seem to be the items at the forefront on this Board and certainly are the ones more clearly elaborated in State law that it is not insignificant the consideration of cultural resources and impacts in this situation. I need to stand by my feeling of inadequacy in the assessment of the cultural impacts as a cultural practitioner myself.

Member Pacheco said he can appreciate that too from a cultural perspective. Looking at the larger context of activity on the mountain and those impacts how this particular activity for this particular duration of time in those particular areas for me it's the core habitat.

Chair Aila took the vote: 4 Ayes, 2 Nays. 4 in favor and 2 opposed.

<u>Ayes</u>	<u>Nays</u>
Agor	Gon
Edlao	Pacheco
Goode	
Aila	

Approved as submitted (Agor, Edlao)

Item C-5 Issuance of Right-of-Entry No. FW-2011-H-02 to United States Army Garrison Pohakuloa 25th ID (L), 25th Aviation Brigade, for Short Term High Altitude Mountainous Environment Training at Mauna Kea Forest Reserve, Hamakua, Hawaii, TMK (3) 4-4-015:001 portion and Mauna Loa Forest Reserve, North Hilo, Hawaii TMK (3) 3-8-001:001 portion.

Mr. Conry indicated that now we have the approval for item C-4 we need authorize the right-of-entry permit which is a standard permit from the branches that there is a discrepancy from what was proposed in the EA and what our permit is. Staff wants to be consistent with the EA and asked to amend the permit to read "...at least 2,000 feet above ground level..." on item 4. Also, under item 3 change 1,500 feet to 2,000 feet.

Member Goode asked whether there are any conditions, general or special that maybe discusses having in the unlikely event of a crash or fire having fire helicopters stand by and ready is there any discussion on those conditions. Mr. Conry said only what the Army has for operations at Pohakuloa they are equipped to respond to fire. Maybe looking at item 9 under General Conditions and maybe elevate that to "shall provide stand-by response" or "immediate stand-by response" as an additional item or as a special condition and confirm with the base commander. Col. Tate said they are agreeable to that condition and referred to the EA reiterating previous testimony that they have wild fire assets having worked with the County. Member Goode said the conditions as written to be modified to say that you have units or personnel on stand-by and Col. Tate said they can modify that however you think appropriate. Mr. Conry suggested putting it in the

Special Conditions – “the Army shall provide immediate response capacity for any fire.” Mr. Rogers said that is what they had describing their fire fighting capabilities.

Member Edlao pointed out that General Condition #9 covers that. Member Goode said to add the word “immediate.” Mr. Conry agreed to that.

Member Goode said that Special Condition #1 talks about LZs that the question is whether this EA was good for this amount of time and the answer is yes. I’m not sure if this is the appropriate place to put this, but I would like to add something should the Army use these LZs again for this type of purpose that a full EIS shall be done – Federal and State EIS. Ms. Chow said that you could put it in here, but because this right-of-entry permit will expire at the end of October by noting that if that is the consensus of the Board in today’s meeting minutes that instruction to the Army is to concur.

Member Edlao said any further action of this kind of activity should come about again I would suggest a full EIS be done – Federal and State. Chair Aila said that the Army and staff could take that as a consensus should another request come in we would certainly want you to do a full EIS. Member Pacheco agreed that a full EIS process would make sense and to look at an overall programmatic use of the State’s force outside of PTA. He would like to limit the right-of-entry to Mauna Loa LZs. There was some Board discussion about the alternatives.

David Henkin said now that the document is accepted and the Army recognizes there are three action alternatives that would accomplish its training goal that they think that the Board should continue considering alternative 5 – conduct training on the continental U.S. reiterating the reason was cost, time and quality of life issues. If the Board should determine entry to any lands outside of PTA we would urge alternative 3 – the Mauna Loa only alternative which would accomplish all of the Army’s goals which is good enough to avoid all the potential environmental and cultural impacts raised today.

Hank Fergerstrom testified encouraging the Army and the Board to make it so they are not in this position to make drastic decisions without the proper information and appreciated everyone who testified and the Board taking the time to hear everyone. He reiterated previous testimony to apply this to the CDUP system and that the Army provide timely responses to their questions.

Member Pacheco said that one of the things that the Board conferred with their attorney was the CDUP process and helicopter landings as defined were not conservation district use. It is an activity and therefore wouldn’t trigger a CDUP process. Mr. Fergerstrom said we should reconsider that because this use has happened several times and will continue in the future. Member Edlao said that if they do come back it will be harder because they will have to do an EIS and will have to do their due diligence. Mr. Fergerstrom agreed since an EIS allows for the proper input and appreciated everyone’s time.

Marti Townsend testified that you are not barred from applying the CDUP standards and this permit does not have any standards and we should use the conservation district for guidance. Look for long term substantial impacts, quality of life, public health, safety and welfare and should take those into consideration when adopting this permit. We should look at the long term cumulative effects of these landing zones.

Col. Tate testified reiterating what he had testified earlier regarding the crawl, walk, run model that Mauna Loa is the crawl level. As noted earlier the Mauna Kea LZs will prepare them for the "run" stage and to go into combat. Also, originally they had 6 LZs now they are down to 3 which would cut their training in half and would double the amount of time to take to accomplish the same aviator training. It would impact them.

Pono Kealoha testified to think about our mo'opuna (grand children) and their home that this is not your kuleana that there is no treaty of annexation.

Kapuakililikoa testified that the discretion is happening over and over again setting precedence against Hawaiians and to look at it on a personal context against a female member of your family. The aina is feeding us that it is deeper for Hawaiians – cultural and spiritual. She made references to Makua, Kaho'olawe and continuing to do it to Mauna Kea – this desecration.

Chair Aila said we have staff's recommendations with amendments.

Member Pacheco said regarding the 2,000 foot and 3,000 foot, knowing and observing the weather up there it seems to me that most of the weather that would impact the activity up there would not allow the flights to go lower. The cloud banks come in and sit right on the ground unless there is a large storm system. Often times the floor of those storm systems is 12,000 plus. I'm confident that the Army should be able to stay at least 2,000 feet and no closer than 3,000 feet. This Board just accepted the EA or FONSI and we have the separate item for right-of-entry. I did support the FONSI and I'm struggling to support this right-of-entry looking at the process and what's before me and I would prefer to have alternative 3, but he will follow his previous vote.

Member Agor made a motion to approve as submitted by staff with amendments and Member Goode seconded it. The Board voted 4 ayes and 2 nays.

<u>Ayes</u>	<u>Nays</u>
Agor	Gon
Goode	Pacheco
Edlao	
Aila	

The Board:

Moved to approve staff's submittal by amending the Right of Entry permit, Special Conditions, item #3 change 1,500 feet to 2,000 feet, item #4 change 1,000 feet to 2,000 feet and also, under the General Conditions item #9 add the word "immediate" after the word "provide" to read as "...provide

immediate fire suppression..." Add to Special Conditions, item #1 "Should the Army use these LZs again for this type of purpose a full EIS shall be done, both Federal and State."

Approved as amended (Agor, Goode)

Item D-4 Grant of Perpetual Non-Exclusive Easement to Time Warner Entertainment Company, L.P. for Telecommunication Transmission Line Purposes, Ponahawai and Waiakea, South Hilo; Kaohe 3rd and 4th, Hamakua, Hawaii, Tax Map Keys: (3) 2-5-01:06 por., 2-5-02:14 por., 2-6-18:04 por., 2-6-18:13 por., 4-4-15:04 por., 4-4-15:08 por., 4-4-16:03 por., 4-4-16:05 por., & 4-4-16:06 por.

Russell Tsuji representing Land Division briefed the Board on item D-4 that the lines are going on existing electrical pole(s) and said he had no changes. Mr. Conry indicated that he wanted to be sure when Time Warner approaches for concurrence to add conditions on the use of those lands. The wording of the recommendation has their condition about concurrence to DOFAW and to be clear for the applicant that it will not get concurrence until it satisfies whatever DOFAW requires.

Member Pacheco asked what does that mean for the permit. Can they just approve the permit? Mr. Tsuji said you can approve staff's submittal because it has that condition in there where he described there are six conditions and haven't obtained that yet. It was asked by Member Pacheco whether they normally have that before they issue. Mr. Tsuji said certainly before the easement document. When he read the submittal he thought the applicant had it, but apparently not.

The applicant agreed to all the conditions after the Chair's questioning.

Mr. Conry said they wanted to make sure the applicant is going in and doing the work and taking adequate precautions to cause excessive damage if they require heavy equipment and done in a manner where you aren't going to have secondary impacts over that easement.

Member Gon said its endangered species, native habitats, and other potential invasive species introductions. Mr. Conry agreed looking at those types of issues. Member Gon said it is a very long easement and he can see it taking some time to put together. Mr. Tsuji pointed out that the representative for Time Warner is a former Land Division administrator and the representative will make sure those conditions is followed.

Unanimously approved as submitted (Pacheco, Goode)

Concerns were raised by Administrator Paul Conry because the applicant has not yet informed DOFAW of how the easement could impact those lands managed by DOFAW. Therefore, HDLO will assure that before the Easement document is sent to the applicant for signature, that DOFAW's concurrence is obtained in writing.

Item D-2 Set Aside to County of Kauai for Public Park and Recreational Purposes , Weliweli (Makai), Koloa, Kauai, Tax Map Keys:(4) 2-8-22:10 and (4) 2-8-18:30.

Mr. Tsuji related some background on item D-2 and had no changes to it.

Member Agor asked for the road to go through when planning the park.

Lenny Rapozo, Director of the Parks and Recreation for the County of Kauai testified that Member Agor is looking at the unimproved road and distributed some aerial photos of the area of the work done by the stewards of this facility – Hui Malama O Kaneioulouma. There is talk about redirecting traffic into the park area and they are looking at possibly during the planning stages off of Poipu Road make it one way toward Poipu Beach Park that would afford us more parking and enhance that area to accommodate what we hope in the future to have visitors to visit this particular heiau area. You would exit from that unimproved road that is there which is all part of the discussion.

Mr. Tsuji asked whether the intent was a road used by the public. Mr. Rapozo confirmed that, but Mr. Tsuji pointed out it might require a sub-division out or a dedication of the road. Ms. Chow asked whether the road will be used as access to other areas or just access to the park where Mr. Rapozo said access to the highway. Right now there is a road that goes in, but ends where the houses are. Ms. Chow said we would have to look at it. Mr. Rapozo said that is not what they are here for, but are here to do what they got to do to make it happen. Mr. Tsuji asked whether it was a County road and Mr. Rapozo said it would be a Park's road.

Mr. Rapozo related the preservation and protection of historical sites on Kauai that the Board should come to visit because this treasured site which is unlike anything in the State of Hawaii. Everything done at the site is done by hand by volunteers and compared the site to the Roman Coliseum.

Unanimously approved as submitted (Agor, Gon)

Item D-8 Request to Reconsider Forfeiture/Termination of General Lease No. S-4007; God's Love Mission, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-027:023 and 024.

Mr. Tsuji conveyed some background history and the last Board action was to grant the lease termination and allow 60 days for the lessee to cure all the outstanding defaults otherwise staff was authorized to terminate the lease. The time came and went and there were still some outstanding defaults and staff informed the tenant they proceeded with the Board action and terminated the lease. Subsequent to that staff was preparing an eviction because the lessee was still on the premises pointing out the correspondence between the lawyers. On the eve of the planned eviction with Land Division staff and DOCARE, I received communication from Kali Watson and discussed the matter with

him. The plan was to cure all the defaults and offered to cure the rental default prior to coming to the Board and being that the lease was terminated with this Board action he told Mr. Watson that he would not accept his payment, but would present this matter to the Board. Should the Board agree to reconsider as prior termination of the lease then he would take the payment, but didn't want to accept the payment without bringing this matter to the Board.

Initially, he had hoped the applicant would have everything ready meaning if the Board was able to grant the request the applicant would be able to perform every single outstanding default is cured and learned this morning that they have some, but not all. They would like to request certain things from the Board.

Kali Watson, counsel for Julius Asam (the lessee) testified that Julius Asam has been on this non-profit property for 15 years. The reason he is involved is because it is a great organization that the fruits and vegetables raised are distributed to the homeless all over Oahu where Mr. Watson described what is growing on the farm. Mr. Asam displayed a huge papaya and some pictures of what they are raising. The recent inspection that DLNR conducted had no use violations that all have been corrected. Mr. Watson has a check for the full amount of \$12,650.00 for the delinquent rent. The tax lien which is for \$21,000.00 will venture into a payment plan with the Tax Department garnishing four payments totaling \$8,000.00 with about \$13,000.00 left that he has to pay off. Mr. Asam's big glitch is his inability to get a \$55,200 performance bond. What he is trying to do is sell two condos in order to generate money for that and unfortunately wasn't able to do it. Mr. Asam has been working with a bunch of different lenders and even talked to a company on the mainland to get his performance bond, but he wasn't able to get that part of the default taken care of today. He anticipates he can do it within a month. Mr. Asam prepared pursuant to the Department's request a conservation plan that costed him \$20,000. Not only does he significantly improve the site, but he is prepared to cure the deficiencies in a timely fashion. It has taken him a little bit longer with respect to these condos as we all know the market is pretty depressed and he has been having difficulty selling them in a timely fashion. Mr. Asam got three loans approved, but the process of getting the documentation and getting everything submitted that is needed in order to get the actual proceeds is moving along. He is making a good faith effort to comply. This Board would not be derelict in allowing this guy a bit more time to get it together in full compliance. They asked to amend the action item to give Mr. Asam an additional 30 days and he is willing to pay off the entire tax lien that he already has a payment plan and made the four payments in compliance and would be fully complete in seven months. Let him do the \$2,000 a month route because his farm is very productive and anticipates generating a \$100,000 a year with the sale of his fruits. It would be a different situation if nothing was there and the guy was derelict and two years delinquent, but he is prepared to make all delinquent rents current. Mr. Asam has taken care of the tax lien by making arrangements with the Tax Department to pay that off and the only thing holding it up is the performance bond which he hopes to cure within the month.

Chair Aila said there was some discussions this morning about the properness procedurally of what we are trying to accomplish here today and asked the Deputy

Attorney General to share with the Board members. Ms. Chow asked whether they wanted to do it here or in Executive Session.

Member Gon made a motion to go into Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Goode seconded it.

2:10 PM EXECUTIVE SESSION

2:20 PM RECONVENED

Chair Aila said that it was determined that the lease has been terminated and the Board does not have the authority to un-terminate the lease in this situation. The Board can recommend for future direction to Mr. Watson's client that we recommend he pays back until he becomes compliant and to work with Land Division to come up with a temporary alternative. The lease will have to go back out for auction.

Mr. Watson said we are in this sort of déjà vu here that the last time he was here before this Board where a lease was terminated where he had to go to court, file a law suit and with that particular Board rescinded that termination. Legal maybe telling you one thing I know for a fact there is precedence that this Board has taken action to institute to cancel the lease. Mr. Asam is an honest farmer doing his thing making revenue to help the homeless and he is good guy and to put him through the expense to put him through this lawsuit to come back here and do battle in court would be very expensive for this guy. I would hope the Board would reconsider that granted that when he was the director he was always getting opinions from attorneys even the Attorney General, but that is only an opinion and the discretion lies with the Board. They have the flexibility to do what they think is right. Mr. Watson asked what is the worst that could happen if they were to reinstate this lease. Chair Aila said speaking for himself and not the Board members based on the prior actions of the former lessee has been less than stellar in terms of performance and not being able to follow through with the conditions he said he would follow through on and that doesn't leave a lot of inspiration on my part in order to use that discretion on behalf of your client.

Mr. Watson related looking at Mr. Asam's history taking a dump site and converting it into a productive farm with over a million dollars of inventory. Obviously, he is not going to give it up. We got to go to court and he thinks the court will disdain any type of forfeiture because what he is really talking about here especially when you look at the original basis for the cancellation. It was saying Mr. Asam didn't provide the performance bond, but when you look at the lease it specifically provides that he is allowed to submit property in lieu of a performance bond which is what he did. When you do the default amount doing the calculations he wasn't actually in default and make it current and they (staff) advanced the charges for the last quarter when it wasn't even due. I really question whether the original cancellation was warranted. I respect your decision, but in looking at the situation I don't think it is the type of situation that

warrants a severe penalty and forfeiture of this guy's lifetime investment. He is a contributing member of society, he is helping the homeless and he has done a really good job in making that facility productive even though he is only using half the property and being charged for the full 34 acres. He is being treated in Mr. Watson's mind somewhat unfairly and I think if we were to take it to court we'd be successful, but do we really have to do that. It maybe so, but I was hoping you guys would...

Member Goode said per our Deputy Attorney General and what advice we got is what our Chair described you (Mr. Watson) bring to the table some other aspects that we have not looked at months ago since he can't remember all the details when the applicant was here last, but there is nothing we can do but deny, but perhaps they could defer. He suggested deferring until the next agenda item or another month, delay any eviction type action and have a chance for you to confer with Land Division and have the AG's sort through all these things. I think it would be better if the two parties talked a little bit more and go through the facts of the prior case in more detail.

Mr. Tsuji said he was the administrator the last time this came up and it was terminated against his recommendation because there was only one minor item left the application of a building permit had already been submitted and was pending. Because it was coming before the Board and it didn't have the required provost for the six month period it frustrated it and terminated the lease. A law suit came, the Attorney General came on board and he said you got to give them back the lease they cured the default. The Monday after they terminated after a Friday meeting and Monday or Tuesday the permit came in. I don't agree with respect to the Department of the Attorney General that this Board does not have the authority to reinstate the lease. Mr. Watson agreed saying I don't either.

Member Agor said he can support the Department.

Member Gon said he can too, but is it okay for them to express their expectations on what they want to see at the end of that deferral period. You are talking about in a months time...Mr. Watson said in a months time he (Mr. Asam) has two properties for sale, a couple loan approvals that got to process and get the money and anything else, but the performance bond that is pending because its on the mainland since no one locally would do it. To me that is the main thing hanging this thing up and when you look at it what is it for? To assure performance of the rent basically and the guy is making a hundred thousand a year and his rent is \$28,000 a year. The guy can handle it and he nets more than enough to cover the rent.

Member Pacheco asked why all of a sudden Mr. Asam can handle it pointing out the two cases of rent default in 2007 and April 2008 the performance bond. Mr. Watson said that the performance bond is always a challenge especially when they upped the rent and required \$55,200. Member Pacheco said in two years there are two violations of lease conditions and five defaults of rent. That doesn't give me a lot of confidence to me on the Board here to be able to go to bat for somebody. Mr. Watson said that part of the problem was Mr. Asam was living on the mainland and somebody else was managing the property and was stealing from him and that has changed now that Mr. Asam lives there

as a full time farmer. The last six month he has been participating in the homeless distribution of food. Like I said here is the current lease rent which they had offered back when. Since Mr. Asam has taken it over he has been very diligent in lease payments. I can't say prior time wasn't a problem, but that problem has been resolved and looking at the recent inspections there is absolutely no use violations. In fact, there was an issue with two of the derelict buildings where he tore those down at close to a \$100,000 to make compliant.

Member Pacheco said he saw that and asked the two properties for sale that one of those was being offered in lieu of the bond as collateral. Mr. Watson said it's a different one. The one he was offering has no mortgage on it. That is the other thing the guy is willing to put up a condo as allowed per your lease and he is being told no. I don't think that is right. Why put it in the lease if you can't use that as an alternative to spending a whole ton of money to getting a performance bond or sell the property to come up with the cash to perform. It seems very expensive and unfair, but you go to go with what you guys say and that is what we are doing. Mr. Tsuji said that came up the last time this was before the Board. The lease language was drafted to allow the Board to exercise discretion and take something like real property in lieu of a performance bond or cash, but staff's recommendation was not to because it would be like a security because you would have a lien on it. It's almost as if we acquired the property and I can tell you Land Division does extensive background checks, due diligence because of the potential liability that may occur once you become an owner of the property or even a lien holder on the property. A due diligence is required. Staff's recommendation when they were offered at the last time this was brought before the Board it was not to accept that. Mr. Watson said this is a condo with no mortgage, environmental, liens, etc. you can do a title search or we'll provide one is more than adequate security rather that sell this condo is a tremendous lost. Mr. Asam has \$300,000 in equity in these two condos and he would put up both of them if you guys want, but give him which is allowed under the lease the opportunity to cure the thing in a way that is allowed. Mr. Watson said he pleads with the Board not to force this guy go through some kind of litigation. I like the suggestion of giving them a bit more time to try and work with the AG's Office and come up with a solution that is acceptable and come back before you folks to have you consider what we've asked.

Mr. Tsuji said if the Board is inclined to do that I just want to make clear what I need to do because I know Mr. Watson wants to give me that check and I wouldn't want to take it unless the Board told me to take it. I didn't want to make it difficult in a later decision. My preference is everything is on hold for 30 days until we work this out and come back. Ms. Chow said do you know if there is a provision in the lease that acceptance of a rent is not a waiver. Mr. Tsuji said he doesn't know that for a fact, but most times it is, but this lease had some funky provisions I go to admit and one of them was in the performance bond that has real property language because that is not normally in our standard form. Mr. Tsuji asked the Board what he wants to do since Mr. Watson is offering him a check for the back rent. Member Edlao said for staff to go back and work with the AG's Office because the lease was terminated and what can we do in lieu of that. Taking that check doesn't say the lease is good because the lease is no good already. If you take it it's for the back rent which they have to pay anyway. Mr. Watson asked whether it was a valid

termination when the lease was terminated where Member Edlao said that is why they have to go back, but accepting that check doesn't validate the lease. It's just the back pay. Mr. Watson said it's just to show we are trying to do the right thing here.

Mr. Tsuji said if the lease is terminated. If the Board decides not to reconsider and state termination one of the questions before the court is "is the default the basis for termination or was it material?" Back rent is material and that is why when Mr. Watson wanted to initially clear all the back rent before getting this matter to the Board I declined because I did not want to possibly jeopardize the Board in its discretionary decision as I believe it has in order to reconsider or not. I'm just saying that. I maybe wrong. The Deputy Attorney General here agrees I can take the rent because it is back rent and already owed. That is why he wanted to bring it before the Board and didn't want to delay it any further because it's been several months back since we terminated and he (Mr. Asam) is still on the property and he can see him paying for the time period that you remain on the property.

Chair Aila said and to discuss the question of the wrongful termination which is what the purpose would be. Mr. Watson agreed. Member Edlao said this is to defer and not a decision to keep the lease going or deny it. All we are doing you are going to accept that back rent and you guys go back and talk to the Attorney General to discuss the termination whether it was legal and what other options the client has. Mr. Tsuji accepted the check.

Member Edlao made a motion to defer for 30 days. Member Goode seconded that. All voted in favor.

Deferred (Edlao, Goode)

Deferred for thirty (30) days. Lessee, Land Division, and the AG to discuss if the Board can rescind the prior termination of the subject lease, and to reinstate the lease.

Item D-7 Amend Prior Board Action of March 11, 2010. Item D-15, Sale of Concession by Sealed Bids for Beach Services at Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, TMK (1) 2-3-037:portion of 021.

Written testimony from Hilton Hawaiian Village was distributed to the Board.

Mr. Tsuji said the submittal explains the history. Staff made a mistake after opening bids, but before an official award was made dealing with one provision that was all over the solicitation documents that whatever you did there was a 10% escalation clause every five years and that one provision was not inside the contract and staff explains how it was handled in the Department. Made some decisions with the prior administration and this administration and under the prior administration they had no choice to go with a certain route which was the only way the contracts would be IE amended where two bidders had to agree to the change which didn't where staff consulted with them to go back out with a new solicitation based on the two bidders – Hilton and Star Beach Boys and their

representatives are here. One of the issues was our concession was difficult for a non-abutting property owner to bid on because of storage issues and other items. They didn't make any decisions at that meeting, talked to the AGs, consulted and ultimately, what staff is bringing before the Board is what we think is something that we are trying to accommodate to make it fairer or viable for a non-abutting property owner to bid on this concession, but to take into consideration that in his opinion Duke Kahanamoku Beach is the nicest beach in Waikiki, the largest and keeping it available for the public by not commercializing it which is staff's recommendation.

Tony Rutledge testified that he recollected that Clyde Aikau had this concession for a number of years, he defaulted and the court allowed Hilton to take over since they were the only ones interested at the time and the State agreed. Since Mr. Rutledge has worked with the City's concession the bids for a beach concession must be a company that is primarily a beach concession rental type business and he doesn't believe Hilton is since that is not their primary income. Mr. Rutledge has been told that this concession takes in \$2 million dollars a year. When the bid first came out it was an exclusive right for the concessionaire to operate the beach so he called and asked and if that is the case he was willing to bid. No way can a business like them can compete against a hotel that is adjacent to the beach and is allowed to continue to operate on the beach because they are going to get 90% of the business. He related talking to the previous Chair explaining what will happen with all the other hotels along the beach. Out of protest they bid and didn't expect to win, but they did. The concern now is allowing Hilton to continue or bid no one is going to bid. If that is the case then have one bid for profit stand and one for non-profit stand. Maybe by the lagoon or maybe in front there are all kinds or have a more open discussion on the whole issue. The State should make as much money as possible or make a deal with Hilton and nobody would bother you. All the advantages are with Hilton, but he felt compelled to come here because he felt an injustice was done because they won the bid the first time. The violation was they had to sign notarizing that they completely understood what the bid was and attached to the contract said the winner bidder will pay blank. So what is so hard of saying we will pay "X" for the first five years, "X" for the next five years and "X" for the following five years after that. He was upset when he got the letter that said the bid isn't good unless Hilton agrees too and he felt that an injustice was done. Mr. Rutledge related what happened in court and he won't appeal. There is more work that needs to be done and not allow Hilton to bid or even come out or if they can bid they should be like everybody else if they lose they should still not be able to upgrade on the beach. That is their biggest issue – whether to upgrade on the beach or not if they are not the winning bidder.

Chair said to clarify to the other Board members what Mr. Rutledge is referring to is a situation where somebody offsite renting a beach mat or umbrella being able to come to the beach. Mr. Rutledge said he understands if someone buys that at the ABC store and sets up, but the issue is if the Hyatt comes over and sets up on the beach and at the same time we are paying money to be there and be allowed to do that and they're not its not fair. It should be the same situation with the Hilton. At the Moana there is a stand there, but they don't have a concession stand with the State and they should be allowed to do that. If you didn't want a concession stand at the Hilton, they'll go to Kahanamoku

Beach then you should give Hilton a permit to do it because the State can make some money there either from the concession there or from Hilton. The exception doesn't make the rule citing the example of an old lady needing an umbrella making that the exception, but don't make it the rule.

Gwen LeBlanc representing the Hilton Hawaiian Village testified that the Board should have received a letter from the Hilton which she distributed and read from. The Hilton for the past 5 years has made all concession fee payments to the State, maintained the beach, provided landscaping, reduced the presence of concession equipment, maximized public access, and promoted the concession free from sales pressure and unsavory activity and at the same time, upholding the highest standards of the Hawaiian beach boys. Hilton agrees with cleaning Duke Kahanamoku Beach regularly by the concessionaire describing how they clean it with a tractor equipped with a surf rake. Also, providing and emptying trash receptacles, and grooming of trees. Hilton hopes to be the successful bidder, but if not the condition of the beach will deteriorate without the concessionaire or the State continuing the beach maintenance. They requested in addition to regular beach clean-up that the Board explicitly require the concessionaire provide and empty trash receptacles on the beach and grooming of the trees. Hilton had no objections to the submittal recommendations except for 1G and believes that authorization reserved for the Chairperson exceeds, and is contrary to, the legal authority given by statute to either the DLNR, the DLNR hearings officer, or the Chairperson, under either HRS Ch 102 or Ch.103D citing a court's ruling and requested that the Board delete recommendation 1G from its approval. Also, recommendation 1H that Hilton finds it appropriate to receive at least 30 days advance notice of the increased concession fee and that the effective date be October 1, 2011 instead of September 1.

Mr. Tsuji said with respect to the court and counsel I don't agree with that. This Board doesn't have discretion to have the provision re-written. The chapter we are talking about is 102, not 103 and I don't know why the court talked about 103d which is a procurement code where you buy paper or construction work. Here, we are not paying anybody for services they are paying us for the right to do something on the beach. In reading Chapter 102 within the BLNR context of Chapter 171 where we are reserving the Board on to itself the same powers that are reserved upon the court of law and I've seen judges reconsider prior decisions and sometimes even decisions about the judges. I respectfully disagree with the court and he was surprised with the actual court decision.

Duane Fisher, lawyer for Hilton testified that they had an issue with part G of the submittal is exactly what the court articulated as their concern when they ruled on the case. At the time, the prior Chair determined it was the best interest of the State to cancel the solicitation and at that point it was over. Then when the new Chair came in he declared it was ok to proceed with the award of that concession at that time. The Judge expressed a concern that it would leave the bid process with no definitiveness questioning when it would be over. How long do you have? Can you change your mind in a week, in a month, in a year? The Court's decision on 103d in terms of the procurement code was applicable. Insofar 102 is a very narrow chapter and doesn't have all the guidance that is found in 103d therefore the Court said you got to read them together and look at the

Legislative history and understand the intent behind the whole process which is an open fair process. Once the decision was made to cancel and terminate you can't just leave that open ended and give the Board the right to revive it at will. That is why the language and I understand why the State has put this in here to try to create contractually the power for the Chairperson to make that kind of decision and that is a direct response to what the Court ruled in the case. I don't think it works because it doesn't satisfy the requirements of the Statute. That is our view on 1.G. that it is not the appropriate power and there is no objective standard that the Board can use and exercise in that power. There is nothing articulated to the public to understand as the basis for the exercise of such a reconsideration. There is certain basis that would be unlawful and to have an open ended ability to do it is not proper. We think that should be taken out otherwise everything else makes sense.

Mr. Tsuji said he had reservations probably in all their 103d contracts adding changing his mind about prior cancellation. Supposedly the court from what I understand because I wasn't there...Ms. Chow clarified since she was there. The Court was concerned that although the provision in the contract said that it would be the best interest of the State there is no final best interest and that is one of the things she keyed on. Mr. Tsuji asked you mean our letter on... Ms. Chow confirmed in the letter in which we said we are going to award it to the Star Beach Boys and that was a concern of hers, but ultimately what she ordered was merely that the contract be put out for re-bid. Her ruling from the bench stated some of her concerns, but ultimately the order was simply that the contract should be re-bid.

Member Pacheco asked what about Mr. Rutledge's statement that a hotel shouldn't be qualified to bid on a beach concession. Mr. Tsuji confirmed that he made that objection, but staff didn't do anything during the process. Hilton has been operating the concession for the required amount of years having taken over from Clyde Aikau since he went into bankruptcy and was acquired by Hilton from bankruptcy court. It is under the name Hilton Hawaiian Village, but operating under Waikiki Beach Activities that is solely on the private property. Staff has a general provision in their requirements with so many years experience in running this kind of operation where Hilton qualified. If the issue came up again he thinks Hilton will qualify again. Ms. Chow clarified it's not really a legal requirement in as much there is a requirement of the concession bid that they have certain experience qualifications. Mr. Tsuji agreed because it wasn't a statutory requirement. We didn't make it really stringent and tried to narrow the field and as long as they showed that they can operate general beach activities.

Member Pacheco asked what about the comment that if we go through this process and Star Beach Boys wins hoping to still bring out...Mr. Tsuji acknowledged and said that issue came up when he first started working at the Office of the Attorney General and question was can the State preclude a business operator running his operation on private property giving an example at Kaimana Beach where Hans Heideman was operating a surf school within the hotel property traversing the beach with his students. It was decided by the AG's Office that there wasn't anything in the Statute that would allow the Board to preclude that. And, when he moved to DLNR staff discussed that issue from a

policy side and that was not where they wanted to go and stop or preclude private operations from traversing to go into the ocean mentioning the umbrella issue at Waikiki Beach. We do not allow presetting on the beach, but nothing stops someone from renting or buying an umbrella from private property and walking it on the beach. Mr. Tsuji personally inspected the Hilton and they kept all the umbrellas close to the private property or Waikiki Board Walk. Outside of Duke Kahanamoku Beach the impacts are greater on the beach giving the Outrigger as an example and Mr. Tsuji will remind them if they extend too far into the public area. Staff is not out there 24 hours a day since there isn't enough staff to do it.

Member Pacheco asked for that reason why can't I charge my customers just the transportation to get to the fence of the State property and as soon as we go into the State Forest I'm not really charging you any more. Why should I pay State fees? What is the difference between that and a surf school? Mr. Tsuji said he doesn't believe the concessionaire is transporting and dropping them off. I do know beach activities. Member Pacheco said with a surf school the surf instructor is out on the water with his students. Mr. Tsuji said that it's the transactions where money is exchange that has to happen on private property unless it's authorized and the only one authorized is this one concession. You will not be stopped for traversing the beach, but we don't have the resources to stop it.

Member Pacheco asked what about Hilton's statements about clean-up of trash and coconuts. Mr. Tsuji said that the clean-up is a requirement. Mr. Fisher acknowledged that and said that placing and removing of trash cans is not a requirement and trimming of trees is not.

Mr. Rutledge said the issue is not umbrellas, but if they are going to do business on their property it will be completed on their property. If someone wants to rent an umbrella and chair they should bring their own because Hilton will take over the whole beach and for staff to raise the price because no one will bid if you allow that to happen. You can't run a concession and do all of those things and hope to get 10% of the business. Mr. Tsuji said that the upset rent and cleaning of the beach is too high. The upset rent was going to be higher, but they followed the County on what it pays out to contractors on Waikiki Beach. Member Pacheco said if you allow Hilton to do that then they will take all the customers from that concessionaire and the State that the concessionaire will not be able to do a viable business because of the gorilla next door that's got most of the clients. Mr. Tsuji said that what Mr. Rutledge is proposing would happen statewide on all the beaches where nobody can operate, nobody can go on there with their umbrella. Mr. Rutledge said he is not saying that. If you give them a permit and there is no concession operating for the State to collect money from and there is nothing there then have the hotels do that. Have a written permit to allow that. Mr. Tsuji said it maybe rather complicated, but this is our staff submittal. Mr. Fisher said there are constitutional issues and opening a whole can of worms to regulate all the beaches statewide is a massive undertaking.

Member Edlao asked how are we doing it at Ka'anapali Beach because it is different. Ed Underwood (DOBOR) said it's the same concept. We would allow them to rent a chair

and umbrella on private property which is brought down onto the beach and if they are vacant for an hour everything is removed from the beach and it's the next person's turn. We already allow that on Ka'anapali Beach. Member Edlao asked but we aren't charging and Mr. Underwood confirmed that. In answer to Member Edlao's question, Mr. Underwood said there are no concessionaires on that beach. Chair Aila asked we are allowing the use of State lands without any fees. Mr. Underwood said like Russell said this issue has gone around so many times. All the transactions occur on the private property and all staff is doing is assisting the person to carry the chair, the umbrella is tagged and watched. If it's vacant for an hour then it's required to be removed from the beach to make room for the public. Chair Aila asked do we charge the hotel for that. Mr. Tsuji said no.

Member Pacheco related how the hotel has 1/3 of Hapuna Beach which is a County Park but is basically Hapuna's and people are traversing.

Mr. Tsuji said about Ka'anapali Beach that is a DOBOR rule which he isn't familiar with and this is under Chapter 102. Under Land Division this is the only one they have statewide. From what he has heard from Mr. Rutledge this concessionaire is a very lucrative business. Member Pacheco pointed out that the businesses before had the same issue with the Hilton and they were able to make a go of it. Mr. Tsuji said that is why it was set at \$18,000, but Mr. Aikau went bankrupt. Member Pacheco said he understands Mr. Rutledge's issue, but he isn't sure how to deal with that issue. Mr. Tsuji noted this issue has been looked at many times with prior Chairpersons, but staff made it clear there is no presetting of umbrellas. If someone wants one rent it on private property and an attendant can take it out there, when pau, pull it out and take it back. That is what they are supposed to do, but sometimes you still see the umbrella out there. More Enforcement and staff would help.

Member Pacheco made a motion to approve staff's recommendation with an amendment to "H" to make the affective date October 1, 2011. Member Goode seconded it. All voted in favor

Unanimously approved as amended (Pacheco, Goode)

Approved as amended. Amended Recommendation H by changing the effective date of the monthly concession fee of \$31,000 for the holdover permit to October 1, 2011, until the issuance of the new concession contract.

Mr. Tsuji said he is going to turn over the rest of the Land Division items to his Oahu District Manager, Barry Chueng.

Item F-1 Request for Approval of Special Activity Permit 2011-34 for Dr. Sam Kahng, Hawaii Pacific University, to Collect State Regulated Corals Stateside

Dr. Bob Nishimoto representing Division of Aquatics (DAR) conveyed that items F-1 and F-2 are both requests regarding take of coral. Dr. Sam Kahng is not here, but his two students are here to answer any questions. Item F-1 is to take stony coral for the purpose of a collection for college level courses at Hawaii Pacific University (HPU) which will include the more common species referring to Appendix 1 that up to 60 specimens and less than 8 inches in diameter each. He read staff's recommendations to exempt the EA, for the Chair to sign declaration of exemption, and to authorize and approve.

There were some suggestions from the Board on where to gather coral from – Kawaihae, Ma'alaea.

Member Edlao asked whether this is only to teach identification of the coral only. Dan Luck representing HPU said that is correct and hope to have some use for them in the future.

Unanimously approved as submitted (Pacheco, Edlao)

Item F-2 Request for Approval of Special Activity Permit 2011-79 for Dr. Sam Kahng, Hawaii Pacific University, to Conduct Deep Water Research on State Regulated Corals off West Hawaii Island

Dr. Bob Nishimoto representing Division of Aquatics (DAR) said item F-2 is take of limited amount of samples of precious stony coral where the applicant will gather in the deepwater off of West Hawaii where there are recent lava flows and he described the plate form that the purpose is to age those corals using history and growth rates. The collection list is on page 1 of the permit which he described and if necessary some samples might go to the mainland for identification purposes. He read staff's recommendation to exempt from an EA, the Chair signs the declaration of exemption and to authorize and approve.

Member Edlao asked why or to whom samples might be sent to. Kristen Pylman, Dr. Sam Kahng's student said if they find something strange that they can't identify we do want to collect them to identify ourselves, but I'm not entirely sure who we would send them to because there is a community of people who will be looking at them before they send them out. Member Gon said you didn't want to preclude the ability to do that and Ms. Pylman confirmed that if necessary and if they need help they would like to ask.

Member Gon asked whether the purpose of this was a synoptic collection of these kinds of coral of being able to site identify in the course of your study of different ages. Ms. Pylman said the purpose of collecting would be that, but to have these specimens on hand because how often are you able to go that deep into the Pacific Ocean. We aren't sure how old these species are and what we reports we have is conflicting. It makes sense to take sample while they are down there instead of creating another cruise to go down and collect again.

Member Gon asked what is the ultimate disposition of these samples. Are they going to the University of Hawaii collection? Ms. Pylman said it will be our personal HPU coral collection.

Member Gon asked how are you going to ensure that any material collected is not sold, bought or traded and how will you comply with that. Ms. Pylman said the amount they are taking is very small that this is for educational purposes. Dr. Nishimoto asked wouldn't you have a number assigned to the samples to keep track of them. Ms. Pylman said she assumed so.

Dr. Nishimoto related working at the Kapoho Lava flow and the aging of corals.

Unanimously approved as submitted (Gon, Pacheco)

Item K-1 Conservation District Use Application (CDUA) OA-3584 for Hawaii Kai Marina and Entrance Channel Dredge Project by the Hawaii Kai Marina Community Association, Hawaii Kai, Oahu, TMK's: (1) 3-9-7:011, (1) 3-9-8:035, and (1) 3-9-2:009 through 011

Written testimony from Michael Whelan and Jim Dittmar was distributed to the Board members.

Sam Lemmo representing the Office of Conservation and Coastal Lands (OCCL) briefed the Board that their projects go through a rigorous process and staff worked out a lot of issues by the time it gets to you. Not only public meetings, but environmental documents have been completed. There has been public input and concessions made, decisions made, conditions added, gone offer and staff is confident in this case that we've done the best we can that this project occurs in the best satisfactory manner. The real thing with this project is the follow up. In making sure if anybody finds sand suitable for beach re-nourishment that somebody is here to make sure that sand is placed correctly in all the right places on the beaches. And, that the beach dredged is not suitable for beach nourishment, it gets placed in the right places and in the right locations. He related some background on this item that the stuff inside the Marina is dirty material and will be placed at locations as shown on the exhibit of the application. One of them is being re-mined, a couple of other sites and possibly the ocean disposal. The stuff in the entrance channel will probably be cleaned. Hawaii Kai Marina Community Association is the applicant. Its private land – Hawaii Kai Marina, Kaiser, it's in the conservation district which is why they were involved. There was concern of disposal of material at one of the re-mines and Mr. Dittmar is here and was concerned of the affect on the birds and wrote a letter to support the project to protect the birds from the dumping. Staff sought the Board's approval on behalf of the Hawaii Kai Marina Community Association to dredge some material from Hawaii Kai Marina including the entrance channel subject to a number of conditions that they have included in the staff report. One of the special conditions is they want to have a biologist from Hawaii monitor the disposal of the material and make sure its done in a way that protects the endangered birds. Also, approving a process for approving sand for beach nourishment which is called beneficial

use of sand. Other standard conditions for these types of projects. He is available for questions.

Jim Dittmar said he was here for questions and that the Board has his written testimony. Member Gon asked whether he was okay with the adjustments in the recommendation and Mr. Dittmar acknowledged that Sam is saving the birds. He reported that about 15 to 20 Hawaiian stilts that come back to the Hawaii Kai Marina and urged the Board for a condition in the permit that the Hawaii Kai Marina give access to DLNR annually to go count the birds not knowing how many are out there now. Mr. Lemmo said whether that happens that is Hawaii Kai Marina Community Association Property and it's a matter whether DLNR has the resources to go out and do that and I'm not in the position...Member Pacheco noted there is the annual water bird survey done statewide and the private landowners would have to give permission to let people on the property to do the counts. I don't know if there is anything we can do to force the count unless it's an endangered species? Mr. Conry said no, it would be permission of the land owner and explained the bird survey annually and how they can do it by adding the site. When the time comes around staff would ask for permission for access.

Member Pacheco said this is one of those projects we need to follow staff on for technical expertise and asked how do we follow up on the material what do we have in place to do that. Mr. Lemmo said we have coastal geologists and expertise in our office to help us make the call whether or not the sand should be placed on the public beach and will coordinate with the applicant.

Member Pacheco asked whether the applicant was okay with the access for the water bird survey. The applicant's representative came up and said he believes so that there are two rim islands in the Hawaii Kai Marina and they are using one that doesn't have birds. And the other one is not part of the project. He can't imagine it being a problem for the Association to allow access.

Mr. Lemmo said that the applicant shall provide access as required to rim island #2 to the State to conduct the semi-annual water bird survey.

The Board:

Approved staff's submittal amending it by adding to the recommendation that the applicant shall provide access as required to rim island #2 for the State to conduct the semi-annual water bird survey.

Unanimously approved as amended (Gon, Goode)

Item J-1 Request Approval to Initiate Rule-Making Proceedings to Amend Title 13, Sections 230-8 Definitions; 231-88 Offer of regular mooring permit valid only fourteen days; written notice of intention; acceptance; 234-1 General statement; 234-3 Mooring rates; 234-4 Mooring rates for offshore mooring and anchoring; 234-10 Electricity fee; 234-11 Shower fee; 234-12 Dry storage and vessel repair; 234-13

Gear locker fee; 234-15 Waiver of fees; 234-16 Permit processing fees; 234-18 Excessive water usage fee; 234-26 Passenger Fees; 234-28 Negotiable instruments; service charge; 234-29 Vessel inspection fee; 234-31 Fee for commercial use of boat launching ramps and other boating facilities; and add Section 244-15.5 Operation of power driven vessels

Some written testimonies were distributed to the Board.

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) reminded the Board that this came before in previous Board meetings that staff brought the big package before them last year and was told to break it up into smaller increments. Staff completed the first increment with Hanalei Bay, Kaneohe Bay and some of the mooring rules. Now they are coming back with the fee portion of the package as well as the Boating Education Certificate. The biggest issue was the category issue where there was a question between a long cat walk versus bow-stern mooring. When staff came before the Board they said they did their financial analysis and determined that if all the boats moored within the small boat harbors had a certain fee increase that would bring the mooring program up to a break even point, but that was based on everybody being on a cat walk category. People didn't feel they should have to pay for the cat walk category because they may not be moored along side a finger pier. They're called Tahiti moor or Mediterranean moor. Staff agreed and spoke with the Chair on it and decided because we are in Hawaii we should call it Tahiti moor defining what it truly is. Staff will apply the fee increase that they talked to the Board about last year to that category and implement it the same way. In the fee portion of the rules, staff raised the electrical fees, but was still really low based on some of the testimonies that the fees should still go up dramatically especially from those who live on their vessels and provided their monthly fees. What staff is doing in the Ke'ehi Small Boat Harbor we are building out the floating docks 600 to 900 and on those docks they are installing electrical pedestals where each pedestal will send a signal to the office and will be able to monitor the monthly rate. Staff looked at individual meters, but the cost to run wires to every pier that HECO and the consultant felt that wasn't practical. But, if this system works it would give staff a good understanding what a vessel uses while it's moored whether it's a live aboard or not and we maybe able to implement that same technology throughout the rest of the State.

Mr. Underwood said the other thing is the Boating Certification Rule referring to written testimony from the National Transportation Safety Board. There are 37 states or territories that already require some form of Boating certification. What staff is asking people to do is to show that they at least taken a boating course that is approved by the National Association of State Boating Law Administrators (NASBLA). This could be done through the Coast Guard Auxiliary, you could go on-line and take it and the course is good for life showing that you have that basic knowledge. Most of our accidents occurring and groundings are people who couldn't read channel markers or didn't know what they were doing. It stands to reason that you have to get a license to drive a car, you got to be licensed to operate an aircraft, but you need nothing to operate a boat. Staff is not asking for a license, only a certificate from completion of an accredited course.

Member Pacheco asked whether that includes rentals. Mr. Underwood thanked him and said there are operators throughout the State – one on Maui and one on the Big Island that actually rent boats and they said that if they had to go through the certification process it would put them out of business and staff agrees with that which came up at the Small Business Regulatory Review Board. The way the rule is written we can let the course provider or the renter of the vessel to give a briefing to their customers similar to what they do for jet skis where the commercial operator gives the briefing. Staff can have the operator put together a 15 minute presentation, staff will look at it and okay it and we think that will suffice. The operators are already doing that now anyway and it's just a matter of staff looking at and agreeing with it. Member Pacheco asked where that rule was and Mr. Underwood said it is under "C" of the rule where it says meets all the requirements of this rule and staff felt it's broad enough to let the course provider to show that your renter is in compliance with this rule and staff is alright with that.

Chair noted another section is local knowledge that people have to pass because there have been incidences of people running over divers and often fatally. A big part of that component is going to be these are things you watch for.

Mr. Underwood said that the on-line courses are really good and 80% is rules of the road. It's all the basic seamanship knowledge and 15% is local knowledge. As the Chair indicated that is what is included – no mooring more than a mile offshore, the new security zone in the event of a tsunami off Honolulu Harbor, all of that can be put in the course. Staff is asking the Board to approve rulemaking on the rules presented before you today.

Member Pacheco asked about "C" where it says "meets all requirements of this rule", but does that mean it goes to the top and required to present a certificate of completion from NASBLA. No, that is not what its saying? Mr. Underwood said staff can in house approve as NASBLA approved course as long as people hit the basics of channel markers and all that. Also, we have reciprocity where many people coming in who rent are already boat operators and if they have a certificate staff can accept that. I personally spoke to both operators and told them in no way do we want this particular rule to affect their business. We want to work with them.

Member Pacheco asked to understand the mooring rates a long catwalk is where the boat is tied up and a catwalk along side the boat or finger pier and they've got an "L" shape access to their boat. Mr. Underwood said that catwalk is such a broad terminology. It could be moored to anything basically and be along the catwalk. What staff is saying is you are tied to pier and is able to step onto the pier. The difference with that and a Tahiti mooring is the boat is still moored in the harbor and have direct access to land, but would need a plank to access the boat. One of the points brought up in discussions was somebody has to pay for the repair of that finger pier when it comes time to replace the facility. Another issue with a Tahiti style mooring, giving the example of Honokohau Small Boat Harbor, is all those moorings that are tied are State moorings and we have to pay to maintain them. Staff has to enter into buoy maintenance contracts to maintain

them so cost is involved in it. Member Pacheco discussed with him on the schedule. Mr. Underwood said there are very few on home installed moor.

Member Pacheco asked going back to OIP complaints from Mr. Shiroma that again he is saying this agenda is not in compliance. Mr. Underwood said two weeks ago staff went to the Small Business Regulatory Review Board (SBRRB) and he made the same complaint there. The OIP office looked at it and they felt it was sufficient. Staff has added additional language into it and we feel we are more than sufficient with the requirements for the agenda title.

Member Pacheco asked regarding that does OIP have the final authority on what these laws are. Or our attorneys are able to vet that? Or how is that? Ms. Chow said OIP has oversight, but they don't actually have any regulatory authority over it so they cannot say you have to re-do your meetings because of it, but there is a provision that allows somebody who believes that a meeting was held in violation of Sunshine Law to sue to get the meeting voided basically. The OIP, they can express their opinions and we don't necessarily have to follow their opinions. Member Gon said unless we concur with them. Ms. Chow said if we concur with them then we would be happy to follow their opinion. Member Pacheco thanked her that he wanted it on the record.

Dave Cooper testified that he submitted three pages of written testimony referring to the rule package that was approved September 9, 2010 which goes verbatim through the same items. Over the course of the year this was good last year and now it's become an A and B system. Everything they fought for last year is gone and now we got something else.

Mr. Underwood explained what Mr. Cooper is referring to is when staff came before the Board and wanted to raise the fee for all boats moored in the small boat harbor so we could at least reach a break even on the mooring program. In that submittal we only amended cat walk rates to raise the fee and that's when it caused the problem with the bow-stern mooring versus the cat walk fee. Staff said we are going to start breaking these down into smaller packages and bringing them before the Board. When we come to the Board for fees then let's knock all the fees in one shot and we don't have to come back again. The only time we anticipate coming back is when we need to accept the fees at the Ala Wai by appraisal as the Legislature wanted them to do. Hale o Lono and Hana are in there and all of these are not small boat harbors, but off-shore mooring areas so we took them out taking this opportunity to clean up the fee schedule. There was no reason to have five different categories. In fact, there should only be one really which is what we got it to. For the smaller harbors they are under one category. Ala Wai is our biggest facility is on its own category primarily because they will need to amend it again in the future. And, that is why there is a difference in that now. Chair Aila said that we don't have any regular moorings in Hale o Lono or Hana or any of those places and Mr. Underwood said we do not. Mr. Cooper said he found it interesting that they spend all their time getting things done and a year later they are doing the same thing like we didn't do it right the first time. Chair Aila said the rate increase had to be amended because of the bow-stern mooring issue. Mr. Cooper said that all of the things Ed is now

justifying for changing existed back then and would have been so simple. Mr. Underwood said no. The issue with the bow-stern mooring versus the cat walk didn't get brought up until after the rule making and that was when the attorneys came forward where an attorney from the Big Island had written about it. Chair Aila said we are fixing it and that is the main thing.

Mr. Cooper testified with the increase to fees of a 100% or 150% or something like that without the knowledge of what things cost having an increase like that it's a wild guess. Chair Aila said that is over a period of time. Mr. Cooper disagreed and it out. Chair Aila though he meant the mooring fees. Mr. Cooper testified there are a whole list of fees that have doubled or tripled and done what they did, but there is no justification as to why they went up. Does it suddenly cost a 100% more to have a dock box that's 10 years old? Is that a reasonable increase? I don't know and I think there should be some justifications for what some of the costs are before you just arbitrarily increase it. I heard for the first time at Keehi you are having a metering system put in for electricity. Having run marines flat rates don't work. You got the guy who is real conservative and he complains his rate. You got the guy who is cheating you complain about how much he is using. So without a metering system and I think something like 85% of the slips at the Al Wai are on flat rate where only 15% are metered which are the bigger boats and they are certainly paying their fair share and should be paying what they should pay. And, some people are paying \$25.00 and some are paying \$400.00 a month. If you map that back to the flat rate situation people are going to complain. Either you're charging too much or too little.

Arbitrarily increasing the rate is not fair. Chair Aila pointed out it is not necessarily arbitrary having run a harbor in Waianae that doesn't have individual meters it's the only way to do it. Otherwise, you stand \$500,000 to go back and meter everybody and collect \$10.00 that this is three tiers. Chair Aila said physically the system is set-up where everything is on one meter right now and without going in and retrofitting at some cost...Mr. Cooper interrupted saying you would recover the cost for fast it would make your mind spin. Member Agor asked whether Mr. Cooper was willing to pay for the cost of the meter. Mr. Cooper said he has a meter and paying for it straight to HECO. He has no choice. I would love to be moved to a \$45.00 a month slip and so would anybody on the metered slips. The Chair said that is your specific situation, but there are other situations out there where there are no individual meters. Mr. Cooper said he understands that as an ex-marine operator putting in meters is the payback that happens quicker. Chair Aila said you are certainly entitled to your opinion.

Mr. Cooper testified on the mandatory boater education that it wasn't in the package the last time; it's new, even though your executive summary said it was something split off from the package last year. According to the Hawaii Data Book 2010 the number of boating accidents and fatalities are absurdly low passing out a handout of it to the Board members that the number of fatalities was 4, the number of vessels 21 and number injured was 3. The expense to the boaters, State Enforcement and probably other things has some value. I haven't heard how much it costs, but I doubt the numbers he cited for the State of Hawaii is going to decrease based on some boater education that you can knock out in 3 seconds. It's not a merchant marine course. It's not something that is

going to truly show people what they need to do. There are more divers killed every year than 4. In order to have your tank filled you need to have extensive force that you can't just go and grab a tank somewhere and go diving. Those people are educated to a far greater degree than any of these boaters would be through the NASBLA or anything else. I think it's a huge overhead and at this time why are we putting this overhead on. We are not going to beat this schedule if you took everybody in the State and dragged them through this course three times. What's the point? I don't understand the point and we all need to have some reason, some problem to solve before you apply a solution. This is a solution that doesn't have a problem at least here in Hawaii.

Chair Aila said there are some people who were run over by boats whose families would certainly disagree with you and that are what they are asking for. Mr. Cooper interrupted by saying do you believe the education would...there are a lot of people killed in car accidents that would make the same mistakes and they have a license and a lot better education than what this is going to require. It's not going to change that. Do you believe this number is going to go down? The Chair said certainly otherwise we wouldn't be proposing it. Mr. Cooper asked will I see this number drop in 2 years. Member Edlao said it may not, but if you can save one life isn't that worth it. Mr. Cooper said yes, if you can quantify it and save a life. I swerved because I took this course and I didn't hit that guy. How are you going to say that? Chair Aila said that I have been made aware that there are divers in the water and if you didn't have that course you wouldn't have been aware of that. Mr. Cooper questioned he doesn't think's so and the Chair said anybody can buy a boat now without any education. Turn the key and go. We are just providing some basic education to make things safer and that is the proposal. Mr. Cooper said I am just saying that proposal is not going to change that and questioned again whether he believes that. Chair Aila said he is entitled to his opinion.

Member Goode gave Mr. Cooper a copy of written testimony from the National Transportation Safety Board (NTSB) where Mr. Cooper questioned whether this applies to Hawaii. Member Goode said of course, it's a national survey that says 2010 600 to 700 people were killed nationally assuming Hawaii has 1/200th of the nation's population, say a million five and apply our last year four it would be 800 folks died. A quick math, Hawaii has a higher than average rate of fatalities than the rest of the nation. In 2009, eight people were killed which means we have more than twice the rate of fatalities per population. Mr. Cooper asked how many swimmers were killed. Member Goode suggested Mr. Cooper read that. We are not going above a public hearing and will get more information. I don't disagree with you. You can't just do things if you don't feel there is good justification. What the NTSB provided is the type of analysis where one state, Oregon promulgated the rule and they saw a distinct decrease in fatalities. It's the type of thing as a Board member he can't ignore. Mr. Cooper thanked him.

Mr. Cooper testified that before all the Harbor increases and all the fee increases we hear the harbors don't support themselves. Specifically we hear the Ala Wai doesn't support itself. But, the numbers from at least FY 2009 the Ala Wai spun off a million dollars positive revenue. Chair Aila asked whether he included the land leases. Mr. Cooper said it is from whatever DOBOR puts out and the Chair said that includes the land leases. Mr.

Underwood said that when staff provided that information it was written that you needed to subtract certain things from that number and our accounting provided it. Mr. Cooper suggested having numbers from DOBOR to show what the harbor rates are with everything over the last few years so I don't have to hear what I just heard here. Chair Aila said they would be happy to present that to you that you are the only one asking for it.

Member Pacheco said that he put this out there before that he doesn't see the logic. We have certain mooring births that can accommodate certain size vessel and we're charging them per foot and me as a Board member looking at our resources and managing them in a business sense I'll use the analogy of a self storage unit. It's the same physical size unit whether you have a couple boxes in it or filled to the gills. On these moorings we shouldn't be charging by the size of the boat, but by the size of what the mooring space is. Mr. Underwood said 100% agree and when we do the analysis for the Ala Wai that is exactly the way we want to do it and use that as a pilot because you are right. If you break your harbor out and know exactly the amount of money you can make now you can do better financial analysis, but if each slip is buried every time you put a boat in there you can never know what that harbor can max. That is the route that staff wants to go, but that will take a whole revamping of the rules and we'll probably have to establish a categories in all the harbors and that is why we want to start with the Ala Wai because we're required to hire an appraiser at that time to set up the program. Member Pacheco said by legislation and Mr. Underwood acknowledged that.

Chair Aila asked whether that is something being considered within the Division right now. Mr. Underwood said definitely that we feel that is the way it should be, but we need to get to there. Staff needs to get the program up now and then take the time to break out each harbor.

Unanimously approved as submitted (Goode, Pahceco)

Item F-3 Request for Approval of Revisions to Bottomfish Restricted Fishing Area Maps in Chapter 13-94, Bottomfish Management, Hawaii Administrative Rules

Dr. Nishimoto indicated that after consultation with the Chair's Office and the Attorney General's staff requested retracting item F-3.

WITHDRAWN

Item F-4 Request for BLNR Approval to Add \$300,622 in FY 12 Funding (\$111,829 Special Funds, \$188,793 Federal Funds) to a DLNR/RCUH Project Agreement (Contract No. 52850, Amendment No. 9) for the Division of Aquatic Resources' Aquatic Invasive Species (AIS) Project.

Dr. Nishimoto briefed the Board that funding will allow DAR to continue its research activities to address the Hawaii Resource Management Plan and the State of Hawaii

Alien Invasive Species Management Plan. The key objectives of the projects are to improve the prevention management in response system for invasive species to primarily focus on Kaneohe Bay to control urchins and alien algae. Staff recommends exemption from an EA, delegate and authorizes the Chairperson to sign the declaration of exemption, and authorize the Chair to amend the Aquatic Invasive Species Project Agreement.

Member Gon inquired whether he would entertain changing item 1 by adding the adjective "adverse effect" because this has all the intention of having a positive affect. So if we could say "...no significant adverse effect on the environment..." then it would be obvious. Mr. Nishimoto agreed.

The Board:

Amended staff's recommendation item 1 by adding the word "adverse" before the word effect to read "...no significant adverse effect..." Otherwise, the submittal was approved as submitted.

Unanimously approved as amended (Pacheco, Gon)

Item C-1 Request for Delegation of Authority to Issue Permits Under Chapter 13-126, Hawaii Administrative Rules, Rules Regulating Wildlife Sanctuaries, to the Chairperson, and the Administrator and Branch Managers of the Division of Forestry and Wildlife and Authorize the Chairperson, and the Administrator and Branch Managers of the Division of Forestry and Wildlife to Determine and Approve Chapter 343, Hawaii Revised Statutes (HRS) Environmental Compliance Requirements, including Approval of Declarations of Exemptions, as Applicable, for Permits Issued Under the Rules Regulating Wildlife Sanctuaries

Mr. Conry noted with the advice of the Attorney General who recommended staff not delegate before you get to the Chairperson for closure of Wildlife Sanctuaries. On page 3 of the submittal, Section 13-126-6 that entire paragraph be deleted. On the bottom of that page, last paragraph, Sections 13-126-6 could be deleted.

Chair Aila asked in the event of an emergency situation the Chair would not have the authority to close. Ms. Chow said not under this provision. You would have to do a different provision. The Chair wondered whether they would have to wait until the next Land Board meeting to do something. Ms. Chow said the thing is under this rule you still would because this is only effective upon a finding by the Board that's necessary. We still have that problem. The delegation would not help that. What I propose is that I will work with DOFAW to find another way to deal with emergencies.

Mr. Conry said another amendment to do that would be on Table 1 the third line would be deleted. This Board submittal is then authorizing the Chairperson to adjust visiting

hours, authorizing the administrator to issue permits that are dealing with take of species. Basically delegating to the Branch manager any of the routine permit operations and it also authorizes whoever is issuing the permit be responsible to make the Chapter 343 declaration. Scott Fretz, Program Manager is here to answer any questions. When we revise the rules in the future we do need to deal with the emergency situation. The way the rule was written there is no way we could deal with it without changing the rules.

Member Gon asked what Scott's take was on this, whether to go with it. Scott Fretz said definitely, the issue on whether the closure should be delegated to the Chair or stay with the Board staff spent a lot of time talking about initially because it's a significant thing and I think it's reasonable to leave it with the Board.

Member Pacheco said in the past they had discussions of some provision under DLNR where under emergency situations the Chairperson can close areas for a limited period of time. Ms. Chow said I would have to go out and see what specific incidences we have of that.

Mr. Conry said I think some of our other rules there are specific abilities to do that and would be in Forest Reserve for public, health and safety provision and that one fell through the cracks.

The Board:

Made a motion to amend staff's submittal by deleting on page 3, second paragraph – Section 13-126-6, the last paragraph of that page, same section, and on page 4, Table 1, third line is deleted. Otherwise, the submittal was approved as submitted.

Unanimously approved as amended (Gon, Pacheco)

Item C-2 Resubmittal Acceptance of Hearing Officer's Report on a Public Hearing for Three Proposed Withdrawal and Five Proposed Additions to the Forest Reserve System on the Island of Oahu.

Approval and Recommendation to the Governor Issuance of an Executive Order to Withdraw Approximately 80.35 acres from Waimanalo Forest Reserve, Kailua, Koolaupoko District, Oahu, Tax Map Key (1) 4-2-010:004.

Approval and Recommendation to the Governor Issuance of an Executive Order to Withdraw Approximately 64.8 acres from Pupukea Forest Reserve, Pupukea and Paumalu, Koolau District, Oahu, Tax Map Keys (1) 5-9-005:002 and (1) 5-9-005:077.

Approval and Recommendation to the Governor Issuance of an Executive Order to Withdraw Approximately 0.59 acres from Round Top Forest Reserve, Makiki, Honolulu, Oahu, Tax Map Key (1) 2-5-019:006.

Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 1,413.93 acres to Honolulu Watershed Forest Reserve, Nuuanu, Pauoa, Manoa, Palolo, and Wailupe, Honolulu, Oahu, Tax Map Key parcels (1) 2-2-047:001, (1) 2-5-011:007, (1) 2-9-051:001, (1) 2-9-055:014, (1) 3-4-010: portions of 009, (1) 3-4-022: portions of 001, (1) 3-6-004:004, and (1) 3-6-004:026.

Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 2.5 acres to Waimanalo Forest Reserve, Waimanalo, Koolaupoko District, Oahu, Tax Map Key parcel (1) 4-1-010:094.

Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 25 acres to Mokuleia Forest Reserve, Mokuleia 2, Aukuu and Kikahi, Waianae, Oahu, Tax Map Key parcel (1) 6-8-003:041.

Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 695 acres to Re-establish the Lualualei Forest Reserve, Waianae, Waianae, Oahu, Tax Map Key parcel (1) 8-8-001:010.

Approval and Recommendation to the Governor Issuance of an Executive Order for Addition of Approximately 3,592.78 acres to Establish the Honouliuli Forest Reserve, Honouliuli, Ewa, Oahu, Tax Map Key parcel (1) 9-2-005:025.

Mr. Conry reminded the Board that this was withdrawn at the last meeting because of the problem with the title which has been corrected. This is a request for acceptance of the hearing officers and the recommendations for the Executive Orders for admissions and the removals from the Forest Reserve System.

Unanimously approved as submitted (Gon, Pacheco)

Item C-3 Request Approval to Initiate a Competitive Sealed Proposal Process and Authorize the Chairperson to Issue a Request for Proposals and Award and Execute a Multi-Year Contract for the Planning and Implementation of Wildlife Conservation Projects in Hawai'i and Requests to Authorize the Chairperson to Determine and Approve Chapter 343, Hawaii Revised Statutes (HRS) Environmental Compliance Requirements, Including Approval of Declarations of Exemptions, as Applicable, for the Services to be Procured Under the Contract Established Pursuant to this RFP.

Mr. Conry said there are no amendments to item C-3 which is to get the Board's approval to go out for an RFP process to go out and seek staffing for special projects that come through our Federal funds and special funds. What staff is looking for is some additional flexibility in dealing with the University of Hawaii and this will give us additional opportunity to see what is offered in the marketplace to see if we can establish a working relationship with another provider for being able to initiate projects with extra funding.

Unanimously approved as submitted (Pacheco, Gon)

Item D-1 Cancellation of Land Office Deed No. S-27083 to Tsutomu Yoshida and Satoe Yoshida, and Request for Grant of Perpetual Non-Exclusive Easement to Jessie C. Yoshida, Jeffrey Johnson and Ellen S. Johnson for Access Purposes, Hanapepe Town Lots, 1st Series, Hanapepe, Waimea (Kona), Kauai, Tax Map Key: (4) 1-9-009:024.

Item D-3 Amend Prior Board Action of May 13, 2011 (D-3), Grant of Perpetual, Non-Exclusive Easement to Maxwell Klutke for Access and Utility Purposes, Kapaa Homesteads, 1st and 2nd Series, Kawaihau, Kauai, Tax Map Key: (4) 4-6-33:portion 7.

Item D-5 Consent to Assign General Lease No. S-5235, Sally Kahikinaokala Dacallio, Assignor, to Kaialii Kahele, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, Tax Map Key: (3) 8-9-014: 053.

Item D-6 Issuance of a Revocable Permit to Pyro Spectaculars, Inc. for Fireworks Display Purposes, Honolua, Lahaina, Maui, Tax Map Key:(2) 4-2-004: seaward of parcels 015.

Barry Cheung representing Land Division said he had no changes for items D-1, D-3, D-5 and D-6.

Unanimously approved as submitted (Goode, Gon)

Item H-1 Non-Action Item Open Discussion by Board Members about Issues, Policies, etc. affecting the Department of Land and Natural Resources (DLNR) or Board of Land and Natural Resources (BLNR)

Member Gon asked whether there was any update from the Attorney General with regard to the rule making for conservation and Ms. Chow said none. Chair Aila said regarding the substantial changes. Member Gon said we remain very interested. Ms. Chow acknowledged that.

Adjourned (Goode, Gon)

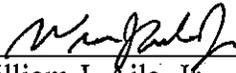
There being no further business, Chairperson Aila adjourned the meeting at 4:27 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



William J. Aila, Jr.
Chairperson
Department of Land and Natural Resources