

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

DATE: FRIDAY, MAY 25, 2012
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

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

MEMBERS

William Aila
David Goode
Dr. Sam Gon

Ron Agor
Jerry Edlao
John Morgan

STAFF

Russell Tsuji/LAND
Paul Conry/DOFAW
Bill Walsh/DAR

Sam Lemmo, OCCL
Dr. Bob Nishimoto/DAR
Ed Underwood/DOBOR

OTHER

Pam Matsukawa, Deputy Attorney General
Meliamé Unga, D-17
Ross Smith: M-3, M-4
Paul Mancini, K-1
Les Young, K-2
Charles Yamamoto, D-6
Enzo Zoratto, D-16
Greg Barbour, D-7
Tina Owens, F-1
John Kellam, F-1
Kamaile Maldonado, F-1
Karen Coke, F-1
Jim Lovell, F-1
Willie Koupiko, F-1

Dr. Jim Anthony, D-17
Ron Tigatedo, M-2
Sandra Song, M-1
Diane Schweitzer, K-1
V. Paul Ponthieux, D-6
Keith Avery, D-16
Bill McCorriston, D-16
Burt Lau, D-15
Marni Herkes, F-1
Katrina Nakamura, F-1
Robert Hajek, F-1
Eric Coke, F-1
Matt Ross, F-1
Steve Paul, D-3

{NOTE: Language for deletion is [bracketed], new/added is underlined.}

Item A-1 April 27, 2011 Minutes

Approved as submitted (Edlao, Gon)

Item A-2 May 11, 2012 Minutes

Item A-2 was not ready.

**Item D-17 Issuance of Revocable Permit to Lose and Meliame Unga for General
Agriculture Purposes, Waialeale, Koolauloa, Oahu; Tax Map Key: (1) 5-8-
001:038.**

Written testimony was submitted by Dr. Jim Anthony.

Russell Tsuji representing Land Division conveyed some background on item D-17.

Member Morgan asked whether anyone is currently living on the property. Mr. Tsuji said no.

Dr. Jim Anthony distributed his written testimony and testified that he was here on behalf of the applicants of this revocable permit (RP) who were present. There is no one living on the property and don't expect anyone to. Dr. Anthony related what happened 18 years ago that the land owners were clearing hale koa from the property and Land Division had an issue with that. They worked out an RP with the Chair Mike Wilson and nothing happened. About 3 or 4 months ago Land Division staff asked them what they were doing there and contacted him since he is on the historical record. Dr. Anthony asked staff to issue an RP and permittees are willing to go through that process. There was some rubbish issues and he told staff that it will be cleaned properly which they did within 2 weeks. Once that was done staff felt comfortable with issuing the RP. He related food sufficiency and described the plants grown. They hope to keep the lease rent at \$40.00 and hope they can work something out with the liability insurance. They asked the Board to approve staff's submittal.

Member Agor asked how the crops are being irrigated. Dr. Anthony said with great difficulty, but once they have the RP they will show it to the Board of Water Supply to get water in. Right now it's mostly by rainfall.

Meliame Unga, the permittee testified relating some history that they never claimed this land was theirs and grew all kinds of plants and trees for families, friends and to feed the people.

Member Edlao asked whether they have to come back to the Board if they want to build sheds or can they just do that. Mr. Tsuji said he wasn't sure what the RP language was, but on a lease typically structures would be submitted plans to the Chairperson for approval. Member Edlao asked would it have to come back to the Board. Mr. Tsuji said typically not and shouldn't on an RP.

Unanimously approved as submitted (Morgan, Edlao)

Item M-2 Lease of Federal Property for Lehua Elementary School at Pearl City Peninsula, Oahu; Lease No. N62478-11-RP-00003, TMK: 9-7-16:001

Ron Tigedo representing Department of Education (DOE) reported that this is to enable Lehua Elementary School to lease for 5 years a gravel lot that is directly across the street to be used for overflow parking. There were some environmental findings where the Navy provided conditions on how they should use the lot.

Member Gon noted the underground conduits and Mr. Tigedo mentioned petroleum as predominate.

Unanimously approved as submitted (Morgan, Gon)

Item M-3 Amendment No. 3 to Concession Agreement No. DOT-A-10-0008 Tiare Enterprises, Inc., Retail Concession at Hilo and Kona International Airports, TMK: (3) 7-3-043:portion of 1

Ross Smith, Property Management/Land Acquisition Supervisor for the Department of Transportation (DOT) – Airports Division conveyed item M-3 background that it is appropriate use of the concession.

Item M-4 Request to Amend Prior Land Board Action Under Item M-4, March 23, 2012, Amendment No. 10 to Concession Agreement No. DOT-A-03-0001, Traveler Services Concession, Lenlyn Limited, Honolulu International Airport, TMK: (1) 1-1-03:portion of 1

Mr. Smith asked to amend the prior action of the Board that DOT is waiving the requirement for a square footage land revenue and they did discuss this with the concessionaire. Staff is asking to remove this condition.

Unanimously approved as submitted (Gon, Goode)

Item M-1 Authorizing the Department of Transportation to Dispose of a Portion of Old Volcano Road, TMK: (3) 1-7-009: Road.

Sandra Song, attorney for the applicant said that DOT - Highways wasn't attending this meeting and that she represents James Fang who is trying to acquire the parcel to consolidate it with another parcel near his greenhouse which will be used for parking.

Member Gon asked whether she was agreeable to staff's recommendations. Ms. Song said that they were having waited a long time for this.

Unanimously approved as submitted (Goode, Morgan)

Item K-1 Conservation District Enforcement (MA-09-54) in Regards to Alleged Unauthorized Seawall and Stairs by Henry and Diane Schweitzer, Located at 4885 Lower Honoapi'ilani Road, Lahaina, Maui, Hawaii TMK: (2) 4-3-015:001

Written testimony was submitted by Paul Mancini.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) related some background on item K-1. In the early 1980s, there was a wall and stairs on the seaward side of the Schweitzers property that staff's assertion was a portion of the structure was placed below the shoreline in the conservation area and staff has been receiving complaints about it where they investigated. There was encroachment and the resolution recommended is a fine of around \$16,000 and apply for an after-the-fact permit for the seawall and take the stairs away or relocate the stairs on to their property within a certain timeframe.

Paul Mancini representing Mr. and Mrs. Schweitzer testified that Diane Schweitzer is next to him and he had distributed written testimony to the Board. He summarized what Mr. Lemmo just said to the Board and in the submittal and related how the Schweitzers acquired the property with plans for a wall design. He related who they hired to design, construct and do the shoreline certification in 1979. In 1980, they were told they needed a new shoreline certification and they did a second one submitted to the Maui land agent. They got the new certification and the designer directed make sure to stay consistent with the 1980 certification to go mauka of the vegetation line on the plans. They received their permits and were monitored by government officials. Now there is a claim that the wall is on state property and most of these people have passed away. Bruce Lee worked on the site at the time and Mr. Mancini gave him the 1980 survey and an adjacent survey that is pending before the Board and asked Mr. Lee if there was an encroachment on the State property. Mr. Lee said there is a minor one on the Lasardi side. He would have to do a survey on the Kahana Sunset side. Mr. Lemmo said the only way is to do a survey and over plane and they would like to do that. Mr. Mancini also wanted to get a previous government official to come out to see if he monitored this construction. There was a concern of undermining the wall if the stairs are removed and would like someone to look at that. They would like to come back to see what the facts show if there is an intrusion and/or impact. This is stressful for the owners and they ask for a deferral. The landowner relied on consultants to do this that the consultants are no longer here. He would like to see the final certification for Kahana Sunset to see where it is in relation to this property.

Member Morgan asked whether his client is paying for the Kahana Sunset certification. Mr. Mancini clarified that Kahana Sunset has already filed and is pending with the Board the certification and are going in for another wall and has encroachment issues. He pointed out on the map the various properties and walls.

Member Morgan asked referring to recommendation #4 that Mr. Mancini wanted to identify the problem and correct it if there is one and whether he wanted to defer any fine until it is determined there is an actual problem and the extent of that problem. Mr. Mancini confirmed that is correct. One scenario is the wall was built incorrectly, inconsistent with the plans on State property, needing an after-the-fact permit and question is whether removal of the stairs is the best

public interest. Scenario two is a portion of the wall maybe on State property and what is the penalty for that portion. The third scenario is it is mauka of the certified shoreline from 1980 then it becomes a County issue. Need to do a survey to determine.

Member Gon asked what estimated amount of time would be needed to make the estimate. Mr. Mancini related who needs to be contacted, to do the survey; contacted Kahana Sunset and that he couldn't answer that. Mr. Schweitzer will be undergoing surgery and won't be back until end of July and Mr. Mancini will be gone until mid-July and asked for 60 days after that and coming back in September.

Member Agor said when the government sends you a letter in 2009 you got to respond. Mr. Mancini said that Mr. and Mrs. Schweitzer have been attempting to respond with the people on the property and with the County who issued some notices of violation while the Schweitzers were out of the country. Mr. Mancini contacted Mr. Lemmo once he heard about it.

Member Goode asked whether they can get reconciliation with the surveys. Mr. Lemmo said the extent of the survey is not going out to do a shoreline certification that they are going out to overlay the 1980 shoreline certification over the existing structure to figure out how much or if there is a violation encroachment and he is ok with that. He was ok deferring it to get more facts.

Diane Schweitzer said there are so sure they had all the permits and to come back 33 years later.

Member Edlao moved to defer until end of September 2012. Member Goode seconded it. All voted in favor

Deferred until end of September 2012. (Morgan, Agor)

Item K-2 Conservation District Use Application (CDUA OA-3609) for a 30-Foot Telecommunications Tower, With Management Plan by Verizon Wireless, Located at Ko'olau Golf Course 45-550 Kionaole Road, Kane'ohe, Oahu, TMK: (1) 4-5-042:001

Written testimony was submitted by Dr. Charles Prentiss.

Mr. Lemmo conveyed item K-2 background and sought the Board's approval subject to standard conditions. The facility is not visible to public views and the mitigation to view plains has been accomplished. But, we have a letter from Dr. Charles Prentiss opposing the project.

Member Goode asked there is a draft EA and is there a final EA then. Mr. Lemmo acknowledged that there was a final EA.

Member Goode asked whether it was disguised as a tree. Mr. Lemmo said the applicant's comment was it would have to be taller to be tree then we are talking about another application.

Les Young representing Verizon said that is an option that is available, but the pole would need to be 10 foot taller. Member Morgan noted there are a number of these around the island.

Member Edlao referred to photos in Exhibit 3. Mr. Young explained the location that the buildings are the golf course maintenance facility which is permanent. There was more discussion about the distance from trees, the facility, close to H-3 and not close to any residences. The trees in the background are higher and the trees closer are about the same height of the pole that Verizon was thinking of painting it some kind of green color to blend in and the cost doubles to disguise it as a tree. Plus there is increased maintenance and the maintenance building is a one story structure.

Member Goode asked whether it is part of their plans and specs of their EA and how do they ensure it doesn't turn out a shiny silver color. Mr. Lemmo said it is a mono pole and they could put in a condition that it be painted to match its surroundings. The Board members' agreed. Mr. Young said that the panels, antennas and tower can be painted the same color.

Member Morgan noted that there are power lines in the area that having a tree would be nice he would feel bad to make it a requirement and to be reasonable to paint it. Mr. Lemmo said if this was a structure going into a public park he would question those things, but this was off the beaten track. Member Goode asked whether it was ok to have that as a condition and Mr. Young said that would be fine. Mr. Lemmo gave the wording as the permittee shall paint the tower structure and panels an appropriate color to blend in with the surrounding environment.

Unanimously approved as amended (Morgan, Gon)

Item D-6 Grant of Perpetual, Non-Exclusive Easement to Henk Brouwer Rogers and Akemi Matsumoto Rogers for Primary Access Purposes, Hale Piula, Puuwaawaa, North Kona, Hawaii, Tax Map Key: (3) 7-1-001: portions of 006 & 007. And

Grant of Term, Non-Exclusive Easement to Henk Brouwer Rogers and Akemi Matsumoto Rogers for Secondary Access Purposes, Hale Piula, Puuwaawaa, North Kona, Hawaii, Tax Map Key: (3) 7-1-001: portions of 006 & 007.

Written testimony was submitted by Mike Donoho.

Mr. Tsuji indicated that item D-6 was returned to staff to look at it further that the landowner is supposedly land locked and the recommendation was the easement be for gratis. The reason is this parcel is landlocked and that the State was involved in an exchange earlier on. Also, there is a second easement as identified on the map. It should be an access easement for a term. He received written testimony in opposition by the applicant because the easement is a term and he wants perpetual and asked to defer to negotiate further with staff. All access easements are for term per market value. It's going to come out less than the cost of the easement. Mr. Tsuji recommended that negotiation will not be fruitful and would end up with what they are already recommending. If the applicant still feels this was with easement #2 then he recommends proceeding with easement #1 where the access is gratis and deny request for easement #2.

Vincent Paul Ponthieux introduced that he represents Henk Brouwer Rogers the owner of the property. Charles Yamamoto introduced himself with Mr. Ponthieux. Mr. Ponthieux testified that they only asked for one easement and was offered two that they wanted the historical route from the ranch to the sanctuary and is the same route DLNR staff uses. It's impractical to drive 3 miles down the road to access his easement when they already have the one built to the catchment since the 1940s. If staff is offering both easements they'll take it, but they only wanted the one easement and they understand it wouldn't be gratis because it wasn't the shortest route.

Member Goode referred to Exhibit B and asked which easement he was referring to that he wanted. Mr. Ponthieux said A to C is the easement they wanted. The reason B is in there is its ranch property. DOFAW's concern was if it passed through the ranch property and the ranch was sold separately from the property then it would become landlocked again. They routed the easement around the ranch through a paddock that DLNR uses and that satisfied the conditions of not landlocking the property again, but doesn't pass through the ranch property and was close to the property gate. B is the Pu'u Wa'awa'a Ranch house. The reason why they want this is they built a wash station for vehicles to disinfect and check for any invasive species so you don't bring it up there. The purpose was to do a project up at C which is the 2.75 acres belonging to Mr. Rogers where they are going to put in a Native Hawaiian bird and forest research facility up there. They were offered both easements as perpetual and that is what they agreed to, but is only interested in the one as being perpetual.

Member Gon asked whether the vehicle cleaning station already built and Mr. Ponthieux said yes that it's at B at the gate. They did build the 3 cattle guards at C granted by the CDUA. Member Gon asked the route D to C bypasses the vehicle cleaning station. Mr. Ponthieux confirmed that saying completely. That route was built for the water tank where a deal was made with the Hine family. They asked to defer this, but was told it was too late. Chair Aila said you want the easement A to B to C. Mr. Ponthieux acknowledged that.

The Chair asked whether we can do this. Mr. Tsuji said they don't want to pay for it and they don't want term they want perpetual. For gratis, the law is for landlocked purposes it's the most direct access and in granting perpetual it's the shortest direct route. Easement 2 is being offered and we could forget about easement 1 that they will pay for it, but the issue of term versus perpetual remains. Member Morgan asked what is the practice. Have we ever given a perpetual? Mr. Tsuji said he doesn't recall ever giving a perpetual. Mr. Ponthieux noted that the Deputy AG didn't know why they were never given a perpetual easement for this landlocked parcel and they should be granted one by necessity that it shouldn't matter which one it is and they are willing to pay the fee for it.

Member Morgan said this is between the law and the circumstance, but the law says the most direct and Mr. Ponthieux said only for gratis. Member Morgan said there is no precedence for gratis for perpetual access on a different easement. What we are charting new territory on a perpetual easement. Is that correct? Mr. Tsuji said yes and gave an example of granting a neighbor an easement and not wanting someone tearing up his land. Could change in 100 years.

Member Morgan asked this is a 30 year easement. Chair Aila asked can you be comfortable with 55 years. Mr. Ponthieux said they don't understand why it can't be perpetual for one easement and 2 easements would cut up the land even more that they only want the historical route. They went through a lot of expense based on what they were told they would be given based on the plan for this research that DOFAW and DLNR offered them 3 options.

There was some discussion about the D to C to B route where for Mr. Ponthieux to take the horses down there to corral them having to go through the gates on the highway doesn't make sense. He only wants the A, B, C as a perpetual easement and forget about the other easement.

Deputy Attorney General Pam Matsukawa said it is the discretion of the Board. If you want to give them that second easement to be perpetual that is the discretion of this Board.

Mr. Tsuji asked do you want to do that to your land. Member Gon said since it is already a traditional route already used by DOFAW then there isn't much burden on the landowner.

Member Gon referred to Exhibit B that the route the applicant desired was from A, B to C and asked whether he was familiar with that route. Paul Conry (Division of Forestry and Wildlife) said he was. That is the route DOFAW uses to access the area. Listening to Mr. Tsuji it really comes down to policy on whether or not if you do this now are you setting a precedent to everybody else who comes along and that is a policy issue. We are not going to solve it by deferring and going back to negotiations.

Member Gon asked about why D-C route was built. Mr. Conry said it was pre-existing for fire break. One issue was whether it could be improved to better as part of the easement.

There was more discussion about the D-C route reiterating the Hine family and the catchment. That road is in bad shape.

Member Agor said he didn't see the problem with a 30 year lease term and coming back in 30 years especially if it goes against what we usually do. Mr. Yamamoto said they ended up with 2 easements because the requirement for an easement was part of a CDUA that got approved. He pointed out to Mr. Conry that they are landlocked and that they should receive an easement by necessity, but resulted in 2 easements – one gratis for necessity and another term easement. If you look at a 30 year term easement then the applicant is entitled to an easement by necessity which is gratis. They are entitled to a permanent easement to begin with and the applicant is willing to pay for it. You need to look at the proposed use as to the location of the easement. Remove gratis or not because the applicant is willing to pay for it. Member Agor said he would support gratis for the shorter route and for A-B-C he would accept staff's recommendation.

Member Morgan noted that staff did all they could with the policy and procedures, but he understood Mr. Ponthieux point of a perpetual. Mr. Ponthieux said that they wanted one easement and not to be burdened maintaining 2. Member Morgan asked can't you say leave it as is. Is there a requirement to maintain it to a higher standard than it is? Mr. Ponthieux said it is the condition of the CDUA for us to get the easement first of all and maintain with the State.

Mr. Conry said the C-D is a fire break, fire access and the applicant wouldn't desire to improve it beyond that. Member Morgan asked whether he foresees any additional monetary or physical burden on the owner. Mr. Conry said it is a win-win for us which is keeping it as a fire break.

Member Goode said that Member Pacheco couldn't be here, but expressed support for A-B and B-C perpetual that he is up there a lot and is familiar with the project DOFAW is doing up there.

Chair Aila asked if this easement wasn't granted how would our employees get up there. Mr. Conry said that they will continue to use it. A-B is tied with parcel B commonly used by all inhabitants. B-C is traditionally used by everyone.

Mr. Ponthieux said that Mr. Rogers has proven his commitment by working with the State that this parcel has always had a contentious relationship with the State before Mr. Rogers. His goal was to repair all the damage and be a good neighbor with the State. Right after the purchase he donated \$80,000 for a new liner to put into the reservoir which is used for firefighting purposes in the area. Also, the State is refurbishing the catchment area and there are inadequate funds to put in the pipeline to bring the water down and they are talking to DOFAW to see if they can help with that as well. Member Morgan said they don't dispute Mr. Rogers as not being a good steward.

Member Edlao said he shared Member Agor's concern with the policy issue. Member Morgan pointed out if we decide to grant B-C that doesn't necessarily establish policy because it is the discretion of the Board and the Board is acting on specific site information. Is that correct? So we wouldn't be creating policy just addressing this particular situation? Ms. Matsukawa said its not legal precedence in the sense that it might be binding for other parcels so it doesn't establish legal precedence it's more like a practice. She thinks what Mr. Tsuji is saying is it may be precedence in terms of the Board practice and policy, but if you feel there are special circumstances to allow this then she thinks you can make that clear if you want to allow the second easement.

Member Gon said as one who appreciates traditional routes he didn't think it would necessarily be an unusual move for the Board to recognize that it is somewhat longer it is already in use and that this Board could consider the A-B-C route easement by necessity in this case.

Ms. Matsukawa clarified that there wasn't any evidence that at the time of the original conveyance there was any particular route used for access. They may be talking of tradition in later years that she wanted to clarify that. If there was a known route at the time of the conveyance the easement would have to go along that route.

Member Agor said he would give both gratis. Mr. Tsuji said they can't do gratis on both. Ms. Matsukawa said as a matter of law there is an argument for an implied easement which results in an easement by necessity along the most direct route and it's gratis. It would only be gratis from C-D.

Chair Aila said that C-D is there because of the CDUA condition which the Board imposed upon them in the re-zoning of the application for the research station which is why B-C is there. Mr.

Ponthieux said the C-D only came up when they agreed to A-C route. Chair Aila asked is the B-C route is imposed by the CDUA. Mr. Ponthieux didn't know of a specific one, but they have to have an easement access by the CDUA and didn't know if it was B-C.

Chair Aila asked if the CDUA imposed an access do we have the ability to define whether it's B-C or D-C. Mr. Tsuji said the CDUA it may require it referring to the previous item regarding the shoreline. The CDUA process is not going to document the easement. The Chair asked whether they already have an easement from A-B. Mr. Conry said it is only for the ranch property because that could be sold separately. They need A-B-C. Yes, there is an existing easement from A-B. Chair Aila asked whether B-C is shorter than A-C. Because if the perpetual is the shortest distance and they already have one from A-B where Mr. Tsuji said it has to be another parcel.

Member Agor asked can they get easement 2 and forget about easement 1. Mr. Conry said yes that he agrees with Mr. Tsuji that this is a policy issue.

There was some discussion about whether it can run with the ownership, but there are legal issues.

Member Goode made a motion that D-C is the shortest access, but is not practical. The access from A-B-C has been the traditional access maintained by DOFAW. Forget easement 1 and easement 2, A-B-C perpetual easement along with the terms. Member Morgan seconded that because it doesn't set a legal precedent, it is traditional access and it benefits not just the applicant, but the State as well. Member Edlao said for clarification, it would be at fair market value and you would help maintain. There was some concern and discussion that the route didn't go through the property.

Member Agor said he wasn't going to support it. Everyone else voted in favor. Motion passed.

The Board:

Approved as amended. The Land Board decided not to issue Easement no. 1 at all, but instead granted and agreed to only issue the easement area identified as Easement no. 2 (on the map attached to the submittal) as the sole access easement perpetually, at fair market value as provided in the staff submittal.

Unanimously approved as amended (Goode, Morgan)

Item D-16 (1) Status of Outstanding Delinquencies and Termination of the Development Agreement Between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001

(2) Termination of the Development Agreement between the State of Hawaii and West Wind Works, LLC, for the former Ewa Feedlot site at Campbell Industrial Park, Honouliuli, Ewa, Oahu, Hawaii, Tax Map Key: (1) 9-1-031:001.

Two booklets were distributed to the Board members from Keith Avery.

Mr. Tsuji presented some background on item D-16 referring to a map. There is no lease yet since certain conditions need to be met. Part of the development agreement was the developer was to pay a fee to hold the lands while the developer goes through the development process. Payments were made initially, but the developer has fallen behind which is quite substantial. They wanted to present a proposal to the Board. The account is over \$300,000 behind and that is very significant for the Department. Not that it's comparable, but as an example – sometimes the press calls when a high profile tenant is one payment delinquent asking when the matter is going before the Board and why aren't you taking action to terminate the lease. He is bringing this to the Board to show the amount of the delinquency and the developer is here to make a proposal to the Board. Mr. Tsuji's recommendation which he had expressed to the developer was that at this stage staff gave all they could because we don't need to have the EIS done yet and because the developer hasn't nailed down the other parts of his project yet. It involves other entities to get on contract with the developer. The EIS is on hold for now.

Member Morgan asked how much have they paid so far since one check bounced. Mr. Tsuji said they paid the first year and all the second year is due. The bounced check included an extension fee that they paid \$10,000. If they were to bring it current today, it would be \$384,375.25 because of one extension fee. He referred to the development agreement attached in the exhibit page 6 and 7 going over permits and dates by the developer and not necessarily from staff. Some have passed and some are coming up. The way the agreement is for an extension for those dates is \$10,000 for each one and that is how it is drafted. Because this development agreement was directly negotiated it is within the Board's discretion to modify it if you feel the need to do so. Not that he is recommending it. This was done through an RFP/RFQ process. Developers proposed a project, it was selected, the development agreement was negotiated and the way it's structured which is how all these terms came in. If the Board felt maybe \$50,000 in fees is too much, maybe \$10,000 or \$20,000, it's the Board's discretion to decide.

Member Morgan asked in the submittal it says it will impact the Kahuku project can you elaborate on that. Mr. Tsuji said that the entity has an agreement on another project on other State lands, but is not a Lessee at this point.

Keith Avery representing West Wind Works testified relating some of his history in Hawaii doing renewable energy for 32 years and the various companies and projects. He related the project in Kahuku bidding in 2008 with HECO and is still in a process with them to complete that project. The RFP for the feed lot there was an earlier RFP that had come out 2 or 3 years before this one and that there were no winning bids. When this RFP came out there were several bids including their own and all were denied. He approached then Chair Laura Thielen and suggested the project they are proposing has tremendous benefits and could pay the very high lease rent – around \$4 million a year. It was bound in the land and a return on investment to the State. Chair Thielen agreed to give him an opportunity, but had only 3 weeks to negotiate a development agreement and then only 3 years to complete the project which is why those milestones. The shortness of the project was based on the opportunity for the State to buy the power at a 20-25 year fixed price and so the benefits would not only be lease rent but would also be fixed price electricity or powering the University of Hawaii on a 100% renewable energy out

of what they call the Oahu Renewable Energy Park (OREP). As they started paying the rent it became apparent that what they were doing in technology was combining solar photovoltaic, solar concentrated with mirrors, troughs, wind energy and biomass and that we need alternatives to be able to move forward in an economy where world oil prices affect us on a daily basis. As he started moving through this process he realized that this was a very difficult product to produce technologically so he reached out to a company called International Electric Power, Enzo Zoratto's company who had experience in doing this as well as a couple local partners who had biomass and solar experience. Over the last year and a half they have been designing this project and its coming together, but they are guided by who they can sell this power to. To be able to sell power to HECO on a negotiated basis if you are 5 megawatts or less and you see a lot of 5 megawatt projects coming up. If it goes over 5 megawatts then it has to go out for RFP. We are still in the 2008 RFP and now we have another 200 megawatt RFP coming out from HECO. They are bound by HECO's timeframe more than the timeframe they would like to build the project in. If the State came in and said they will buy that power and take all the advantages that the State gets then they could complete the project in 2 years easily. They are here to describe what the plan looks like and how they would like to resolve this issue.

Enzo Zoratto representing International Electric Power (IEP) testified thanking Mr. Tsuji and relayed some background information working in Hawaii. If the Board allows the contract to be assigned to them it would be in the best interest of DLNR and would support Keith technically and managerially. While Mr. Zoratto was caught up about making payments and missing milestones they determined they can accelerate this project and make it financially exciting for the State yet chart a different path and they would like to negotiate with DLNR. He asked to envision what he is to say in imposing a path forward on Keith and that this is the right way to go. He distributed 2 color booklets to the Board members and that he would only go through the proposal. The other is a product that they had already begun when they modeled the project and determined that they wanted to help.

It was asked by Member Edlao whether Mr. Zoratto was asking us to transfer this to him because it is not on the agenda. Mr. Zoratto said no, not today. It is part of the request that the Board will eventually have to deal with. Member Edlao said but, we are talking about terminating this agreement with West Wind. Mr. Zoratto said he is going to describe a new pathway, but would like the Board to consider in lieu of termination allowing us to join 3W (West Wind Works) so they can get the project going. Member Edlao said counsel said you need to give us a reason why we shouldn't terminate and to proceed. Want to make sure we're on the agenda here. Mr. Zoratto agreed that he is new here.

Mr. Zoratto presented one booklet that describes all the layers of the project and will go to the bank for their financial. He referred to the other booklet and acknowledged that 3W failed to meet their milestones and payments. 3W's position is they have identified deficiencies in the Development Agreement (DA) and propose a solution to justify and modify the DA to continue that relationship and he went over those changes. Assignment of management, technical and financial responsibilities to a team lead by Independent Power Producer (IPP) International Electric Power, LLC (IEP). IEP would be the majority partner and 3W would remain at reduced capacity since the project no longer involves wind power. A special purpose IPP called ORP LLC will immediately cure all DLNR payments. Future payments will be tied to the financial

closure milestone providing economic benefits to DLNR compared to the current DA. This will require re-negotiation of terms of the DA and a commitment of DLNR to issue a stronger agreement. Page 5 – ORP Master Plan on technologies. The funding comes from a syndicated non-profit group and he named a couple foundations. They are able to put monies into testing new technologies. Mr. Zoratto described the economic models. Page 6 - Current DA Requirements and Progress. Page 9 - ORP Power Generation Technologies.

Member Gon interrupted and pointed out that there is a lot of information here that the Board is not in any position to make a decision on. The Board's decision is whether to accept staff's recommendation to terminate based on the deficits. The information Mr. Zoratto brings provides a potential change in those conditions, however, bringing forth all that information before the Board at this stage is probably premature. It is likely all this information is for the staff and the Department to consider in order to properly determine whether or not there is a viable future for this. Therefore, he would like to entertain a motion to defer this permit item so that the Department has time to take in this information rather than in a public venue.

Bill McCorriston testified that he was retained as counsel and was going to make the same suggestion that they want to defer this agenda item for at least 60 days which would allow staff to modify the existing program. Keith and Enzo wanted to come today to show that they worked on this substantively. They are not asking for a deferral period without having done a lot of work to ensure what they are asking they can come back realistically in 60 days and say to the Board here is what we have, here is our concrete proposal, here is something we both can work on. Keith and Enzo wanted to show their sincerity that they working very hard on this getting a stronger financial partner, reformulating some of the milestones and processes to do a legitimate project and which we can with the cooperation of staff present to you after 60 days. Today they are here to show that they have spent a lot of time and money to look at this problem. They are serious in curing the default to work out the process to present something to you in 60 days they will have something for you to consider.

Member Gon thanked him and said to Mr. Zoratto that he wanted him to know what the Board could decide on and he is impressed that Mr. Zoratto addressed the key issue with potential to cure all problems. Member Gon asked staff whether the potential of deferring 60 days is reasonable. Mr. Tsuji said it is substantial and didn't think 60 days would do it. He reminded the Board of the substantial default amounts that he suggest to Enzo and Keith to submit payment and not to accept anything less than what needs to bring current. Something can be worked out later. Mr. Tsuji is getting pressure from the accountants.

Member Edlao asked how do you deal with them as a direct lease when somebody else wants to come in. Is that fair to others? Mr. Tsuji said we don't have a lease yet. And, you can assign a delinquent one that it is like assigning any other lease. Chair Aila noted we are talking about the DA.

Mr. McCorriston said if a work out agreement can be negotiated between us and staff presents to you for approval part of that approval is condition upon bringing everything current. Mr. Zoratto agreed and said they wanted to have a high level of confidence that they can get there.

There were discussions about the benefits. There was more discussion about the defaults. There was concern from Mr. Tsuji about taking partial payments and agreeing for the future.

There was some discussion of when the RFP/RFQ went out and whether there were any other applicants and that only one qualified. That it would be easier to cure all of this and then come back with a change of entities involved and Mr. Tsuji said he thought some members would say pay all current and no promises, but that's difficult.

Mr. Avery said they don't have a problem making the finances current, but they do need an adjustment to this DA. It's a complicated project and the benefits are enormous. The integration of renewables is what is going on the Big Island. Maui is curtailing because they can't deal with them integrated and they could demonstrate it. Mr. Zoratto reiterated his financial proposal and the benefits. Member Edlao said a check for the over \$300,000 and the future benefits they just presented he would be open to their merger and wouldn't have any problem. Mr. Avery said they would give them both, but not in that order.

Chair Aila pointed out the question before the Board is if the staff's recommendation were modified in such a way that we allow more time for this to occur. Obviously, it is within the legal parameters to allow for this change in ownership to occur and that is what is before us.

Member Morgan said the simplest thing is to defer for a period of time. He encourages the State that Oahu needs to go in this direction, but understands we can't put anything up front without any clarity and supports a deferral because we don't have a lot of players out there to choose from.

Member Edlao agreed that as an island state we need to do something.

Mr. Zoratto said that they are going into some parts of the world that you have to address this issue. You do not want 50 cent power which is the direction the State is headed in.

Member Morgan made a motion to defer 60 days and Member Edlao seconded it. All voted in favor.

Deferred for 60 days. (Morgan, Edlao)

Item D-7 Establish Lease Rent Under General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority (NELHA), Lessee, at \$480 Per Annum Plus Fifty Percent (50%) of the Net Operating Income for the Period July 3, 2011 to July 2, 2021; Amend General Lease No. S-5619 to Modify the Character of Use Provision to Include Telecommunication Purposes, and Extend the Lease Term for an Additional Twenty (20) Years for a Total Term of Sixty-Five (65) Years; Government Lands at Hamanamana, Kalaoa 1st- 4th, and Ooma 1st & 2nd, North Kona, Hawaii, Tax Map Keys: 3rd/ 7-3-43: 5, 41, 42, 51, 63, 66-94, 98, 100, 101, 102, and 106 (formerly designated as 7-3-43: and 7-3-09: 23 and 24).

Written testimony was distributed to the Board from Dr. Glenn Okimoto of DOT.

Mr. Tsuji conveyed that this is to extend the term noting that NELHA is a State agency attached to DBEDT. They are modifying the character of use to allow telecommunication. NELHA doesn't pay rent and runs on a deficit. He related some background on the site and the aquaculture that comes out of it.

Greg Barbour representing NELHA testified that he understands Verizon has a tower there for 15 years and the law was changed and they were not grandfathered in. A law passed in 2008 allowing them to do telecom and this is to make the lease in compliance with the law.

Chair Aila noted that DOT asked that all future potential projects they should be notified.

Member Gon asked whether he was agreeable with staff's recommendations. Mr. Barbour said yes.

Unanimously approved as submitted (Gon, Edlao)

Item D-15 Mutual Cancellation of General Lease No. 3811, HI 120 Properties, Inc, Lessee; Sale of Remnant to CP Kam Properties, LLC, Kaluaao, Ewa, Oahu, Tax Map Key: (1) 9-8-013:015.

Mr. Tsuji asked to cancel the access easement and the grant for the sale of a remnant which is not much use to the State at this time. He had nothing to add.

Burt Lau representing the landowner testified that he had nothing to add and support staff's recommendation.

Unanimously approved as submitted (Morgan, Edlao)

Item F-1 Request for Approval to Hold Public Meetings and Hearings Pursuant to HRS Chapter 91, to Amend Hawaii Administrative Rules (HAR) Title 13, Chapters 54, "Puako Bay and Puako Reef Fisheries Management Area," and 57, "Keauhou Bay Fisheries Management Area;" To Repeal HAR Title 13, Chapter 60.3, "West Hawai'i Regional Fisheries Management Area, Hawai'i;" To Adopt a New Chapter 60.4, "West Hawai'i Regional Fishery Management Area, Hawai'i;" and To Amend Title 13, Chapter 75, "Rules Regulating the Possession and Use of Certain Gear" As Attached as Exhibit A of this Agenda

Numerous written testimonies were distributed to the Board members.

Dr. Bob Nishimoto representing Division of Aquatic Resources introduced Dr. Bill Walsh, a Kona biologist. Dr. Nishimoto conveyed Item F-1's history,

Member Gon disclosed that on this West Hawaii Fishery Council (WHFC) is a number of staff from The Nature Conservancy, Hawaii Island Program and as an employee of The Nature Conservancy he wanted to disclose that the decisions occurring is in a completely different program that he has no direct relationship to and asked our Deputy AG if he should recuse. Deputy AG Pam Matsukawa said she doesn't think that would affect the interest and that you being here is solely as a Board member and won't affect it.

Dr. Nishimoto conveyed and read from staff's submittal 4 sections:

A. Repeal of HAR Chapter 13-60.3 and the adoption of proposed HAR Chapter 13-60.4, West Hawai'i Regional Fishery Management Area which is in Exhibit A.

1. The first proposed change prohibits the practice of scuba spear fishing in the WHRFMA.
2. The second proposed amendment addresses a conflict that arose in 2004 between recreational user groups and commercial aquarium fish collectors in Ka'ohe Bay, South Kona (also known as Pebble Beach). After consultation with staff, Big Island aquarium collectors agreed to allow the closure of Ka'ohe Bay to aquarium collection. The current proposal establishes an approximate 1,500 foot section of Ka'ohe Bay as a protected FRA.
3. The third major substantive proposal establishes a list of "no-take" protected species and a list of the only species that may be permitted for aquarium take purposes (i.e., an aquarium species "white list") within the WHRFMA. See section 13-60.4-4 (1) (prohibiting any take of certain vulnerable species) and section 13-60.4-7(b) (permitting aquarium take or possession of only the 40 enumerated species). Size and/or bags limits for aquarium collectors established in the latter section for yellow tang, kole, and Achilles tang. Also, bag limits on yellow tang less than 2 inches in length and greater than 4.5 inches in length are established for all fishers. These were approved by the WHRC and BIAAF.
4. Other rules changes to address poaching activities and clarify existing rule provisions:
 - a. Establish a West Hawai'i Aquarium Permit requirement to engage in aquarium collecting activities in the WHRFMA and to use fine mesh nets for both recreational and commercial collectors;
 - b. Allowing possession of aquarium collecting gear or marine life collected for aquarium purposes after sunset or before sunrise only with prior notification to the DAR-Kona office;
 - c. Requiring labeling of nets or containers used to capture or hold marine life with the commercial marine license number(s) of the person(s) owning or using the equipment;
 - d. Specifying that minimum mesh size requirements for "lay nets" do not apply to lay nets permitted for use under an aquarium fishing permit, and labeled with the CML (commercial marine license) number of the person owning or using it; and
 - e. Clarifying that the "total length" standard will be used for length measurements.

Chair Aila asked what is the purpose of the night time notification. Bill Walsh said presently, aquarium collecting is prohibited at night and on occasion people will be on an overnight trip not aquarium collecting, but have gear and animals on board which was permissible under the

existing rule. In order to close potential loopholes, legal advice was to require notification of DAR if they are going to be out overnight where he gave an example of someone reporting this boat and DAR can say they are doing an overnighter, or broke down and usually it's just 2 days.

Member Edlao asked how would you know if they were not diving. Mr. Walsh said we wouldn't know unless someone reported. If someone is going to be out overnight and someone reports them they can say whether that boat is ok to be anchored because they have notified staff that they are doing a multi-day trip. But, they should not be collecting. Chair Aila said so if they haven't notified they shouldn't be anchored off the reef right.

Member Agor asked what the depths of the water are in the reserve area. Mr. Walsh said from the shoreline to 600 feet. Chair Aila noted in some cases just 600 feet which occurs real fast on the Big Island.

Chair Aila asked lets say someone needs to harvest a specific resource no longer available in shallow water, could they apply for a special use permit to use scuba which Mr. Walsh confirmed in the affirmative.

B. HAR chapter 13-54, Puako Bay and Puako Reef Fisheries Management Area

1. Amendments proposed to HAR sections 13-54-1, 13-54-2, and 13-54-3, to clarify the boundaries of the Puako Bay and Puako Fisheries Management Area (proposed as Puako FMA), clarify the types of nets prohibited within the FMA and to incorporate and update a more accurate map of the Puako FMA. Only throw nets are allowed. The boundaries were adequately described in the rules, but the map shows "approximate" bounded area which doesn't conform to the FMA description and the signs posted on the Puako FMA shoreline do not reflect the area described in the rules causing confusion. This rule seeks to amend the current FMA rules to incorporate by reference a more detailed, accurate, and up-to-date map of the Puako FMA; clarify that barrier nets and hand nets are also prohibited by the Puako FMA, and add Hawaiian language diacritical markings.

The Chair related testimony from a Mr. Makani Christianson who claims long time lineage to Puako asking how does that affect his native gathering rights. Within the proposed Puako FMA there will still be the ability to request a special use permit to gather something that is prohibited. Mr. Walsh said yes, the existing Puako FMA rule prohibits all nets except throw nets which have not changed and they added 2 specific net types to the original rule including various nets and hand nets. Chair Aila asked whether spear fishing and pole and line fishing is still allowed and Mr. Walsh said that is correct.

Member Morgan asked referring to the map why didn't the FMA go to the edge of the bay. Mr. Walsh said the boat ramp was used as the northern boundary. The seaward boundary was defined as the fringing reef and they based it on NOAA habitat maps which are where the edge of the reef ends where they can get GIS coordinates for any particular point here. If you want to use nets other than throw nets you have to be outside of this area. There was some discussion about going to the edge of the bay.

C. HAR chapter 13-57, Keauhou Bay Fisheries Management Area

1. This submittal proposes to amend HAR chapter 13-57 to make the described Keauhou Bay Fisheries Management Area no-netting boundaries consistent with the no lay netting boundaries established under chapter HAR 13-60.3. The current map and rule language in chapter 13-57 will be updated to match the boundaries described in chapter 13-60.3.

Chair Aila asked which section has the part about no taking of sharks and rays. Mr. Walsh referred to section A. The Chair asked say a shark is taking meat can he take it. Mr. Walsh said you should talk to your legal counsel on that one. Chair Aila said they have an opportunity to put that in the rule because the rule hasn't gone out yet. Is there an ability to defend yourself against a shark? Mr. Walsh said he couldn't answer that in terms of the take. Is it considered take? Chair Aila said that is what he is asking according to the rule. Mr. Walsh acknowledged there is a description of take and it's taking and killing the animal. The Chair asked so if he kills the animal in self defense is that take. Member Gon said he guessed it's not take if you leave the animal in the water. Mr. Walsh said it depends how akamai your lawyer is. Member Gon thanked staff for the clarification of the nature of the rules that they have received huge amount of testimonies in favor and asked for clarification this is just to take this proposed step to public hearings and no doubt there will be a lot of feedback from the public on this. This is not the venue to make changes, but we could point out areas the public finds wonderful or troubling that we will not be able to make those changes in this venue. The Chair acknowledged that this is for permission to go out for public hearing.

Dr. Nishimoto read staff's recommendation from the submittal.

Member Goode asked whether staff will be doing rules for Hilo, too. Mr. Walsh said this is the third iteration of having major rules and did a single meeting in Kailua-Kona and the reason is that was the most convenient place for them. They didn't hold any meetings in Hilo because fundamentally this is a West Hawaii rule proposal and that is his inclination.

Member Gon asked whether he had any push back for making that decision or what were the consequences of that. Mr. Walsh said not at all that both hearings were the most heavily attended public hearings ever held by DLNR. There were 18 articles by both newspapers with lots of publicity with lots of attendance and feedback.

Member Goode asked whether people from the other islands could comment via e-mail or letter that you are not restricted to attend a public hearing. Mr. Walsh confirmed that and as in the past staff will do an analysis of all the comments and bring it back to the Board.

Member Edlao asked whether he plans to publish notices of the public hearings on the other neighbor island newspapers. Mr. Walsh said as soon as they get permission to hold public hearing there will be a lot of media attention. Aquarium issues are a hot button all around the State.

Member Gone asked whether aquarium issues are a hot button in other states like Florida and would they be looking to Hawaii's rule package for guidance. Mr. Walsh confirmed definitely that there are a number of trade organizations that deal with the aquarium fishery and the rest of the world is looking at what we are doing at the West Hawaii Fishery and they have been very

encouraging and are impressed with the way we are approaching this as a fishery that needs to be managed.

Tina Owens from Kailua-Kona testified (from her written testimony) in support of this submittal and related working many unpaid hours on these rule proposals having sacrificed her time and effort. The work in the fish replenishment areas is already a huge success, but there are those who may try to tell us differently. The data proves it is working. She related that all WHFC meetings are open to the public and there are opportunities for the public to learn about what they are doing. Only the people of West Hawaii should decide on the rules pertaining to their shoreline and not someone outside of it. Ms. Owens asked the Board to approve this to take it to public hearing.

Marni Herkes, Administrator of the WHFC testified that the Board has her written testimony and related how their public meetings are held that all views are considered. She also related how they have committees and how well the tasks are done for the past 10 years. Our communities can work to preserve our resources.

John Kellam testified that he submitted his written testimony and was in support, specifically Ka'ohē Bay (Pebble Beach) and he described the access to it. Mr. Kellam related the problems with commercial aquarium collectors. People from other islands tried to get legislation to ban all aquarium collection which didn't work. They thought having DAR staff regulate this situation by going through the process which took 7 years now and the issue merits a public hearing urging the Board to approve.

Katrina Nakamura testified that she formally was an independent certifier with the Marina Aquarium Counsel Program where she reviewed initiatives that people wanted their area or their place in the supply chain certified to that global standard for sustainability excellence. After reviewing the State of Hawaii for a year the best place was the Big Island because of the quality of management already in place. She worked directly with the collectors and exporters on the Big Island and found they met the standard for collection areas. Ms. Nakamura also works for Sustainable Fisheries Partnership and she has worked with the Hawaii Long Line Fleet on their sustainable platform. Internationally, the companies at the top have to commit to investing back in the resources where they come out of the ocean or from the ground. They look globally for examples of excellence. She kept hearing about the WHRFM area all the time that globally this is a great example of co-management and a commitment to improving the role of the collectors and taking care of their source.

Kamaile Maldonado representing Office of Hawaiian Affairs (OHA) testified that a letter will be coming waiting for their director's signature and read it. They appreciate the WHFC's work in drafting these rules and encouraged DLNR to continue public consultation on West Hawaii.

Robert Hajek testified from his written testimony that he is the President of the Big Island Association of Aquarium Fishermen (BIAAF), has been on the WHFC for 4-1/2 years, a scuba dive instructor for 22 years and an aquarium fisherman for the last 5-1/2 years. He took issue with what was stated about the WHFC's productivity, openness and dependence from the public and wouldn't interpret it as enthusiastically as some who came before have which was his

observation. Mr. Hajek requested that HAR 13-60.4 not be allowed to proceed to public hearing since the BIAAF and so many people worked so hard on several components within the rules proposal and until recently were in full support of the changes. The problem is this particular version on the rules package does not nearly resemble the rules package they all agreed to support about a year ago. The BIAFF stands by its commitment to previously agreed upon elements and continue to support the Pebble Beach proposal, the White List proposal and the size and bag limit agreements made with respect to specific species of aquarium fish. However, the BIAAF today would not support the 2"-4.5" size slot that it did a year ago. Nevertheless, they are set to support all the rules that they agreed upon, but originally agreed upon, and not the ones in front of us.

Mr. Hajek said the BIAAF had serious reservations with the additional segments that suddenly appeared in this rules package for the first time 2 weeks ago. He referred to staff's submittal section A. that everything from West Hawaii Permit on was new to them and was never discussed. He had concerns with the lack of due process for the entire lay net section and the additional West Hawaii Permit section that there was no formal public discussion on either of these matters nor was there any WHFC discussion. The West Hawaii DAR office, the WHFC executive committee and special interest groups took it upon themselves to come up with a relatively detailed proposal with respect to the lay net and a vague and ambiguous one for the West Hawaii permit addition and added them to the package unbeknownst to any of the affected parties. This action is reason to stop this rules package here or to eliminate these questionable portions entirely so as not to negate the agreed upon elements of the rules package or follow the established protocols of process and discussion to come up with lay net and West Hawaii permit components that have been agreed upon by all concerned parties in a fair and balanced proposition and then add them to the rules package at the completion of the process. They don't understand how the West Hawaii permit got on the rules package since it is so ambiguous and he presumed that it is the first step towards the establishment of a limited entry aquarium fishery program. They need to develop a viable limited entry program first and then install it into a rules package. They can't just approve the West Hawaii permit concept without any details and serves no purpose which is redundant. That they were in the position to approve and proceed, but wouldn't be in this situation if Kona DAR and the WHFC functioned with more transparency and should be held accountable for their actions.

Mr. Hajek testified that the BIAAF has no problem with the minor housekeeping, technical and wording changes made by the Attorney General's office and some of the additional definitional changes. They are not in support of modifications to the AQ signage, stiffened pennant regulations, coming back after sundown/over night rules, etc. which have little relevance to the actual fishery. We find these rules convoluted, largely irrelevant and create more problems than they solve that they are more enforcement related than pertaining to the fishery. He reiterated the concern with DAR and WHFC forgoing the established process without the notification of stakeholders. The BIAAF always stood for the maintenance of a sustainable fishery supporting a scientific approach to regulation development. They are the most responsible stewards of the ocean resources because it benefits them to be that way. It doesn't make sense to destroy their own business and they have never been opposed to responsible and cooperative management of the fishery. They are against the unjustified reputation we have bashed on decades long assault on their industry by special interest groups, misinformed news media and plain old ignorance of

what it is we do and how we do it. They resent the opinions that our activities need to be curtailed because of the resource issue they claim it is when everyone who really knows about the industry knows its user conflict that drives the public concern for what we do. Do we really believe the rhetoric that 25 aquarium fishermen are “devastating” our reefs and fish population? Doesn’t it strike you as strange that 25 people are getting this much attention? The fishery is doing quite well. They are the most regulated fishery in the State by far. They would make the argument that one of the problems of their fishery is over regulation, unfortunately, brought on largely by over-compensation for the lack of enforcement.

Mr. Hajek said in summary, while they would like to continue support of the proposed HAR 13-60.4 that they were led to believe would be the version submitted they cannot support this modified version. If you eliminate the aforementioned elements in question they could again support the package as previously agreed upon. They are under the impression that eliminating sections of this magnitude would be considered substantive and not possible without sending the whole package back to start all over which would be disappointing to us, but the process is the process. If you can’t remove these unacceptable sections and support for this rule package is all or nothing then they have no choice but to reject the forward motion as a whole as it is at this time. They love what they do and are global leaders at it. In any other community they would be well respected members of that community. Within the aquarium world they are renowned worldwide for the quality of their product and technique of their execution. No one does it better than they do and are proud of what they do and how they do it. They are constantly vilified locally by a manipulative press, a well-organized vocal minority and by the “not in my backyard” mentality. Not only do they help spread joy to people around the world with what they do they help promote tourism to our State. The tourist industry that benefits the most from their contributions are diving and snorkeling tour operators who are some of our biggest detractors. They do their best to educate everyone of the facts as opposed to the negative propaganda that is so efficiently promoted and in West Hawaii they are only a few voices of truth against a sea of misinformation. All they want to do is fish, earn a living and do it right.

Karen Coke testified that she is a Kona resident and is in support of this rule package noting everyone that worked together on it. With a little compromise Dr. Bill (Walsh) added 15 extra species to the white list and the aquarium fishermen gave up the Pebble Beach FRA with no swap. The bag limits and size restrictions are the most important. She wished it applied to all fishermen and not one user group. Ms. Coke had concerns with the lack of details of the permit and Dr. Bill said that the details will be discussed and all will be vetted in the future and will take into consideration some verbage they had concerns with. She urged the Board to move this to public hearing. Ms. Coke read written testimony from Tony Nahacky and Ula Carmacky that their income is derived from the fishery in West Hawaii having collected for 40 years and they support the rules package. If there are any changes please retain the Pebble Beach FRA, the white list, the yellow tang restrictions, the size and bag limits, the achilles bag limits and the kole size restrictions and bag limits. They request that the original support by the BIAAF be considered along with independent letters of support.

Eric Coke testified from his written testimony related that he is a member of the BIAAF and that they had voted in support. He didn’t want to give up his fishing grounds, but in this situation it was the right thing to do. Dr. Bill Walsh was fair with us fishermen on the white list adding the

additional 15 species which Mr. Coke appreciated. He supports the size limit on yellow tang to enhance the fishery. The additional items added to the rules package are meant to make the fishery more professional and to close down loop holes that are exploited by fishermen with ill intent. DAR-Kona office explained these and is willing to clarify the language and is satisfactory to Mr. Coke as a stakeholder. The old control date of 2005 is the only concern because it would exclude him and shut down his business. He was told there will be considerations for active participants and alleviated his concerns. Move this package forward to public hearing. Referring to Bob Hajek's testimony about a BIAAF vote today that the organization has shifted and wasn't the group it once was and the group is much smaller. It wouldn't be the same as back then.

Jim Lovell testified that he has been fishing in Kona since 1979 and been to countless meetings like these over those years to keep their industry alive defending false accusations, attacks by other user groups of the resource. In 1979 their opponents claimed there was no fish left in the ocean that the tropical aquarium fish collectors have taken them all. Their licenses were suspended while DLNR looked into it and obviously those statements weren't accurate that there were millions of fish out there. In 1987, DLNR told them that this is not a resource issue that this is a user conflict and if they agreed to a new round or rule packages and willing give up more reef it will be able to rid them of these things once and for all and put it behind us. They accepted those items and supported it. Their opponents violated that agreement the next day with a letter to the Legislature asking for a total ban. He is still waiting for that 1987 agreement to be on there. Over 36% of the reef in Kona is shut down to the fishermen and related other closures or not being collected and asked why they need to keep adding more rules every few years? Because it is a user conflict and will never go away until they address the problem. Mr. Lovell referred to a map of all the areas that they are not allowed to dive. The issues with Pebble Beach and his experiences with a dive charter harassing him and preventing him from doing his job. When he left the dive charter followed him to repeat the harassment by taking pictures, posting on their Facebook page putting disparaging remarks and character assassination calling him a criminal when what he was doing was perfectly legal. Front page article on the paper accusing him of criminal activities which were false. A malicious smear campaign that was done to influence the vote of their County Council and it worked. A council member voted for the ban even though he knows it's not a resource problem and later was mad at Mr. Lovell for not informing him of Mr. Lovell's opponent's agenda to smear him in the paper. Their opponents know what they are doing. Mr. Lovell related the accusations he had with a County Council member, DAR staff and the head of DAR made false claims. He related the Pebble Beach FMA boundary issue. Many collectors are supporting the package because they are fearful of losing their jobs. The control date was removed after working with the fishermen and reappeared and why should they agree to something out of fear is not right.

Mr. Lovell related on item B that he had gone into the DAR's office in 2007 regarding a sign that showed up on the northern boundary of the Puako area which designated the no take boundaries. They told him it was an accident and would be removed. He informed them that he had been fishing in the areas for 20 years and the sign would cause problems. Staff told him that it would be taken care of as soon as possible. It was still up in 2008 and he went back to staff and reminded them again of the problem. He was turned in for diving in the area that DAR staff said he was half a mile outside the boundary. In 2009, he was turned in again and was cleared by the

DAR office. The DAR office in Honolulu told him that they will have the sign removed that the only way they could change the boundaries of the FMA was to go to public hearings. He had gone in 5 times about the issue and then the head of DAR made accusations afterwards. Mr. Lovell had the old fishing regulations booklet and the new booklet where the boundaries changed and was told the sign was staying that they had public hearings. He referred to 2 maps of the boundary changes and the problems and asked which map is legal or in place?

Chair Aila said it will be determined by what is the fringing reef. There are NOAA maps that determine that. Your question is what rulemaking process do we go through to that. Mr. Lovell said yes and reiterated his testimony above about the boundaries and the booklets. The Chair said what is before the Board today is a proposed rule to go out to public hearing. Mr. Lovell asked to change the boundaries and the Chair said to clearly define the boundaries. This is to decide whether to go out on the rule or not. You have the opportunity for the Board to decide to take the rules out to testify against the proposals. Mr. Lovell said if they are changing the boundaries then it should be the original map in place and not the new one. He asked if someone could look into what map is in place and would appreciate that.

Mr. Lovell said he understood that the area is throw net only and he doesn't know anyone who can throw a net $\frac{3}{4}$ of a mile off shore and in 80 feet of water and asked if they could change it once to support the fishermen. Member Edlao had asked about the over night and Mr. Lovell said because the fishermen have been pushed so far they have to fish over night now.

Matt Ross testified that he is a commercial aquarium fisherman on Oahu and agreed with Tina (Owens) that the last time they have Oahu aquarium rules people from other islands complained. He does not fish on the Big Island. He explained that they are in this industry because they love it and why the emotions happen that other people on the other side want to get rid of us because they feel a connection for the same reasons. He is glad the fishery is being managed better and if those rules applied to him he would be okay with them, but some he would have a problem. Working on the fishery more will help the industry statewide. Mr. Ross can't accept the ban on scuba spear fishing because people spend a lot of time banning our fisheries and that you can manage the fishery without completely shutting it down. He had a concern with a ban on scuba gear because if he was free diving and it was too dangerous to retrieve the anchor he had heard stories of people blacking out underwater and the person on the boat could rescue them because they had a scuba tank. It would be difficult to enforce, but was concern that being unable to possess scuba gear could pose a safety issue and hope they can work on that. Aquariums he sees as a cultural asset rather than a way to get income. The way the white list is written it would apply equally to commercial and non-commercial collectors. He was concerned that kids wouldn't be able to catch fish near the shore because most are on the white list. Those same rules can't apply to everybody, but hope there could be a compromise that the white list would apply to commercial divers.

Willie Koupiko from Miloli'i testified that he was here in January. Knowing that DLNR doesn't have the equipment to enforce this and they are working with the Governor so that they DLNR can get enforcement to regulate and noted the depletion of fish in Miloli'i. All the fish on the island is to eat and this is not traditional. There has to be a better science or study regarding this industry. The State doesn't have the crew to enforce. There are all these no take zones and nobody out there regulating. There is an FMA area in Miloli'i and he fought the opelu project

and the same thing with the tropical fishing. Why the State not regulating? There was no EIS to the community that this kind of industry is going. Close it and start enforcing it. It is a big controversy on the Big Island, but a lot of spear diving and commercial opihi need to be regulated too. It has been 13 years in this place taking don't you think it's too long to be fishing in this area and it should be closed to replenish? He knows the south side is lacking fish. Manage the bottom fish, the mullet and close them and why do you have to do something like this? If you can not stipulate the rules then no sense have them.

Ms. Owens asked if the Board approves this, goes to public hearing and there are changes does this start over again. Chair Aila said if there are substantial changes then the areas of the rules with substantial changes will have to go back out again. If there are substantial changes to all the rules then the whole rule package has to go back out.

Mr. Kellam asked to without making changes to the rules at least the changes in the explanation of DAR perhaps would make some collectors more comfortable. Couldn't we do those can't we? The Chair said we can't touch the rules as they are written right now. But, the Board could approve A, B and not C to go out to public hearing. Mr. Kellam said the rules are indigestible coming from the AG's office. The collectors have some difficulty with that summary. Chair Aila said you have a difference of opinion on the interpretation. Changing the summary is not going to change the difference of opinions. You are welcome to meet with staff afterwards and Mr. Kellam said he will.

Member Gon approved staff's recommendation as submitted. Member Agor seconded it. All voted in favor.

Unanimously approved as submitted (Gon, Agor)

Item D-3 Grant of Term, Non-Exclusive Easement; Issuance of Immediate Management Right-of-Entry to the County of Hawaii for Nanawale Spigot Facility and Related Purposes, Kaniahiku, Puna, Hawaii, Tax Map Key: 3rd/1-4-001: portion of 004.

Mr. Tsuji said he had no changes to item D-3.

Steve Paul representing AECOM testified that he was the surveyor on this project and the remarks cover everything that he knows about this project as far as the necessity and how it came to be.

Member Gon asked whether he had any issues with staff's recommendation and Mr. Paul said he did not.

Unanimously approved as submitted (Gon, Goode)

Item J-3 Request that the Board of Land and Natural Resources (Board) Authorize the Extension of a Construction and Management Right-of-Entry for a Temporary Sewage Bypass Line to be Placed within the Ala Wai Canal to the

City and County of Honolulu (CCH), Waikiki, Honolulu, Hawaii, Tax Map Keys: (1) 2-3-034: 035:, 036:, 037:, (1) 2-7-036:, (1) 2-6-017 and any other State Lands Adjacent and Within the Ala Wai Canal Surrounding Area

Ed Underwood representing Division of Boating and Ocean Recreation (DOBOR) briefed the Board on item J-3 and the City and County is asking for an extension.

Member Gon asked whether they were ok with staff's recommendations. The City and County representative said there were no problems.

Unanimously approved as submitted (Morgan, Goode)

Item C-1 Request Approval to Authorize the Chairperson to Issue Invitation for Bids, Award, and Execute Contracts to Furnish and Deliver Seventeen (17) 4X4 Vehicles to Oahu, Kauai, Maui and Hawaii Division of Forestry and Wildlife Department of Land and Natural Resources And

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for the Project

Paul Conry representing Division of Forestry and Wildlife (DOFAW) conveyed item C-1 and will take to bid and through this process to replace vehicles.

Item C-2 Request Approval to Issue A Request for Proposals and Authorize the Chair to Award and Execute Contracts for the Management of FY2013 Statewide Youth Conservation Corps Program And

Request Approval of Declaration of Exemption to Chapter 343, HRS, Environmental Compliance Requirements for the FY2013 Statewide Youth Conservation Corps Program

Mr. Conry said he had no changes to item C-2 and related their partnership with the vendor.

Unanimously approved as submitted (Edlao, Gon)

Item D-11 RESUBMITTAL - Request Approval of Plans for Construction of New Residence, Patricia Moore, Diamond Head View Lots Unit Two, Increment One, Lot 42, Honolulu, Oahu, Hawaii, Tax Map Key: (1) 3-1-048:050

Mr. Tsuji said he wanted to defer item D-11 because the attorneys are trying to come to an agreement and asked for a deferral to June 22nd. Mrs. Moore is elderly and in a care home.

Deferred to the June 22, 2012 Land Board meeting. (Morgan, Gon)

Item D-12 (1) Report on an Agreement for an Easement for Encroaching Seawall and Filled Lands; (2) Rescind Prior Board Action of April 27, 2012, Item D-14,

Regarding Enforcement Action Against TLM Partners Ltd. for, Inter Alia the Removal of the Encroaching Seawall and Filled Lands; situated at Niu, Honolulu, Oahu, Tax Map Key (1) 3-7-002:seaward of 009; and (3) Dismiss And/Or Permit the Withdrawal of TLM Partners Ltd's Petition for Contested Case Hearing Regarding the Prior Board Action of April 27, 2012, Item D-14.

Mr. Tsuji said as for item D-12 they finally arrived to an agreement. They did agree to the 4 triggers and attached is the agreed upon easement document, the promissory note on the mortgage document and the easement has been executed by the McConnells waiting for the Chairperson's signature. He did attach the blue lined copy of the changes that were made. The date changed effective to June 1, 2022 and he is doing that as a formality. Staff asked to rescind the enforcement order and withdrawal of the contested case.

Unanimously approved as submitted (Morgan, Goode)

Item D-19 Amend General Lease No. S-5478, Office of Hawaiian Affairs, Lessee, Waialua, Oahu, Tax Map Key: (1) 6-6-009:023 by Expanding Character of Use and Sublease Provisions in Lease Including the Authority to Assess Sublessees Reasonable Rental, Maintenance, and Utility Fees and Consent to Sublease to Haleiwa Farmers' Market Association, Inc. for Farmers' Market Purposes which Fulfills the "Prior Approval" Provision in Section 11 of the General Lease.

Mr. Tsuji noted that Office of Hawaiian Affairs (OHA) has been helpful in finding a site for the Haleiwa Farmers Market and asked that their lease be amended for character of use and would allow them to have the Farmers Market on that site.

Unanimously approved as submitted (Gon, Morgan)

Item D-13 Acquisition of Private Lands and Set Aside to Division of Forestry and Wildlife for addition to the Hamakua Wildlife Sanctuary at Kailua, Koolaupoko, Oahu, Tax Map Key (1) 4-2-003:017.

Mr. Conry said that item D-13 is a great project and related some background on it. Part of the Legacy Lands and Federal partnership. Thanking Land Division for all the administrative due diligence.

Member Gon asked if there were any plans for re-vegetation and Mr. Conry confirmed that is one of the plans which he described.

Unanimously approved as submitted (Morgan, Gon)

- Item D-1** Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display at Shipwreck Beach on June 25, 2012, Poipu, Kauai, Hawaii, Tax Map Key: (4) 2-9-01: seaward of 2.
- Item D-2** Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display at Shipwreck Beach on June 30, 2012, Poipu, Kauai, Hawaii, Tax Map Key: (4) 2-9-01: seaward of 2.
- Item D-4** Consent to Assign General Lease No. S-3619, Mauna Kea Electric, Inc., Assignor, to Mattos Electric, LLC, Assignee; Amendment of the Terms and Conditions Regarding Allowed Use, Assignments, Subleases, Insurance and Bond Requirements for General Lease No. S-3619; Lot 39 Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii; TMK: 3rd/ 2-2-49:13.
- Item D-5** Issuance of Land Patent in Confirmation of a Portion of Land Commission Award No. 9971, Apana 5 to W.P. Leleiohoku, situate at Paalaea, District of Hamakua, Island of Hawaii, Tax Map Key: (3) 4-5-006:004.
- Item D-8** Consent to Assign Grant of Non-Exclusive Easement No. S-5798, Frederic W.C. and Mary F.C. Constant, Assignor, to Maui Happy Place, LLC., Assignee; Amendment of Grant of Non-Exclusive Easement No. S-5798 to Allow Easement to Run with the Land Identified as Tax Map Key No.: (2) 2-1-006:006 situate at Honouaula, Makawao, Maui, Further Identified as Tax Map Key: (2) 2-1-006: Por. of 098.
- Item D-9** Amend Prior Board Action of May 13, 2010 (Item D-12), By Correcting the Owned Parcel's Tax Map Key Number from (2) 2-4-013:028 to (2) 2-4-014:028; for the Cancellation of Non-Exclusive Easement Bearing Land Office Deed No. S-28038 to Christian C. and Julia C. Low and Grant of a Term, Non-Exclusive Easement to Anthony and Christine Riecke-Gonzales for Waterline Purposes, Hamakuapoko, Makawao, Maui, Tax Map Key: (2) 2-4-013:Por. 078.
- Item D-10** Issuance of a Right-of- Entry Permit to Oahu Hawaiian Canoe Racing Association and the Lanikai Canoe Club for the Duke Kahanamoku Long Distance Canoe Race Event to be held on August 19, 2012, at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037:portions of 021.
- Item D-14** Second Amendment of Lease to Delete Performance Bond Requirement of Non-Exclusive Easement S-5210 to Michael A. Miki and Mary E. Lau-Miki, Griffith T. Yanagi and Olivia C. Yanagi for Seawall and Stairway Purposes, Koolauloa, Oahu, Tax Map Key: (1) 5-3-010:seaward of 017.
- Item D-18** Withdrawal from Governor's Proclamation dated December 22, 1928, as Revised, Setting Aside Hilo Forest Reserve, and Set-Aside to the Department of Transportation for Public Highway Purposes; Issuance of Immediate

Construction and Management Special Use Permit; Issuance of Immediate Construction and Management Right-of-Entry; Piihonua, South Hilo, Hawaii, TMKs: 3rd/ 2-5-01:02 por., 2-5-01:06 por., 2-5-01:08 por., 2-5-02:01 por. and 2-5-02:14 por.

Member Goode recused from item D-9.

Unanimously approved as submitted (Morgan, Agor)

Item J-1 Issuance of a Revocable Permit to Ace Towing Service, Inc. to Provide Vehicle Towing Services and Occupy a Site for a Vehicle Storage Yard, Located at the Ala Wai Small Boat Harbor (AWSBH), Honolulu, Oahu, TMK: (1) 2-3-037: (por)

Item J-2 Request for Authorization to Amend the Memorandum of Agreement (MOA) that was Approved by the Board on August 12, 2011 with the Department of Transportation Regarding the Maintenance, Planning, Installation, and Monitoring of Ten Day Use Moorings in Hilo Bay as well as Another One Hundred Day Use Moorings Statewide.

Item J-4 Delegation of Authority to the Division Administrator to Exempt Janitorial Service, Electrical, Plumbing, Refuse Pick-Up, and Collection and Removal of Water-Borne Debris Contracts from the Requirements of Chapter 343, HRS, and Title 11, Section 200-8, HAR

Mr. Underwood said he had no changes to items J-1, J-2 and J-4.

Member Edlao asked on item J-1 what kind of fence staff is going to put up. Mr. Underwood said it is a temporary chain link fence where they are doing the long term lease allowing them to use the area so that the car doesn't get towed to Sand Island. Member Edlao suggested they put up some kind of screen.

Unanimously approved as submitted (Edlao, Gon)

Item L-1 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. B72DO71C, Keehi Small Boat Harbor, Pier 300 Improvements, Honolulu, Oahu, Hawaii

Item L-2 Appointment of Thomas Oi as a Director of the East Kauai Soil and Water Conservation District

Item L-3 Request Approval of Updates to the Inventory of Dams for the State of Hawaii by Adding MA-0134 Kaopala Basin, KA-0135 Hanamaulu Filed 21 Reservoir, HA-0136 Waikoloa Reservoir No. 3, OA-0137 Oahu Reservoir 155, MA-0138 Kahakapao Reservoirs, MA-0139 Maui Field 290 Reservoir,

MA-0141 Kehalani Offsite Retention Basin, MA-0142 Middle Field 14 Reservoir, MA-0143 Kaili Ili Reservoir, MA-0144 Mahinahina Reservoir, MA-0140 Ukumehame Reservoirs, KA-0145 Kauai Lagoons, KA-0146 Halaula Reservoir, HA-0147 Punawai Reservoir, OA-0148 Helemano 11 Reservoir, OA-0149 Maunaolu Reservoir, MA-0150 Wailuku Water Reservoir 6, MA-0151 Wailuku Water Reservoir 10, and MA-0152 Waikamoi Reservoirs and Removing HA-0026 Lalakea Reservoir, HA-0027 E-13 Reservoir, KA-0028 Puu Ka Ele Reservoir, HA-0052 Kehena Reservoir and OA-0148 Helemano 11 Reservoir and Authorize the Chairperson to Approve Additions and/or Removals of Dams to the Inventory of Dams for the State of Hawaii for Future Changes to the Inventory

Unanimously approved as submitted (Gon, Edlao)

Adjourned

There being no further business, Chairperson Aila adjourned the meeting at 1:18 p.m. Recording(s) of the meeting and all written testimonies 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

