

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

DATE: FRIDAY, JULY 27, 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 9:06 a.m. The following were in attendance:

MEMBERS

William Aila, Jr.
David Goode
Rob Pacheco

Jerry Edlao
Dr. Sam Gon

STAFF

Kevin Moore/LAND
Maria Carnavele/DAR
Cliff Inn/DOBOR
Paul Conry/DOFAW
Carty Chang/ENG

Barry Cheung/LAND
Ed Underwood/DOBOR
Randy Awo/DOCARE
Dan Quinn/PARKS

OTHER

Linda Chow, Deputy Attorney General (AG)
Dr. Randy Kosaki, F-1
Paul Meierdiercks: J-3, J-2
Patty Miller, J-3
Brett Phillips: J-3, J-2
Karen Moore, J-3
Colleen Meyer, J-2
Rocky Kaluhiwa, J-2
Heather Lammers, J-2
Glenn Menko, J-2

Patti Miyashiro: M-1, M-3
Edson Lott, J-3
Leonard Cantos, J-3
James Haley, J-3
Brenda Presley, J-3
Alan Chang, J-3
Mahealani Cypher, J-2
Bob Raven, J-2
Rick White, J-2
Peter Young, J-2

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

Item A-1 June 8, 2011 Minutes

Chairperson Aila recused from item A-1.

Approved as submitted (Gon, Edlao)

Item A-2 July 13, 2012 Minutes

Board member Goode recused from item A-2.

Approved as submitted (Edlao, Gon)

Item M-1 Issuance of Direct Lease, Together with a Construction Right-of-Entry to VAK Fisheries, LLC and Kim Lu, Portion of Pier 19 Shed, Honolulu, Harbor, Island of Oahu, Tax Map Key: 1st/1-5-39:63 (portion)

Item M-3 Issuance of Right-of-Entry Permit to Gay & Robinson, Inc., at Nawiliwili Harbor, Lihue, Island of Kauai, Tax Map Key: 3rd/3-2-04: Portions of 02, 17, 18, 19, 22, 27, 36, 39, 54 and 74

Patti Miyashiro representing Department of Transportation (DOT)/Harbors briefed the Board on item M-1 and on item M-3.

Unanimously approved as submitted (Pacheco, Edlao)

Item M-2 Conveyance of Enterprise Road, Lot 13080-B of Land Court Application 1069, Map 1049, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-13: Enterprise Road

Chair Aila announced that they are withdrawing item M-2.

Withdrawn

Item D-6 Grant of Term, Non-Exclusive Easement to Frank H. Barton Trust and Elsie M. Barton Trust for Pier, Seawall, and Landscaping Area Purposes in Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-037:seaward of 033

Kevin Moore, Assistant Administrator for Land Division conveyed some background on item D-6 that there is no requirement for a conservation district use permit (CDUP) and to grant the easement. Staff requested an amendment by adding an administration cost to item 2 of \$200.00

Frank Barton, Jr. agreed to staff's amendment per Member Goode's question.

Unanimously approved as submitted (Edlao, Gon)

Item D-5 Forfeiture of Grant of Non-Exclusive Easement, Created By Land Office Deed No. 28603, Masaharu Edamura, Grantee, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-013: portions of 001, 018, 021, 022.

Mr. Moore related background on item D-5 where the Grantee maintains the liability insurance, but the Grantee decided he can't which results in an outstanding insurance. Staff asked for forfeiture of the easement.

Member Edlao questioned if it expired in 2009 and why is it before them. They have a right to ask for the easement and we have the right to ask for the insurance.

It was questioned by Member Goode whether the insurance was standard. Mr. Cheung acknowledged that the Attorney General's office amended the position for more than less. Deputy Attorney General Linda Chow noted they were following the Comptroller's Memo. Member Goode suggested adding it to the home owner's insurance. Mr. Cheung explained that some insurance companies agreed to attach a liability, but some can't provide it and they will have to go get another company.

Member Pacheco asked whether there was another access and Mr. Cheung confirmed there is.

Member Goode asked whether the property was subdivided. Mr. Cheung confirmed that noting that the easement was not. Member Goode said the property could be CPRd.

Joe Edamura representing the Grantee testified that they have a hard time obtaining insurance through their homeowners because they need commercial or general liability and there is no commercial going on. There was a lot of discussion with the residents and nobody else has it. He gave some details of the coverage and asked for more time.

Member Pacheco asked whether there was State land. Mr. Edamura said he wasn't aware of any. Primarily used as a dwelling residence and zoned country after the Board member's questioning.

Member Pacheco asked he was quoted \$600 for liability and Mr. Edamura said roughly that was numbers from last year that he did ask for additional quotes.

Member Goode asked about his condominium documents and it didn't seem worth it. Mr. Edamura said he didn't realize how difficult it was. There were a lot of questions about the use of the road, but they are willing to pay the insurance.

Member Pacheco asked about the commercial liability insurance and should be general. Mr. Moore explained that they use the commercial as shorthand and will have to look at the lease document to see what it says and probably says general liability.

Member Pacheco asked we own the road because its land we own and people are using that for access. Mr. Moore said it's not unusual for a driveway and State road on unencumbered State lands, but what happened was the legal access issue came up. Mr. Cheung explained the

construction loan triggered the process. Mr. Moore said when that comes up they start documenting because they can't control the driving.

Member Goode asked whether other parcels use this road for access. Mr. Cheung said he believes so because geographically there is a bunch of TMK there. Member Goode said that maybe these other parcels should be sharing the cost.

Member Pacheco asked if it was a paved road and Mr. Cheung said it is not to County standards.

Member Pacheco said he would like to see this go back with general liability.

Member Edlao asked Mr. Cheung to find out how many other parcels use this and how much more time he would need. The Board members discussed when to come back with this.

Member Goode suggested coming back in a month with general liability insurance.

Defer for 30 days. (Pacheco, Goode)

Item F-1 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Randall Kosaki, National Oceanic and Atmospheric Administration, Papahanaumokuakea Marine National Monument, for Access to State Waters to Conduct Surveys of Deep Coral Reefs

Maria Carnavaele representing Division of Aquatic Resources (DAR) briefed the Board on item F-1 background introducing Dr. Randy Kosaki. She read staff's recommendation to approve this item.

Member Pacheco asked whether he had seen documents on invasive species. Dr. Randy Kosaki described it at Mokumanamana that it is not as much as here. Also, they do hull inspections.

Member Gon asked whether this is on-going survey that will continue. Dr. Kosaki confirmed that. This habitat is poorly known.

Unanimously approved as submitted (Gon, Pacheco)

Item J-3 Request for Approval to Adopt Title 13, Part 2, Boating Section 13-244-15.5, Hawaii Administrative Rules (HAR), Operation of Power Driven Vessels

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

Ed Underwood administrator with the Division of Boating and Ocean Recreation (DOBOR) conveyed some background on item J-3 - an education requirement for power driven vessels reminding the Board members of the rule package from September 2009. The Board instructed to break up the rule package and to go out for statewide public hearings which staff did. The general consensus was to require boating safety courses for those who operate in congested areas

like Kaneohe Bay and Waikiki. Other comments were: rules were poorly written, courses would cost too much and there was no need for rules for existing boaters and just for new boaters. What staff found after working with the Coast Guard, Coast Guard Auxiliary, the National Association of State Boating Law Administrators (NASBLA) and other agencies there is a direct nexus between education and the reduction of fatalities in boating accidents. The 2011 National Coast Guard statistics showed of all the boating accidents 78% of the people didn't have any form of education. After all the public hearing, staff wants to make the following amendments to the proposed rule: Where it shows "valid license" change it to merchant mariner document which is what the Coast Guard is using standardizing our language. We have a minimum age requirement of 15 years old and staff proposes reducing that down to 12 years of age noting that there are young children who watch and assist their parents with boats like the Molokai Hoe. There are Federal grant programs that allow children from age 12-14 to operate boats. Also, they propose this for boats to not less than 10 horsepower. With visitors from out of state if they are on the waters for less than 60 days that you will not have to fulfill the mandatory education requirement and adhere to our vessel registration rules as well. There are 2 rental companies that rent boats who had concerns whether people had to go through the class that they wouldn't rent a boat. What they will do like other states is have the rental companies provide the safety briefing to ensure renters have the knowledge of the site they are operating in. With that staff feels they addressed the concerns of the people and request the Board's approval of the amendments and forward to the Governor for approval.

A query was made by Member Edlao whether there will be a certificate or review of the safety class given by the rental company and Mr. Edlao confirmed that it will be approved by staff.

Member Edlao had concerns with a 12 year old driving a power driven vessel and suggested having a 25 year old on board. Mr. Underwood acknowledged that there were a lot of discussions and comments regarding that. Driver's license is 16 and if you have it so long you can operate on your own. He as a father wouldn't allow his 2 sons at 12 years old alone in a boat, but there are other parents who would. There was more discussion regarding this.

Member Goode read that portion of the HAR concerning the age and said he thinks this needs a lot of work and to wait to hear from the public.

Member Pacheco asked how many licensed boats there are in Hawaii and Mr. Underwood said 15,000 registered boats. Member Pacheco asked if there was an estimate of the cost of the Department for administrative enforcement. Mr. Underwood said the only real cost is staff time and they have a full time person that does this. Boating education is the main component of the Recreational Boating Safety Grant that funds that position 100 percent. There is an on-line free course. Staff is preparing our own in house course for people who don't have the ability to access a computer where staff will proctor the course for them which is a free test and they get a certificate. Do it one time and the goal is to educate as many people as possible. The Chair said that the objective is to increase boating awareness and hopefully translates into boating safety.

Member Pacheco inquired whether the Hawaii numbers were included in the NASBLA accident figures and asked what the Hawaii's numbers were. Clifford Inn (DOBOR staff) acknowledged

that it's nationwide and for Hawaii in 2011 were 6 with fatalities. Hawaii averages 3 a year. There was more discussion about the rates per year for accidents and fatalities.

Member Goode said what he saw was states that had boater education for many years had substantially lower rate compared to those that didn't.

Member Pacheco asked about the on-line course that after completing it you can print out your certificate. Mr. Inn acknowledged that and if you don't have a printer you can request with \$5.00 to have it sent to you.

Member Pacheco asked about the course developed for Hawaii whether supported by computer. Mr. Inn said there is a booklet which you can study where you can fill out the test and send it in or come in and do the test. That will not be on-line yet per the Chairperson, but they will look into it. Mr. Inn said that his job is to foster a proliferation of courses for the public - multiple courses that people can take. Staff is looking at ways people who have taken the US Power Squadron or US Coast Guard Auxiliary course to retroactively become compliant and just take the State's specific information to bring them up to date and become compliant. There will be multiple ways people can do that.

Member Gon asked there was a question on what it will cost to be compliant. Mr. Inn said for the on-line it's a free course. There is another in development with an exam that will cost \$50.00. If you go to a US Coast Guard Auxiliary course its \$50.00 if they don't have to rent a facility and sometimes it's free depending on the national situation and if it's through the Power Squadron its \$30.00 because DOBOR staff has been helping them with materials.

Member Edlao asked about taking the free State course to become compliant if the person already did it with the Coast Guard. Mr. Inn explained you can, but if you want to build on your experience it is an investment in time because it takes several weeks to go through the Auxiliary or Power Squadron and the cost depends on those organizations. People can always go on-line, but Mr. Inn recommended taking a refresher course from time to time.

Member Gon asked once you take a course it's good forever. Mr. Inn said yes, but staff recommends refresher courses.

Member Pacheco queried whether there are a number of boaters that staff reports on. Mr. Inn said it is a difficult number to that he couldn't say how many they are reaching. Every person that comes in for vessel registration he tries to interact with them. They get numbers from the Power Squadron of the number of people who pass the classes. Windward Community College does the class and that is a number indicator as well. Mr. Underwood pointed out that they supply them the remote control boats that go out to the children at a young age on wearing life jackets, etc. Mr. Inn said he gets regular reports from a gentleman on Kauai who talks about the outreach he has done throughout the year. During Boating and Safety Week staff does events statewide and reaches about 20,000. Staff hopes through redundancy it filters down.

Member Goode asked if this passes today it says on the last page it becomes effective in 10 days. Mr. Underwood said the rule becomes effective, but there is a 2 year implementation phase.

Member Goode agreed with that is plenty of time and he hoped that DLNR employees get out there and do it first and show them it can be done. Mr. Inn noted that the Auxiliary and the Power Squadron do make offers of free classes to all of their employees and they do take advantage of that. There was some discussion about having to renew to stay current. Mr. Inn explained why the 2 year lag because the first year a certain age group and the second year a slightly higher age group, but there was an age discrimination issue so blanket it to everyone at one time.

Mr. Inn acknowledged that this is all modeled by NASBLA after Member Pacheco's question.

Edson Lott testified he has been in boating education for 35 years and is also a NASBLA vessel application specialist and spoke in favor of this program. A lot of times people who have accidents are not fully trained. He does a lot of vessel inspections for safety equipment and with various organizations they have a sticker that shows the vessel has been inspected. A lot of times when they check whether these people have had a class and most likely they check they have not. With the amendments this program is credible and the people can take their pick. The on-line courses are not as good as hands on equipment experience, but are a little more expensive. After Member Edlao's inquiry regarding the age situation. Mr. Lott said 12 is too young and recommended age 21 be certified. A lot of times the guy at the wheel doesn't have a master's license, but has to be supervised by someone who does. Young people have to be taught and here in Hawaii it's not like being on a little lake, its open ocean which changes significantly. A lot of times people think their boats can do anything until it's too late.

Member Edlao asked about a certificate of completion. Mr. Lott said a certificate until you go on the water training and is the way to go, but is difficult with the large number of boaters.

Paul Meierdiercks testified that he had testified at the Aiea Elementary School hearing and didn't want our children thumbed down where they can't participate. He thinks 10 foot boats with 60 horsepower have the driver's license age of 16 is a better requirement and thinks the age requirements are good, but thinks the 10 horsepower be age 15. In excess of 10 horsepower younger children than 12 should be able to operate a boat with the safety course and exam. He doesn't want younger children left out. Mr. Meierdiercks has a 50 ton certificate from the Coast Guard and at his yacht club they have children as young as 8 sailing boats. Having a restriction on the horsepower for under 15 be recommended. He would like to see it 10 horsepower across the board and under the supervision of the parents.

Leonard Cantos, a NASBLA certified instructor and an instructor with the Coast Guard Auxiliary testified that he has been boating since he was 11. He is here to support this. It's a good step in the right direction that Hawaii has some special issues. As for the age issue, 16 is more realistic and at that age is able to supervise and could drive the boat. Age 12 can be certified and should be the cut off age where you don't have correct judgment, but you have the motor skills. There are a tremendous amount of boaters with no boating education and less than 12 percent have any education.

Member Gon asked if he were to impose a minimum age for a child operating a power driven vessel greater than 10 horsepower what would that be. Mr. Cantos said 16 or 12 year olds with a

certificate and under supervision of someone 16 or over. Member Gon referred to how it is written now with someone under 12 without certification and supervised by someone over 15 with certification. Mr. Cantos said that is unacceptable especially in Hawaii.

Member Goode asked if someone at 12 can be certified. Mr. Cantos said absolutely. The Coast Guard Auxiliary does not charge for the course. It's all for materials. Charges could be free since DOBOR has been providing materials to all organizations free of charge. The cost is minimal. Even those times during charged material courses kids from the age of 8 up is charged nothing at all and many children have already been exposed to these courses and they like it. The public seems to want this education asking how they can find about this. It is not a license, but a certification.

Chair Aila asked as a NASBLA instructor his opinion regarding the amount of injuries and fatalities should this rule go forward will help reduce that. Mr. Cantos confirmed that is a proven fact. There is no question that we are higher in Hawaii than the national average. The states that implemented and the longer they had that in place the numbers continually go down. It is unquestionable.

Patty Miller testified she is from NOAA (National Oceanic Atmospheric Association) – Hawaiian Islands Humpback Whale Sanctuary representing Malia Chow and Elia Herman who submitted written testimony which Ms. Miller read from. The Sanctuary supports mandatory boater education to reduce accidents, save lives and protect our natural resources. In particular boaters learn local ocean safety principles and practices, rules or laws pertaining to protected species and protected areas. With this knowledge it will reduce collisions, interactions and harassment where she noted some information on whale collisions and vessels. Ms. Miller is the site coordinator for the County of Maui where every commercial boater/captain must participate in an 8 hour training which included information on the protected species. DLNR/DOBOR participated with rules and regulations. Life guards came in and provided some safety issues. Some cultural presentations and these folks were required to take a test. They did it for 2 years and put 250 people through it on Maui. It is now a review process where the owners of those companies come in to do a refresher course. It is a positive program. She related a situation with a boat and whale where a child had died. A lot of education is needed and they strongly support this. They have provided courses on Maui, Oahu for the Coast Guard Auxiliary and the boat companies are interested in learning about all the different species out there. They have general support for the rule.

James Haley, a retired Coast Guard Commander whose 25 year career was in marine safety testified that he submitted written testimony in support. He related various accidents – Hudson River, Kaneohe Bay and news report on boating accidents. Only 14 states require licensing of private boat owners, but Canada requires everyone to be licensed. Mr. Haley distributed some training books for the Board members to look at. He asked to do the right thing that you will get some push back by the old timers, but this will have to go forward. The children on the Hudson River didn't have to die.

Member Pacheco asked him about the age issue and Mr. Haley said 16 and explained that he taught high school that even at 16 they are not responsible even with supervision accidents happen, but that is the age to drive a car.

Member Gon said that even before you are 16 you can get a license to start to learn to drive with a responsible adult present. If we adjusted this where no person under 12 will operate a vessel and if no person under 16 will do so without an accompanying certified person...Mr. Haley agreed that is reasonable. Member Gon said he didn't want to see no experience at all until you are 16 and he would rather see skills building under supervision and then at 16. Mr. Haley related that the manual he gave the Coast Guard will certify you if you take the first half of that. The Auxiliary does the entire manual.

Brett Phillips testified in support having sailed for 48 years and has never taken a course. He wants to convey the information to people who crew on his boat and thinks it will work. As far as public opposition he will save money on his boat by taking this. For the age, he thinks 12 year olds can figure it out.

Karen Moore introduced Brenda Presley and herself from Hawaii Sail and Power Squadron that she is the first female in its 43 year history. They are the largest non-profit boating education organization in the State of Hawaii and gave some background about their organization. They do go out to the neighbor islands, too. Boating education is number 1 and they have witnessed some scary things on the ocean. People need education on what to do in emergencies and she strongly supports the rule. Ms. Presley described teaching the entire US Power Squadron in Hawaii and have boating safety classes and seminars every weekend. Ms. Moore said also, they have on the water certification. As for the age, she said 16 supervised by a 21 year old. They can have book knowledge, but they need to have experience with maneuvering the craft and out on the water. They should be certified on-line and on the water.

Member Edlao asked whether they worked with 12 years or younger and Ms. Moore said they have. Ms. Presley said they have a hard time passing the test. They haven't taken them out on a vessel at that age - education first then out on the water. She would be cautious of taking someone out below 16.

Alan Chang testified that he has been boating for over 50 years and after he retired he took his first boating seamanship class at Windward Community College. He thought he knew everything on the water and was surprised how much more knowledge he gained. The course covered the right boat to use, handling, trailering, maintenance, weather, using a radio, rules of the nautical road, equipment safety in general, etc. All instructors are experienced boaters. Over the years the boat ramps and waterways have become more crowded with people who didn't know what was going on. More road rage and accidents. Something has to be done. Have common sense at least take a course. He hopes the boating knowledge will make people safer. As for the age issue, 16 is more responsible and have supervision.

Member Gon asked about restricting young people in use of power vessels. Mr. Chang said anything with a propeller is dangerous.

Mr. Phillips related how a 12 year old saved a sailboat full of adults and to allow a 12 year old to run a vessel with supervision. Start the certification at 8 or develop a curriculum for younger kids. He wants the 12 year old to be able to grow up around boats with his family and not discourage him.

Mr. Lott clarified that the Coast Guard Auxiliary and the Power Squadron do take students under the age of 12. Any teacher will adjust their course to who the audience is and give reasons to a 12 year old. He described how kindergarteners are educated to wear a life jacket.

Mr. Cantos said any 8 to 10 year old can pass the NASBLA course reiterating driving at age 16 and boats are not as complex. Supports 12 and 16.

Member Edlao said he was not opposed to a 12 year old if properly trained via a structured class and the supervisor has to be at least 21. A person under age 12 if properly trained in a structured environment shall not operate until 15.

Member Pacheco inquired about Mr. Underwood's comment of an age change nationally. Mr. Underwood described that Kama'aina Kids puts on a Youth Education Program teaching boating basics – power boats, canoes, sailboats and these kids are between 12 to 14 years old operating vessels that are under 9.9 horsepower. This would allow programs like this without having to go through the certification class before they take this. Member Pacheco clarified he was specifically talking about the language in that section needs to be re-worked. Mr. Underwood said that these kids in the program if operate bigger boats like skiffs are between 12-14 years old. Staff got a lot of calls that they have been boating all their lives and staff is trying to come up with a number. They would have to take the class to have the certification and depending on the age they will have to be supervised by either a 21 year old or under or over because they need to gain that knowledge. As a parent he always supervised his kids (who were under 12) and would never let them go alone.

Member Pacheco related a 10 year old in Miloli'i who could handle trailing a boat by himself, but a young child wouldn't understand the rules of the road out there, but he was savvy for a 10 year old. He was comfortable with 12 year with a certificate and an 18 year old supervising.

Member Gon said he was going to suggest no one under 12 will operate. No person under 16 shall operate without being certified and supervised by an 18 year old or older. From the 12 to 16 range will be supervised.

Member Pacheco asked what does it mean to operate if you have a fishing boat a child runs the wheel for 10 minutes while the dad is getting the lines out is that a violation. Mr. Underwood said technically it is. Member Pacheco described growing up learning to boat on a lake and that is how you learn as a child and we should be careful to not create something where every family violates teaching their kid to run a boat. Chair Aila said no matter how young the child is there is an adult.

There was more discussion regarding the age issue between the Board members citing various ages and level of experience.

Member Pacheco asked whether anybody can drive a boat in the State of Hawaii. Mr. Underwood said there is one for jet skis, but none for boats.

Member Pacheco said that they are trying to educate the boating community to make it safer and the culture of having children learn nominal tasks of boating is in the best interest of boating safety. It works against it. You are a better boatman with that kind of experience. He wants to find some language....

The Board members had more discussions regarding the age of the supervising person. Mr. Underwood suggested under be 12 supervised by an 18 year old or older. From 12 to 16 can run the boat with the certification and supervised by a certified 18 years old or older. It's a graduated certificate. The Board members agreed.

Member Gon asked whether this is a substantive change to this language. Deputy Attorney General Linda Chow said she didn't think so because it goes along the lines of the change that has already been suggested.

Mr. Underwood reiterated his previous suggestion that the under 12 doesn't need the certificate because the parents are teaching you the boating basics who are certified. Member Pacheco said that the 12 to 16 is not certified. Ms. Chow pointed out it's the same requirement for under 12 for the 12 to 16 as far as somebody supervising with a certification. There is no distinction between under 12 and over 12 other than over 12 you have to have certification. I don't understand the reasoning behind that. Chair Aila said under 12 is to allow you to get the practical skills with your family, but 12 to 16 is take the certification to get the other skills that are necessary. Ms. Chow said but you are not making a distinction with the under 12 and over 12. You can do what you could when you are over 12 when you are under 12. Member Pacheco said he understood that you can drive the boat without a certificate at 11, but if you are 12 you got to get a certificate if you are supervised. Keep it simple and make it if you are under 16 you have to be supervised by someone 18 or over. You don't have to have a certificate to operate a boat if you are being supervised by somebody 18 or over who has a certificate.

Member Gon said that is closer to the original suggestion under 12 you learn the boat while an adult is on board with certification and from 12- 16 you have to have that certification.

Ms. Chow said she heard that under 16 as long as you are supervised by someone with a certificate you could operate a vessel and as long as you also have a certificate. She thinks that is what Cliff said, that way you don't distinguish between the under 12 and the over 12.

Mr. Inn said he suggested everyone who operates should go through the course and anyone by a certain age be supervised by an adult. Member Gon asked what about the 8 year old. He would have to pass the course. Mr. Inn said yes.

Board member Pacheco made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded it. All voted in favor.

10:56 AM EXECUTIVE SESSION

11:14 AM RECONVENED

Member Gon said after their consultation with our Deputy Attorney General over the basis for the 3 categories of ages we have a simplified version. He made a motion to support the revised rules by changing Item B – A person under the age of 16 years of age shall not operate a power driven vessel on the waters of the state unless certified and accompanied on-board and directly supervised by a person 21 years of age or older who holds the required certificate of completion. Member Goode seconded that. All voted in favor.

Member Gon clarified that this means that there is no minimum requirement as long as the person is certified.

Mr. Underwood asked under 16 shall not operate a power driven vessel unless certified...Member Gon said and accompanied by and change the age from 16 to 21.

Unanimously approved as amended (Gon, Goode)

Item J-2 Request Approval to Adopt Amendments to Title 13, Chapter 256, Ocean Recreation Management Rules and Areas, Subchapter 5, Windward Oahu Ocean Recreation Management Area, by Adopting a New Section 13-256-73.13, Ahu O Laka Safety Zone, to Restrict the Following while in the Safety Zone: 1) Possession or Use of Alcohol, 2) Entrance whole Under the Influence of Alcohol or Drugs, and 3) Disorderly Behavior

A number of written testimonies was received and distributed to the Board members.

Mr. Underwood briefed the Board on item J-2 and reminded the Board members that last year staff came before you to implement an emergency rule to curb the unwanted behavior at Ahu O Laka commonly known as the Kaneohe Sandbar. The emergency rule initially stated to create the enclosed area and would apply to all weekends. During discussions of the Board meeting at that time it was decided instead of all weekends apply it to weekends associated with a State Holiday which staff did. After doing that and monitoring what happened during that time staff found it very effective. The emergency rule worked really well and curbed the behavior at the Sandbar/Ahu O Laka and became a more family friendly place. Staff took that emergency rule to public hearings to make it a permanent rule. He described the public hearing at He'eia Kea State Park. The general consensus was the current rules in place was adequate and just needs to be enforced. Other comments were closed containers should be allowed on boats, that the proposed delineated area is too large, it penalizes responsible boaters and not the irresponsible boaters, too many closed weekends, and a recommendation to establish an ambassador program where people are out on the Sandbar monitoring. Staff considered all the testimonies and found that the behavior occurs during the summer months which are the Memorial Day, Independence Day and Labor Day weekends. Staff proposes instead of this restriction on all State holiday

including 3-day weekends to limit it to those 3 weekends only. We like to make that amendment and ask approval to move forward to send this for approval to the Governor for final approval.

Member Edlao referred to testimonies that we already have rules on the books and why are we duplicating this. Mr. Underwood said there are rules and laws on the books, but what our enforcement division found is its very hard to enforce because the current consumption rule you had to see someone consuming the alcohol, approach them, take the container, tested and go through a whole slew of things to make a case whereas possession is very clear. If there is alcohol on the vessel within this designated area during those designated weekends, it's a violation. People had concerns with what if I may have inadvertently left some beers in my bait well. Technically, if the officer boards your boat for safety check for some reason and sees the alcohol within the designated area, yes, you can be fined for that. The Ahu o Laka Sandbar is not within any channels and you have to make an effort to get to this area. The buoy only encompasses the area that is heavily used because you can moor and stand on the Sandbar.

Brett Phillips testified about being at the Sandbar during the 4th of July and there were no issues. The presence of DOCARE officers makes a difference. The other issue is in 22 lines staff tried to duplicate what the AG and the State Legislature came up with in 18 pages putting a lot of judgment against DOCARE officers endangering them if someone disagrees. He e-mailed the statute to all of the Board members which defines everything and is already on the books. The other issue is the noise and big music concerts and he questioned why you would want the judgment of the officers to determine the noise level. He suggested making the noise level 85 decibels over 8 hours pointing out a website and re-write using HAR 711.01 as far as disorderly conduct. Declare a noise level and apply HAR 11-46 and continue to police on jet skis. The problem is the actually 3 holiday days.

Colleen Meyer testified that she testified in opposition at the June 28th He'eia Kea for the rule changes today, but things has changed since then and appreciates just the 3 weekends. At that hearing she heard the director say that he didn't care what they said that he would recommend to the Board to pass these rules to make the emergency rules permanent. Why have public hearings if you don't care what you hear at the public hearing and the decision is already made? It's upsetting. Chair Aila clarified that he didn't hear anything new that would change my mind in presenting to the Board and that the Board is the decision making body and these are the folks who will decide. All the testimonies that he heard there was nothing new that he heard previously from the emergency rules. All the testimonies were the same. If people had the impression that my mind was made up and he made the statement that he indeed had not heard anything new and therefore based upon what he knew he intended to bring these rules before the Board. Ms. Meyer said she wasn't privy to that testimonies and someone did suggest an ambassador for the Sandbar. She related being a legislator for 14 years and went through the bill for Ahu O Laka where she felt the rules gave too much power to DLNR. She fought that bill all along. When they received testimonies on this bill they those who were for it were kupuna who weren't at the Sandbar to witness these horrible behavior. Ms. Meyer related being at the Sandbar that Labor Day during the fight and described what had happened. It bothers her about these urban legends of the horrible activity and behavior at the Sandbar. You as Board members have no way of knowing if these things are true or not. The same people who are for this are the same people who wanted to stop all the fun. She believes this new amendment to the rule goes

too far citing having police searching the trunk of your car for alcohol that just because these items were in the car doesn't mean the person will start drinking it which is the problem with possession. Their boat has liquor on board and they don't plan to take it off, but this possession rule and like Mr. Stone they would have been cited. The Department by way of these rule changes becomes the enforcement branch and decides on the severity of the penalties. There is an incentive to collect large fines that would distort their judgment. With these rules the Department becomes the policeman, the jury and the judge and she doesn't think you should put people in that position. The Department should spend more time with the recreational boating community and look at ways to address bad behavior at the pier and at Ahu O Laka.

Member Goode asked whether she supports the 3 day weekends proposed. Ms. Meyer said definitely. Member Goode asked there were talk of just the actual holidays. Ms. Meyer acknowledged that it is true that the largest number of boats is on the actual holiday.

Member Pacheco asked as for the actual penalty any that this Board gives out is either determined by either rule or law. We can't pull some number out of the air that it is set in rule and they can't make it a policy. Ms. Meyer said she did read some of our minutes and there was some discussion about \$500, maybe \$1,000, \$5,000 and she was amazed at that figure. Member Edlao said he was trying to make a statement that giving a guy a small fine of \$50, to him is a slap on the hand and will do it again, but if he gets fined big numbers he'll think twice about doing it again. What if I were to take away your boat and give you a \$5,000 fine. You're going to think should I get another boat than go do this again? I don't think so. Chair Aila said that the rule based on statute which has a range if it had gone before a judge that judge would have the same range that is the situation that is similar.

Mahealani Cypher testified speaking on behalf of the Ko'olau Foundation which is an organization dedicated in preserving Hawaiian culture and cultural resources. They offer strong support of the Department's proposal to amend the rules to the 3 weekends and restrictions on alcoholic beverages around Ahu O Laka. They are concerned with the growing crowds and are glad that you are strengthening your rules to protect the area and for public safety. They suggest a carrying capacity study to determine the appropriate number of boats and people moored at Ahu O Laka. In the future ask the Leg. to consider something like that. There is a Kaneohe Regional Plan that still needs to be adopted by this Board and hoped it will be done soon. It is about keeping the experience in Kaneohe Bay healthy and they encourage amending this rule amendment to consider in the future the Kaneohe Bay Regional Plan. We urge you to adopt the rule changes and thanked the Board for the emergency rule that kept Kaneohe Bay safe this year.

Member Gon asked whether the Draft Kaneohe Bay Regional Plan have anything specific to Ahu o Laka. Ms. Cypher referred to another representative, Rocky Kaluhiwa that she knows it has to do with carrying capacity. It could be something the Board could consider and should be revisited since it has been awhile since it was drafted. The original counsel had disbanded and limited to 1 year or so. The original counsel was created for the community to come together to resolve problems like with the recreational community that they could address it to make it a win-win for everybody.

Rocky Kaluhiwa testified on behalf of her 'ohana and related that her grandfather was the konohiki for the area. We have a Kaneohe Bay Master Plan that was put together by a lot of the community and the Board should look at it. It took over 1500 hours to put together and has not yet been adopted. Ahu O Laka is included in it which is called the Sandbar in Kaneohe Bay. Ms. Kaluhiwa related what happened at a hearing at the Capitol at that time where the police, the firemen, the people who stopped the fight and a whole slew of people testified to what happened where the representative came late and didn't think anything was wrong. She described the incident with the girl whose head was held underwater could have died and her brother tried to get the people away, but he got piled by the men on the Sandbar. Her kids went in there to break it up. The firemen and police couldn't get to the top of the pier because it was so crowded. Her family is looking to see what damage the military did to the Sandbar. The president of her 'ohana said they agree with these rule amendments and that we should all work together as a community. It is not a right to be on the Sandbar, it is a privilege. To us Ahu O Laka is a sacred place and described the chief buried there and how it used to look. Chair Aila said that they do have biologists out there.

Bob Raven testified that he lives in Hawaii Kai and was concern that he heard that Waikiki and Hawaii Kai is next. The Chair explained the context of it because Kaneohe is nice and peaceful now because all of those folks doing all of that bad behavior have now moved to Hawaii Kai and Waikiki. Mr. Raven said he doesn't condone bad behavior or under the influence of anything, but his concern is consumption at the Sand Bar that there was a number of legal things that staff had to go through and his impression was it was too much trouble to get any kind of conviction to make an arrest. It's too much trouble for something the Legislature has gone through a lot of trouble to ensure our civil rights, that's scary. He related having a refrigerator on his boat and he doesn't drink that he doesn't drink and drive. Mr. Raven reiterated previous testimony about having closed containers of alcohol in the car. The officer may have you do a field sobriety test and he was fine with that, but you don't get violated and fined up to \$5,000. He wants that to stop right now for Hawaii Kai.

Member Pacheco noted the language of this rule is limited to Ahu o Laka. Mr. Raven pointed out it also says going to or from and how do you know whether a boat is doing that on Kaneohe Bay. Member Pacheco said it says zone H-2. Chair Aila said it was always within the zone. Mr. Raven said he still doesn't think its right.

Heather Lammers testified is not in support of the wording of the ruling as it stands. She supports a mutual goal of public safety between the public and enforcer. She referred back to Mr. Raven's testimony that police officers don't have to see you with a cup to your mouth maybe a breathalyzer with sobriety tests don't infringe on the rights of people to have containers on their vessel. It's not the containers on the vessel, but your rights to your own private property and this is a slippery slope and only being proposed for 3 three day weekends in Kaneohe Bay that it may go to Hawaii Kai and Waikiki. The slippery slope is once you infringe on those property rights that may ban activities everywhere. The passing of the boating safety rules is huge. Young people are not the boating safety type of people. You need to look at the deterrent perspective and not say what you can or cannot do. Look to the community to fix the problem and not shift the problem to another community. We need to educate the public and the boating safety will do it. Fix the problem and not push it away.

Rick White, a recreational fisherman and charter boat captain raised on Windward, Oahu testified in opposition and addressed issues from his written testimony. He had concerns with due process and a fair trial. Of the 7 people cited for possession of alcohol during the 120 day period not one was cited for being unruly, vulgar or being on drugs. Some did not know they had alcohol on their boat. He can't help to believe that is not the intent of the rule. The intent was officers were not to search all vessels, but they have. He related Charley Stone's case giving his background had no intention to consume or knew he had alcohol in a closed cabinet. Mr. White doesn't think a safety check allows someone to go in and search the vessel. The Board members told him the cabinet was open for the safety inspection and the alcohol was in plain view and Mr. White doesn't think that is plain view because it was a closed cabinet. There were no problems after the 120 days and seems to be curtailed a lot with the presence of DOBOR enforcing the existing rule. He hates to see us take drastic steps to infringe on people's rights doing something when in fact it's been resolved by staff. Mr. White suggested reviving the Kaneohe Bay Regional Council and create some venue for a public voice.

Member Edlao said in regards to the violations that came before the Board where they had alcohol in their possession and at that time that was a violation – that he had to go with that. It was what was before the Board and was part of the rule – possession. He agreed with Mr. White that they weren't obnoxious or anything other than when he got fined before the Board. But, the gentleman with grandchildren there and he was seen consuming alcohol. This is why Randy (Awo) is here because the intent is to deter and not necessarily go on every vessel, but if there is obvious bad behavior then that's cause of the officer to go to that vessel. He doesn't expect a random thing.

Mr. White said we as safe boaters try to participate in the Coast Guard Safety Inspections and was inspected the last couple months. He is not saying the Board has to accept that. A lot of boats out there don't have that sticker, but thinks it's important that you or the officers recognize that the people who have that sticker is trying to boat safely.

Member Edlao said the most difficult part is the obnoxious behavior types don't come out here and you're here saying it doesn't happen and he believes you folks, but we have to look at the total picture and start some place. Until we can come up with a better idea, he thinks this is the only option at this point.

Mr. White asked is there an option today to make another temporary rule while we look into this more. Member Edlao said we would have to have it done all over again. Deputy Attorney General Linda Chow acknowledged that and said she wasn't sure about the whole publication. Member Edlao explained they would have to take back out to the public all over again to review it and that takes time and money. Member Goode suggested we could make a proposed change that affected Labor Day only this coming year, but he is not proposing that. That is what Mr. White is getting at. Mr. White said yes. We have one more holiday for the whole year.

Glenn Menko (?) testified being on the Sandbar every weekend was concerned with the rules not allowing people on the Sandbar and going to Hawaii Kai and Waikiki. We're going to chase down these people everywhere until we close down every place. These people will continue

doing it and are there for a good time. They are not there to fight, but some do. These people move to someplace else and put people in more danger. The Sandbar is a safe place without the waves. We need more DLNR presence out at Kaneohe, but not at 8:00am. Should be at 5:00pm or 7:00pm where all the problems start after enforcement has left and keep officers there later and not in the morning when everyone is sober. Most people want to have fun. Chair Aila said unfortunately, the Board doesn't get to pick and choose it pays attention to public safety and where it doesn't. On land when a noisy party pulls up you call the police and DLNR could have the same thing. Banning the alcohol out there will not solve anything. It just moves the problem around.

Paul Meierdiercks testified that he has a boat at the Kaneohe Yacht Club and lives in Kaneohe and is against total prohibition. If you have to get enforcement certified with breathalyzer test which could be expensive, but that is what you'll have to do. As for making it alcohol free and 3-day weekends he thinks the holidays are best because that is when most people come out. He thinks we should certify the officers and enforce the law the way it is or don't go after closed containers because there are a lot of people with big boats. People may bring coolers on and he may not be aware of it. That law is not fair and should enforce it the way it is.

Peter Young testified that when he sat in the Chairperson's chair they faced the same issue. At that time it was the big parties and the barges. When you call attention to a place and show a presence people will move. We can all live with the 3 three day weekends, but that is not the issue. He doesn't go on 3 day weekends because it's too crowded. The problems he has with doing it on a weekend basis is if a problem comes up on other days where hundreds of people show up. You start adding up your weekends and then you can't do that anymore. It is an unintended consequence that can happen. There is little impact to the sand at Ahu O Laka, but boats are anchoring in the middle of the bay near reefs and some reefs are now mud flats. He is concerned with moving people into other places that we don't want them dropping anchor. He grew up in Kaneohe Bay. It's in better shape now than it used to be. When he was a kid there was dead reef all over. Now the reefs are coming back. The challenge is a rule closing a place like this by time like this is a consequence of moving people to other times. Then we are going to shut down use. We haven't addressed our responsibility of saying we are here to protect the public right to use public resources in a responsible way. Mr. Young said you need to pass a rule and to support this rule proposal because it's easy, but all we did was create another time for people to come back because there is going to be some problem some place, some time. He knows you can't say we need more enforcement because there are only so many officers around the island they can only be in so many places throughout the week. But, pass some rule to keep the attention going and that is why people aren't going there partying like they used to. It's an attention area. He thinks the flotilla group is different from the partiers that use to go out to the concerts. It's a new recreation that is happening around other states because it's cheap and fun. Mr. Young has a concern with the approach this rule is going because it doesn't address the problems yet and we need to have a dialogue about what is the best way to address it and make sure we don't have some unintended consequences about resource issues. A rule package for disorderly conduct and noise, but he is concerned with the way this rule is approached. The alcohol doesn't always do it. Some people fight or are disorderly without the alcohol which is the only consequence of this rule that suggests because you have alcohol on these 3 weekends and now we're going to say you can't that we are not going to have any fights, disagreements

and it's going to be quiet. He doesn't think it approaches a solution. It just moves it to another time and place.

Member Edlao said he agrees with him that alcohol doesn't necessarily cause that behavior. He asked do you think limiting alcohol use will help. Mr. Young described going out last weekend and each had one beer. If it was 4th of July weekend they could not have done that and he would not go to that area. So why couldn't I? We weren't causing any problems. There isn't enough enforcement to be there all the time. The rule making attention has been effective. You need to pass a rule to keep the attention there. He doesn't like how this rule is, but calling to disorderly conduct or noise is ok. If you have to go out for another round of rulemaking, that's even better by calling attention to bad behavior that the Land Board is not going to tolerate it anywhere in the state. Having the Department going out to public hearings calls attention to the Land Board taking appropriate management action to restrict and have consequence for inappropriate behavior. That is a good thing. That's good free advertising for you guys and keeps people aware of it. Keep in people's minds that if we are not nice to this place we may not be able to come here anymore. This is 3 weekends and they talked about 13 before, but it might be 52 later and that is the consequence of this kind of rule which is why he doesn't like it the way it is, but he does like the idea of a rule and a rulemaking process to get Boating staff out there talking to boaters, better understanding of issues, hearing about other things specific to the rulemaking...that kind of outreach you guys can't buy that kind of marketing.

Member Edlao asked are you looking at this rule package specific to Ahu O Laka or statewide. Mr. Young said it's going to end up statewide. You can drink on your boat with others drinking. You can have an open container or closed container. That is something about boating that goes hand in hand. Not everybody drinks is a boater and not everybody who is a boater over drinks. It's about appropriate behavior in places that is not yours. Rulemaking like this could help with other resources the Board manages.

Mr. Phillips said we aren't going to target boats, but we are looking for boats that have obvious bad behavior and address those. He reiterated previous testimony about the State law that defines disorderly conduct and the passing of the boater education which will make people more aware. He brought up the noise ordinance and it's good we define that area because it is in affect every day.

Member Edlao asked Randy based on testimonies today he gets the sense that officers will go out there to nail everybody under the guise of safety and looking for alcohol, etc. while DOCARE is out at Ahu O Laka what is your charge and what is your process out there in your mind and why.

Randy Awo representing Division of Conservation Resources and Enforcement (DOCARE) said as he was listening to input there were 3 things he would like to address. One recurring theme is how do we schedule officers and should do it a certain way. The other term he heard was "slippery slope" – a violation of rights. The third thing is the coastal marine sticker. He wanted to take each piece and put it in the proper context. When we talk about Ahu O Laka it's important to know also what are our global responsibilities are to the Department. DOCARE is responsible for enforcing laws that covers 3 million acres of state marine waters. We have the 4th largest coastline in the U.S. We have 23,000 acres of inland surface waters, 410 acres of

coral reef, we have the largest tropical forest in the nation, the largest forest reserve system in the nation and within that forest system we have 1 million acres set aside just for hunting. We have 2 million acres zoned conservation and 1.2 million acres of land under our Land Division. Add to that we have 1.2 million residents in the State of Hawaii, 6 million visitors that come here yearly and we have 96 officers to manage all of that. When we take Ahu O Laka, which is a small piece of what we do, when we schedule our staff we have to take into account every other issue, every other need that ties us to what he just described. Also, there have been requests to keep our staff later and they have for the emergency rules they've kept their staff until sun down. That's the process that they try to do, but understand they have other responsibilities constantly that have to be met as well.

Mr. Awo said the second piece is the discussion about a coastal marine examination sticker. To summarize what that sticker does, in order to get that sticker the Coast Guard is saying you participated in a process where you are held a certain standard and the expectation is you comply with the safety standard that is required of you. Added to that the Boating rule that says people who are bearing that sticker on their vessel don't have to be inspected. The logic behind that and it's built into the rule is so that our officers are not tied up with added responsibilities because that sticker indicates you already met certain standards. The rule also states if the officer has reasonable suspicion that a violation has occurred we can board the vessel. Added to that he had a document from the U.S. Coast Guard Auxiliary Vessel Examiners Manual, page 1-10 and it says "Display of the CMA decal indicates a boat carrier carries proper safety equipment and the owner/operator has exhibited an interest in safety on the water. Usually, a boater will not be boarded for boating regulations, however, obvious violations, unsafe practices observed and boarding for law enforcement inspection programs will include boats with the CMA/CME facility decal." This is not an absolute and we have done so in boarding these vessels even with the sticker.

Mr. Awo said we get to the big one – the "slippery slope" or violation of rights. Basically, there are 3 ways they can board a vessel. One is through a Boating rule 13.242-15; to summarize the Boating rule allows them to board a vessel to conduct an inspection for safety equipment gear. If in the course of an inspection typically what an officer will say "we are boarding your vessel to check your equipment." What happens as a result is the operator of the vessel will start opening cabinets to get to the safety equipment. If as a result of opening up cabinets there is evidence in plain view that constitutes a violation of any law or rule that's grounds to issue a citation or if it's a felony initiate an arrest. Also, the Hawaii Revised Statutes 189-14 – rights of entry, to summarize, what that statute says is that any marine vessel that has the capacity to capture marine life can be boarded and that is just a summary statement. There is much more to it than that, but it does allow an officer to board a vessel for that purpose. Even with those 2, one is a rule one is a statute, our officers have to be very careful not to violate the fine print of what the law says when they engage in that kind of search. The most common search is the probable cause standard and the reason why we are bound by the probable cause standard is because the Fourth Amendment, the constitutional requirements say and he read it "The right of the people to be secure in their person's, papers and effects against unreasonable searches and seizures shall not be violated." So how do we abide by that statement? We can't just walk into a person's home, we can't just shake down a person and we can't just walk on a boat without probable cause. That is the standard that most of us will live by. That is the big one. When looking at

what constitutes probable cause for example, Ahu O Laka. It could be the result of a safety inspection, but more likely the result of an officer looking with his binoculars, looking across the Sandbar and observing someone picking up a container which appears to be a beer or pouring from another container and appears to be hard liquor that becomes the probable cause standard that triggers the investigation. It is not a situation where we just roll up on a boat and do it just because we want to. What happens as a result when we make these kinds of cases is based on the rights to inspect, the right to seize our actions are then scrutinized either by the Board, by attorneys, or by a judge. It's extremely important that we understand the standards of probable cause because nobody wants to lose a case based on their failure to uphold the constitutional requirements afforded our citizens. That's basically it in a nut shell.

Member Pacheco asked we hear over again that you enforce the laws or rules we already have and when we went back for the emergency rulemaking he understood that the reason why we have these rules in here is because there were gaps in what we could enforce. Mr. Awo said looking at the emergency rules today the question becomes is it a more effective tool to address some of the problems that were occurring at Ahu O Laka and the answer is yes. Part of the problem with the previous rule - possession is an important piece of language contained in the current rules that allows us to be more effective in doing our job out there. Although, consumption is important you need both to make the rule more effective and it has been effective. We heard earlier someone saying that there weren't that many citations issued out on the Sandbar and that was the desired outcome we were looking for. We wanted to reduce the number of violations occurring out there and we believe that it has and would like to see that continue.

Member Pacheco asked what about in our rules about drugs, threatening violent behavior and those kinds of things is there already things in our statute or rules that would address behavior out there. Mr. Awo confirmed that there are. We have statutory language that states disorderly conduct, possession of drugs and alcohol, but again this is language that creates a more effective tool for DLNR. What this rule does it clears up any gray area that may occur as a result of our enforcement efforts versus jumping from a statute to a rule that is clear specific to Ahu O Laka.

Member Edlao asked whether they have periodic checks on other weekends or are you capable to have someone out there. Mr. Awo said he would say periodic, but scant just because of what he described earlier with all the other responsibilities that they have.

Member Edlao asked as for adjusting hours from mornings to evenings that is no problem. Mr. Awo said that is already occurring and is part of their operational assignment.

Member Goode asked about the possession question recalling the previous 7 or 8 cases that one was possession, but there was no consumption and found that it was difficult for the Board members to fine that person. Can the rule be...if there is consumption its automatic possession, but mere possession because its humbug. If you aren't using it at all and happen to have it do you guys do a random search. Because it's clearly not being consumed why should we be fining those folks? Mr. Awo said from an enforcement point of view if we start from the premise that consumption is banned why would you even want it in your boat in the first place because it leads to what we've experienced. If a crew has alcohol on the boat they plan to consume it

eventually or to resist the temptation to consume it. We've seen it where people go in looking around hoping that nobody sees them and start pouring into a red cup. From an enforcement point of view we think is consumption is prohibited just don't bring it on your vessel. That is his point of view.

Member Goode asked in unruly behavior under the general statute, disorderly conduct can it be applied to Ahu O Laka because we don't have any rules for right now, right. Can we enforce disorderly conduct out there today? Mr. Awo said his short answer is probably, but disorderly conduct, statutory violations occurring in Ahu O Laka prevents us from taking to criminal court because they don't view it as their jurisdictional responsibility. It is a challenge sometimes when you move it into the judicial system. When we look at a rule that is specific to DLNR, a rule they bring before the Land Board it makes it cleaner and brings more clarity to the disposition of the case.

Member Goode asked someone can be cited for disorderly conduct in the Forest Reserve right. Mr. Awo confirmed that. Member Goode asked is it more difficult jurisdictionally. Mr. Awo said when they were doing the emergency rule making questions aroused from the County Prosecutors office an intense discussion of jurisdiction and whether or not that would apply to them. And that is the process; we issue a citation for a criminal proceeding and go before their body. It's still a question mark.

Member Pacheco said this was a good discussion because that is an important distinction between the rule and the law the public say enforces the criminal laws on the books, but that is through judicial process and we are making rules to manage our resources and that is a very big distinction. We have rules in all of our State Parks that allow alcohol. This is not a big jump from the other policies and rules we already have on our lands and resources. In fact its 3 weekend days out of the year and that are more powerful to him as a Board member. It's important to know the distinction between the laws for us to be able to manage our resources versus our ability to create rules and administer and enforce those rules.

Chair Aila noted the County Prosecutor in regards to Ahu O Laka is emergent at times and submerged at other times which is why we have challenges with the County Prosecutor's office agreeing in taking our cases to the criminal side. The fact that we had many, many years of Ahu O Laka being problematic and the fact that we adopted emergency rules which appear to everyone to have had a positive impact is the reason why this rules is moving forward to become permanent. Taking the difference between citing someone for possession versus the procedures they will have to go through for consumption. If you were to write a citation, the procedure for you writing a citation for possession and the procedure to go through for consumption to get a citation through the County Corp. Mr. Awo said we would have to meet similar standards. For example, if we were boarding a boat to conduct a lawful inspection and discovered in plain view containers of alcohol that would be sufficient to issue a citation on this current rule. On the other hand, if we were to witness somebody from a distance consuming what appears to be a commercially recognized container with Bud light, Heineken, etc. that would be probable cause to conduct an investigation and that is sufficient for us to issue a citation for consumption.

Chair Aila asked in order to obtain a conviction what about chain of custody of evidence. Mr. Awo said with chain of custody there is a whole bunch of things they have to go through. They have to seize evidence. If somebody is consuming they try to preserve what is contained in the bottle/sample and subject to testing. They make sure their search is lawful and provide a record of it coming from the defendant to the officer, storage and all of those things matter subject to judicial scrutiny. If you miss one step the whole case is tossed. There are a lot of pieces to make a case and achieving a prosecutorial outcome conviction. The Chair asked and the alcohol would have to go to a certified lab and additional cost. Mr. Awo confirmed that.

Chair Aila said he is going through this exercise so the folks can understand that. Just getting them for consumption is a difficult and complicated thing to take all the way to conviction. It is not as easy as possession. The minimum cost to test for alcohol is \$100.00 per sample. The possession is you have it or you don't. A question earlier was if you can't do the existing rule don't make it more convenient to do it the other way, but he will disagree. Possession is more convenient and more efficient and very effective at Ahu O Laka. This Board does not have the distinction to not go to other areas because residents are asking us to respond. We don't have that luxury whether it's at Haleiwa or at Waianae or Maunaloa Bay if somebody comes to us with an existing problem with whatever we have to try to address it with the minimum amount or resources that we have. Any of those 3-day weekends we have things going on at Kaena Point, at Kahuku, at Waikiki, Maunaloa Bay. In my perspective, possession is a tool in the context in that larger context of dealing with multiple problems all over the place and it has been very effective. We don't want to infringe upon people that are responsible, but given all the conditions we have to face this rule seems to be the most appropriate way to deal with it. You are welcome to disagree, but he wanted to make the case here. He asked Mr. Awo to go through boating under the influence.

Mr. Awo explained that could be a whole another meeting. Boating under the influence requires specialized equipment which is very costly. The Police Department has it. The Field Sobriety Test doesn't establish a violation, but sets you up for probable cause standard which takes you to a whole another level of testing. Some of it is in the labs; some is subject to what the Police Department has available to them. In the way of equipment, you have specialized units that do this every day and that is all they do because it gets these units ready for testimony as expert witnesses. They are subject to all kinds of challenges by defense attorneys so it's a process that requires time, money, continuous training and all of those things we are not prepared to undertake at this time. Chair Aila said in addition to the jurisdiction and the chain of custody to make things more complicated we have in the County of Honolulu the County Prosecutors saying they are not going to take in boating under the influence cases from the U.S. Coast Guard who is trained and has the proper equipment and we don't have the money to buy that equipment or do the training. He wanted to educate everyone what the other options are.

Member Gon asked during the course of the emergency rule period were there any citations that were based on noise violations. Mr. Awo said no that he didn't recall. Member Gon said he was wondering because there was public testimony in regard to how one would assess whether or not a certain noise level was sufficient to the violation. It seemed it would be on the judgment of the officer involved at least as stated. Mr. Awo acknowledged that was correct. There is equipment that can measure decibels, but that can be challenging as well.

Member Pacheco said we had a problem, put emergency rules in place, got the problem knocked down, we know that weekends have these big events. He was wondering whether we necessarily need this law. Staff is out there to be a presence and we curtail this that he doesn't see these things coming up again as long as those periods of time as a point of discussion.

Chair Aila said he doesn't believe the troublemakers are aware the rules are in place. By not having these rules in place for these 3 day weekends puts the public and their officers at risk.

Member Goode said after listening to everything he doesn't feel possession only, but understood where you are coming from. He supports knocking down those 3 weekends and suggested a sunset for these rules in 3 years. Give it 3 years for it to grow and see what happens outside the bay and other islands. Monitor it and prepare to address it again.

Member Gon asked out Deputy Attorney General whether the addition of a sunset would constitute something substantive. Ms. Chow said she doesn't think so. It doesn't affect the rules or the processes under the rules. Affects the making of the rules, but nothing else and she doesn't consider that substantive. Member Gon said under those conditions he would be willing to second it.

Member Pacheco asked what Member Goode's thinking was. Member Goode said it's his experience of various legislation made, then administered and setting the rules, because often times there are concerns with this rule when legislation is passed. There is a fair amount of unknowns, treading on un-charted waters. Give it a sunset to give us a chance to look at it. He wasn't sure ruling a sunset involves a whole another rule making procedure. Ms. Chow acknowledged that it would. Member Goode said that it is a whole another option to go back out to the public seeing what is going on. Understand what the flotillas are up to and behavior. He sees it as an effective tool for both legislative bodies, administrative bodies and the public.

Member Goode made a motion to approve the rules as presented with the amendment made by the Department earlier to address 3 day weekends only which were Memorial Day, 4th of July and Labor Day weekends with the provision that the rules would sunset in 3 years after adoption upon the signature of the Governor. Member Gon seconded that.

Member Edlao commented that he didn't know what good that would do. Member Gon said he like the idea of a sunset because it puts this Department on notice that this rule is not a permanent rule and the addition of 3 years will allow sufficient time to assess the effectiveness of the rule. It gives the actual implementation and enforcement of it. Member Edlao said the intent is to look at the effectiveness of this to look for something better later on. He doesn't think DOCARE will get enough funding to address all these problems which take longer than 3 years. Member Gon said perhaps, but the 120 day rule had its affects and is much shorter than 3 years. Impose the principles of these rules for a longer period of time putting all the community and potential violators on notice that the next 3 years this kind of behavior will not be tolerated. He thinks it's a positive step.

Member Pacheco said he would support the motion.

Chair Aila took the vote and all voted in favor. The motion passed and thanked everyone.

Unanimously approved as amended (Goode, Gon)

1:02 pm Chair Aila departed for another meeting. Member Gon took over as Chair.

Item J-1 Amend General Lease No. H-89-7 to the United States Coast Guard for Addition of Submerged Land for Permanent Mooring Purposes and Immediate Construction Right of Entry for Installation of Mooring and Wharf Improvements, Nawiliwili Small Boat Harbor, Island of Kauai, TMK: (4) 3-2-03

Mr. Underwood asked to amend the lease and gave some background on item J-1 for the U.S. Coast Guard to construct 2 finger piers. Staff is fine with the recommendations.

Unanimously approved as submitted (Edlao, Goode)

Item D-3 Assessment of \$500 Fine Against Association Of Apartment Owners (AOAO) of Lahaina Roads for Seawall Encroachment; Grant of Term, Non-Exclusive Easement to AOAO of Lahaina Roads for Seawall Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-013: Seaward of 027.

Mr. Moore reported on item D-3 regarding a sea wall that encroaches on State land. He related some background on it not requiring a CDUP changing the encroachment to an easement that the association paid fair market value and was fined \$500. He requested to amend with an additional administrative cost of \$250 and to grant the easement.

It was asked whether the representative was fine with the amendment and he said he was.

Unanimously approved as submitted (Edlao, Pacheco)

Item C-1 Request to Amend the Forest Stewardship Agreement with The Outdoor Circle dba Waikoloa Village Outdoor Circle to Substitute the New Licensee, Waikoloa Dry Forest Initiative Inc., for The Outdoor Circle

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) briefed the Board on item C-1 that this is a transfer to a new applicant and staff worked with the AG's office to get the correct terminology. Staff agrees with the takeover by the new licensee and continues the Forest Initiative. The Outdoor Circle is part of the same hui. Member Pacheco said it's the same group. This is a specific entity for it.

Member Gon said he had been there.

Unanimously approved as submitted (Pacheco, Edlao)

Mr. Conry thanked the Board that the Department was recognized by the Western States Forestry Committee.

- Item D-1** Amend Prior Board Action of September 9, 2011, 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-2** Amend Prior Board Action of March 22, 2002, Item D-5, Sale of Remnants to Jeff Hill and Gregory L. Smith Trust, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-5-012:por. 3. The Purpose of the Amendment is to Substitute Brown-Clay Family LLC as Applicant in Place of Gregory L. Smith Trust.

- Item D-4** Issuance of a Right-of-Entry Permit to the United States Geological Survey (USGS) Pacific Coastal and Marine Science Center, United States Department of Interior for Use of Unencumbered Submerged Lands for Pacific Coral Reef Research Monitoring Purposes off the Coast of Olowalu, Lahaina, Maui, Seaward of Tax Map Key: (2) 4-8-003 Seward of 001.

Mr. Moore said he had no changes.

Unanimously approved as submitted (Edlao, Pacheco)

- Item E-1** Forfeiture of General Lease No. SP0140, Dennis Riker, and Paul Kyno, Lessees, Kōke'e State Park, Waimea (Kona), Kaua'i, Tax Map Key: 4th/1-4-004:060

Dan Quinn, Administrator for State Parks asked to withdraw item E-1.

Withdrawn

- Item E-2** Request for Approval for the Sale and Independent Award of Eight (8) Concession or Mobile Concession Agreements by Means of Sealed Bid Auctions for the Purposes Indicated and Delegation to the Chairperson to Issue the Information for Bidders (IFB), Award Each Bid and Give Notice to Proceed for the Following State Parks on O'ahu, Kaua'i, Maui and Hawai'i: Diamond Head State Monument (O'ahu) TMK: (1) 3-1-042:006(por.), (including a mobile concession agreement and a beverage vending agreement), Kōke'e State Park (Kaua'i) TMK: (4) 1-4-001:013 (por.) (including a concession lease for the Kōke'e Lodge and Cabins); Waimea Canyon State Park (Kaua'i) TMK: (4)1-2-001:004 (por.) (including a mobile concession agreement for Waimea Canyon Lookout), Wailua River State Park, (Kaua'i) TMK: (4) 3-9-004:010 (por.) (including a concession lease for an existing restaurant space), Wailua River State Park (Kaua'i)TMK (4) 4-2-

004:002 (por.) (including a proposed mobile concession), Hāpuna Beach State Recreation Area (Hawai‘i) TMK: (3) 6-6-002:035 (por.) (including a concession lease for existing food concession space), and Makena State Park (Maui) TMK: (2) 2-1-006:030 (por.) (including a mobile concession agreement)

Mr. Quinn reported that staff put out to bid concession operations throughout the State. These are revocable permits continuing on. The mobile concessions are lunch wagons, vending machines, restaurants and various other concessions relaying some background on them. Staff is going for a 5 year period. Koke’e is longer depending if they can replace those buildings. Wailua River is 15 years and delegated to the Chairperson.

Unanimously approved as submitted (Pacheco, Goode)

Item L-1 Certification of Elections of Lori Beach, Don Brayan and Marissa Harmon and Appointment of Doug Connors to Serve as Directors of the Hamakua Soil and Water Conservation District

Carty Chang representing Engineering Division said there are no changes to item L-1, but wanted to amend the spelling of the names – Brayan is Bryan, Harmon is Harman and to correct it throughout the submittal.

Unanimously approved as amended (Pacheco, Edlao)

Amend staff’s submittal throughout the following: Brayan is Bryan and Harmon is Harman. Otherwise, staff’s submittal was approved as submitted.

Item L-2 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. B78DO71A, Heeia Kea Small Boat Harbor Pier and Site Improvements, Oahu, Hawaii

Mr. Chang clarified on item L-2 that they wanted to elaborate to the Board that these declarations are for housekeeping purposes and wanted to reiterate that. These are projects that meet certain criteria. By definition they are exempt because they cause minimal or no significant impacts and are minor projects. He gave the examples of docks that serve the same purpose and replace with new materials and no new piles, etc.

Member Goode referred to Item L-7 and the Board is making the call whether or not the project is exempt and accepting the exemptions as a declaration. If the same project required an EA, went in, published it, etc. Is it the Board or the Department the accepting authority? Mr. Chang said he believes it’s the agency. Ms. Chow said the agency headed by the Board. The Board would be like the director of the agency that doesn’t have a board. The director actually is the one to accept it on behalf of the Department.

Member Goode said he doesn’t see why the Department can’t do the declaration. Ms. Chow said because they need the declaration from the head of the agency which is the Board. Member Goode asked you are saying when accepting an EA or EIS the Board is the accepting authority.

Ms. Chow said we are going to be working on declarations on clarifying that. Mr. Chang asked if he gets an EA he will take it to the Board to delegate to the Chairperson to sign and accept. Ms. Chow acknowledged that with a yes. Later we can talk with the Chairperson about delegating to the Department different types of actions.

- Item L-3 Authorize the Approval and Issuance of a DLNR Dam Safety Construction/Alteration Permit No. 60 Dam Outlet Replacement for Pauwela Reservoir (MA-0096) Haiku, Maui, Hawaii**

- Item L-4 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. D00CO67B, Kawainui Marsh Drainage Improvements Kailua, Oahu, Hawaii**

- Item L-5 Certification of Election of Clark Hashimoto to Serve as Director of the Olinda-Kula Soil and Water Conservation District**

- Item L-6 Request for Authorization to Enter Into a Memorandum of Agreement (MOA) Between the City and County of Honolulu (City) and the State of Hawaii, Department of Land and Natural Resources (DLNR), to Plan, Design and Construct Drainage Improvements in the Lualualei Flats/Puhawai Stream Area, Oahu**

- Item L-7 Declare Project Exempt from Requirements of Chapter 343, HRS, and Title 11, Chapter 200, Hawaii Administrative Rules for Job No. J45CK41A, Wailua River State Park Rockfall Mitigation, Wailua, Kauai, Hawaii**

- Item L-8 Authorization to Issue Procurement Solicitations and Award of Contracts Under Hawaii Revised Statutes Chapter 103D for Various Capital Improvements Program Projects Listed in Exhibit 1**

Mr. Chang had no changes to the rest of his items.

Unanimously approved as submitted (Goode, Edlao)

Adjourned

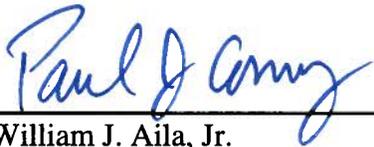
There being no further business, Chairperson Aila adjourned the meeting at 1:24 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:

for 

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