

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

DATE: FRIDAY, OCTOBER 24, 2008
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Laura Thielen
Jerry Edlao
Ron Agor

Taryn Schuman
Rob Pacheco
Dr. Sam Gon

STAFF

Morris Atta, LD
Russell Sparks, DAR
Dave Gulko, DAR
Paul Conry, DOFAW
Athline Clark, DAR

Dan Polhemus, DAR
Kamaile Nichols, DAR
Sam Lemmo, OCCL
Lisa Hathaway, DOFAW

OTHERS

Bill Wynhoff, Deputy Attorney General
Naomi Kuwaye, D-13
Sydney Akiona, F-3
Stephanie Nagata, C-1
Kealoha Pisciotta, C-1
Lyn Cabato, D-9
Aunty Eileen, D-10
Leina'ala Lopes, D-10
Michael Lawaikokanu Kanakakanuwaia, C-2

Terry George, D-11
Ronald Kim, F-3
Yvonne Izu, K-1
Marti Townsend, C-1, F-6
Tin Myaing Thein, D-9
Charlotte Needham, D-10
Uncle Ola, D-10
Keola Lindsey, D-10
Summer Nemith, C-2

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

Item A-1 Amended September 26, 2008 Minutes.

Rob Pacheco recused himself.

Approved as submitted (Schuman, Edlao)

Item A-2 October 10, 2008 Minutes.

Taryn Schuman recused herself.

Board members discussed the motion on page 14. #1 is ok, #2 assessed what is appropriate, and #3 will come back to the Board with a more detailed proposal.

Deferred (Edlao, Pacheco)

Item D-11 Amend Prior Board Actions Regarding the Proposed Land Transfer Approved on July 14, 2006, Under Agenda Item D-9, and as Amended on July 27, 2007 Under Agenda item D- Kawainui Marsh, Kailua, Oahu TMK: (1) 4-2-13:22; 4-2-16:portion 1, 5, and portion 6. (TO BE DISTRIBUTED)

Submittal was distributed prior to the Board meeting.

Morris Atta, Land Division Administrator, reminded the Board that this came before them previously. Staff was directed to go back and finalize the details of the transfer from the City & County of Honolulu to the State of Hawaii. The transfer involved 3 primary documents: 1. Enter into a Memorandum of Agreement – which lays out the transfer. 2. Right of Entry – a trigger to enable the State to utilize Federal funds from the Army Corp of Engineer for habitat restoration. 3. Transfer the conveyance document which will be in the form of a limited warranty deed with the City reserving certain easements for access and utility.

Terry George from the Castle Foundation supports staff's submittal, reported other opportunities to secure more funding, and thanked the Board and parties involved.

Unanimously approved as submitted (Schuman, Gon)

Item D-13 Resubmittal: Approval in Principle of Land Exchange between the State of Hawaii and Hawaii Baptist Academy for State-Owned land at Nuuanu, Honolulu, Oahu, TMK: (1) 2-2-22:02 & 19, and Privately-Owned Property yet to be Identified.

Mr. Atta reported that this was a deferred item. Hawaii Baptist Academy (HBA) currently doesn't have lands suitable for this exchange, but when HBA does identify potential lands staff will enter into an exchange, process it, and come back to the Board.

Naomi Kuwaye of Imanaka, Kudo & Fujimoto representing HBA said that they've been working with staff on this since 2004.

Unanimously approved as submitted (Schuman, Gon)

Item F-3 Enforcement Action against Makena Boat Partners for Breaking and Damaging Stony Coral in Makena Bay, Maui

Division of Aquatic Resources (DAR) Administrator, Dan Polhemus, described the enforcement action background and asked the Board to administer fines.

Member Gon asked whether there was any special designation of Makena Bay where Mr. Polhemus said it is a Division of Boating & Ocean Recreation (DOBOR) mooring area, but it doesn't provide license to discriminately destroy coral in the bay.

Russell Sparks, DAR Maui Biologist, said that the quality of the area coral is mostly low lying, hard substrate where sand fills in intermittently. There is not a whole lot of structured coral reef but a fair amount. At the time of the incident there was little sand and the ocean bottom was exposed where some of the mounds of coral were impacted. These mounds provide fish habitat and is popular with fishermen and snorkelers. To answer Member Edlao's question regarding minimizing damage, the boat owners could have anchored stern and bow preventing swaying of the vessel, but the main damage is from the chain dragging on the ocean bottom.

Mr. Polhemus referred to DOBOR's authority on moorings which would need to be pursued.

Mr. Sparks asked Kamaile Nichols when the last site visit was and she said March 2008. Mr. Sparks described the destruction from the chain explaining that live rock is rock substrate with anything living on it.

DAR Coral Reef Ecologist, Dave Gulko, explained that each species of coral has a different recovery rate where porites lobata coral averages 1 cm per year in this area and fragments die if they don't reattach. A 100 year old coral colony cannot be replaced in less than a 100 years.

Ronald Kim, attorney, introduced Sydney Akiona of Makena Boat Partners, and objected to the amount of the fines and this proceeding. Mr. Kim distributed 187A-12.5 to the Board and said the amount of the fine sought here implicates his client's rights under the double jeopardy clauses of the United States and Hawaii State constitutions. Double jeopardy provides that this Board may only fine Makena Boat Partners for remedial costs. Half a million dollars is sought here for punishment, retribution and deterrence not for remedial purposes. Mr. Kim stated that this penalty is so punitive and formative that it is a criminal sanction. Mr. Kim said his client has been prosecuted for this violation by the district court of Maui, therefore jeopardy has attached, #1. The amount of the fines sought is punitive and implicates his client's double jeopardy rights. #2. Under the

structure of 187A-12.5, this action needs to be brought as a civil action in court. In the statute, F provides in addition to criminal penalties the Board can recover fines fees and costs. Under section A of 187A-12.5, if the Board is authorized to recover administrative fees and costs, but not fines, then if the Board wants to recover fines, it needs to bring legal action. The fine amounts sought would require a circuit court jury trial where his client would invoke the rights to a civil jury trial under the United States constitution section 115. Mr. Kim stated we are not dealing with the facts here just registering these objections and asked the Board to defer this matter. He will present legal argument to the Attorney General's or present a briefing of the issues to the Board, whichever is the Board's preference. Given the important constitutional rights and the magnitude of fines that are sought Mr. Kim really thinks the Board should proceed with caution and prudently here. Also, Mr. Kim's partner, Dennis Niles, is currently unavailable and asked that this be deferred so that he may appear before the Board. Mr. Kim noted that DLNR is in the process of making rules to address this type of proceeding which is another good reason to defer this matter. There are other constitutional issues which he will not present at this time. There are excessive fines which do implicate the 8th amendment, due process issues, and vagueness over breathe issues with the statutory scheme, and separation of powers issues. If the Board does not defer this then they would like to request a contested case hearing.

Chair Thielen noted that Mr. Kim addressed a lot of legal and constitutional issues, but none of the facts regarding the mooring and not responding to DOCARE to move the boat. Mr. Kim replied that he and his client were here to register these objections and doesn't believe that this is the proper forum to address the facts. Chair Thielen said the Board does believe this is the proper forum and she would like to give him and his client an opportunity to address the facts.

Sydney Akiona said that he and Mr. Kim didn't understand that they could provide any testimony or rebuttal. He has a problem with staff's research or estimating/extrapolating the amount of reef that he destroyed and the quality of the reef area. He has been there for 23 years and noted that he can't see the chain under the sand. Mr. Akiona wants to bring in people to rebut what staff is saying he is doing. He acknowledged mooring there and thought he was fine because other boats are moored there for snorkeling. It wouldn't be in his interest to destroy a habitat where his business is.

There was discussion over why Mr. Akiona didn't move. Mr. Akiona acknowledged that this is his boat and his chain.

Mr. Kim interjected that there are causation issues because this is a heavy traffic area. Mr. Kim asked how can DLNR prove that his client caused this damage and that another boat could have come in and caused the damage.

Mr. Akiona reiterated that he had problems with staff's assessment of the quality of the reef and the way it was surveyed. He can't dispute damaging live rock according to staff and would like to provide his own researchers.

Chair Thielen said that if this Board does take an action that Mr. Akiona doesn't agree with, he would have an opportunity to ask for a contested case hearing and in that process he would have the ability to bring forward any information before a hearings officer; then a recommendation would come back to this Board on whether to confirm or consider the hearings officer's decision or however the Board rules. Chair Thielen said there is a process in place.

Mr. Kim reiterated his request to defer.

In answer to Member Pacheco's question regarding when he moved the boat after the notification, Mr. Akiona replied that he moved the boat within four (4) days of the citation. Chair Thielen asked who the citation was from. There was a notification by both DOCARE then later by DAR when there wasn't a response to the DOCARE citation. Mr. Akiona said it would've been the ticket he received from the officer where Mr. Akiona needed to make arrangements to move the boat. Mr. Akiona explained what happened when his company brought in the second boat that was ordered in 2006.

Member Gon noted that there are pictures showing the anchor and chain belonging to Mr. Akiona's boat. Mr. Kim said that he didn't say that there was no evidence. He said that there was causation problems with showing that Mr. Akiona's boat caused the full extent of the damage alleged.

Member Pacheco said that Mr. Akiona was issued a citation on August 1st and then was contacted on August 21st to move the boat. Mr. Akiona noted that the citation didn't say he had to move the boat immediately and that he had to make arrangements. Mr. Akiona wasn't prepared to make any statements and asked to defer.

Member Pacheco asked to move to executive session and Member Edlao seconded it.

9:49 am Adjourned for Executive Session pursuant to HRS §92-5(a)(4) to discuss the Board's legal rights, duties, privileges, and obligations relating to this matter with the deputy attorney general.

10:00 am Reconvened

Mr. Kim reported that his client planned to donate the older boat to the Polynesian Voyaging Society, however due to issues with the loan on the newer boat there were problems with the transaction going through. The current financial climate makes it difficult to renegotiate.

Member Agor said he has no problem supporting the motion to go with staff's recommendation and added that if the party wants to contest it they can in a contested case hearing.

Member Edlao felt this is unfortunate to have this happen during the "year of the reef" and hoped incidents could be avoided by this awareness.

Chair Thielen said some items raised the constitutionality of the law and that the Board doesn't have the ability to determine whether the law is constitutional or not, however the Board needs to follow the law. There is a process in place with the judiciary if the parties wish to contest, but this is not a matter for the Board to decide. The Department is in rule making process for civil resource violations which are for minor infractions. Once those public hearings are completed the Board will be making a decision, but wouldn't apply to these larger cases that come before the Land Board. Those violations are more administrative penalties.

Member Edlao moved to approve staff's recommendation as submitted. Member Schuman seconded it.

Chair Thielen noted that if Mr. Kim and Mr. Akiona wanted to ask for a contested case hearing, they should request it orally during this meeting then follow it with a written request and staff could work with them.

Mr. Kim requested a contested case hearing, but reserving their rights under the double jeopardy clause and their rights to a jury trial.

Unanimously approved as submitted (Edlao, Schuman)

Item K-1 Fourth Time Extension Request to Extend the Processing Period for Conservation District Use Application (CDUA) OA-3412 For a Portion of the Kaloi Gulch Drainage Way Improvements by HASEKO Located Makai of Oneula Beach Park, Ewa, island of Oahu, TMK:(1) 9-1-012:025 and (1) 9-1-011:007

Sam Lemmo for the Office of Conservation and Coastal Lands (OCCL) described the project and requested a time extension to February 1, 2009 to allow additional time to conclude the contested case hearing.

The Board was concerned with the amount of time this was taking and whether it would be completed in 60 days.

Yvonne Izu representing HASEKO reported that the exceptions are due today and if the Board decides to hold oral arguments then the deadline is December 3rd. Ms. Izu doesn't anticipate any extensions beyond this.

Unanimously approved as submitted (Schuman, Pacheco)

Item C-1 Authorization for the Chair to Negotiate and Sign a Cooperative Agreement with the Office of Mauna Kea Management, University of Hawaii at Hilo for Cooperative Management of Mauna Kea Ice Age Natural Area Reserve, Hawaii

Written testimony was submitted.

Chair Thielen noted that this item is submittal C-2 and item C-2 is submittal C-1 which is not an agenda issue per our deputy attorney general at the last meeting.

Paul Conry for the Division of Forestry and Wildlife reported on this agreement which benefits DLNR because it allows staff to work with the Office of Mauna Kea Management (OMKM) ranger corps that provides a presence on Mauna Kea, pass out information to visitors, and notify DOCARE of any violations.

Chair Thielen asked to confirm whether this doesn't give up DLNR's management rights over this area. It's similar to kokua contracts where people assist the Department. Mr. Conry acknowledged that DOFAW retains all management authority over all NARS.

Lisa Hathaway, DOFAW Natural Area Reserve Manager, was concerned with visitors going up to the 13,000 foot elevation and reiterated Mr. Conry's remarks. Ms. Hathaway wanted to formalize this relationship by institutionalizing this agreement should she or other staff leave the Department noting that DOFAW had similar partnerships. Ms. Hathaway met with the cultural advisors of the OMKM, Kahu Ku Mauna who were very happy to enter into this agreement. It was brought before the NARS commission who unanimously approved it. Then it was brought before the Mauna Kea Management Board at a public meeting where there wasn't much public concern.

Chair Thielen noted that much of the testimony the Board received was concern for DOFAW giving up management of Mauna Kea to Office of Mauna Kea Management which is not the case per Ms. Hathaway.

Ms. Hathaway reported that staff will build enclosures around a new silversword and stay at Hale Pohaku instead of staff going up and down the 13,000 feet.

Member Gon asked whether Ms. Hathaway anticipates any compromise to the mission of the Natural Area Reserve geological, natural or cultural mandates. Ms. Hathaway thought NARS would do a better job protecting those resources with this relationship. Member Pacheco concurs with Ms. Hathaway that it makes sense to formalize this.

Stephanie Nagata representing Office of Mauna Kea Management said that Kahu Ku Mauna Council raised this issue to enter into an agreement with NARS years ago and viewed Mauna Kea as a cultural landscape, a continuous landscape, not divided by political boundary that was concerned with DLNR having limited resources and not having a presence on the mountain. It was important that OMKM had a presence there to report on anything to DOCARE. Kahu Ku Mauna Council was established when the master plan was created in 2000 made up of Hawaiians from the Big Island community and advises OMKM and UH Hilo on cultural matters relating to Mauna Kea.

Marti Townsend reported that KAHEA is in strong opposition to this agreement (written testimony distributed). The University of Hawaii (U.H.) has a history of poor management and that there should be more public oversight of Mauna Kea, not less. U.H. doesn't have the same kind of public accountability as the Land Board and U.H. has

a financial interest to develop the summit of Mauna Kea which is why there are extreme habitat loss and mercury spills. It is bad judgment to work with a land owner who has been sued in court for their inability to manage. KAHEA feels U.H.'s interest is at odds with establishing the NARS. Some of the OMKM rangers have been documented participating in some desecrations and blocking of public access. KAHEA would rather see U.H. give money to DLNR to properly manage the NARS. Ms. Townsend suggested either denying the recommendation and renegotiating with the University to a block grant which the Department has done in the past or amending the recommendation to require that the actual cooperative agreement be vetted through the public process that includes going back to Hilo and bringing it back to the Land Board. KAHEA had concerns with cooperative research and the ability to enter into future agreements that may further compromise DLNR's responsibility. The agreement isn't bad, but gives an opportunity to open to worst things in the future because of the history.

Chair Thielen noted it would still have to go before the Land Board and that this agreement has gone through the public process and would continue in the future. DLNR is not giving up any authority over the NARS area. Ms. Townsend said KAHEA would prefer to see what was done in other NARS situations where a block grant was given to DLNR. Member Pacheco interjected that the Board is not here to change the NARS rules and was perplexed by Ms. Townsend's stand on this. Ms. Townsend explained that U.H. rangers will give a tainted view and reiterated giving the money to DLNR, but per Chair Thielen the legislature might take that money away for something else.

Member Pacheco described the public impact and effectiveness of the ranger program, emphasizing the cultural and natural resources and that it's not for astronomy.

Ms. Townsend said she respects the Chair's opinion and had seen the language change as far as rhetoric, but in practice has not seen that change. There hasn't been a fundamental change in the management and said during the comprehensive management plan it included an Environmental Impact Statement (EIS) for a telescope larger than anything up there.

Kealoha Pisciotta, President of Mauna Kea Anaina Hou, testified in opposition, described her organization by saying that they are the plaintiff's against the State involving U.H. and is currently in litigation in the court of appeals with DLNR regarding legal and structural integrity issues. Ms. Pisciotta described the NARS area on Mauna Kea that if this cooperative agreement is problematic because the State may not transfer their authority or jurisdiction, then why do this. Ms. Pisciotta related that this Board gives sole authority to the Chairperson to make agreements that the public doesn't ever see called ultravirus abandoning public duty which means the Board is acting in excess of their authority as public servants and that each Board member may be challenged individually where the State may not support you if it is an ultravirus challenge. OMKM is not open to the public and do not follow the Sunshine Law. OMKM was created by the University's 2000 master plan and that plan does not have any effect or force of law because it wasn't made or approved by the Board of Land and Natural Resources. All the OMKM and Kahu Ku Mauna staff are appointed or hired by the University including the

rangers. These rangers have no natural resource background and cultural resource knowledge nor any police power. Ms. Pisciotta described how her family ahu and the ceremonial lele was desecrated and destroyed by the rangers and how these rangers blocked public access to the summit impersonating a state officer. Ms. Pisciotta reiterated mis-management by the University of Hawaii and cited court made law, Kapa'akai, which bars this Board from transferring protected Native Hawaiian rights and resources to anyone else including the developer, the University of Hawaii. Also, there are DOCARE officers why the need for rangers who are people off the street and those reasons are DLNR has no money and HRS 171-17 and 18 are being violated by the State allowing the University and all the international observatories to pay only a dollar. Mauna Kea Anaina Hou has a proposal on how to find that money and opposes this agreement because they can't trust the University to do the right thing. The transfer to NARS in 1981 was a result of public outrage when the University built five (5) telescopes without permits. There were two audits that were not in OMKM's favor. Ms. Pisciotta asked the Board to uphold the law and not to approve this, but bring it back for public review. If not, she formally requests a contested case hearing.

(Chair Thielen stepped out. Member Agor covered as Chair.)

Member Pacheco noted that the OMKM operates under Sunshine Law advertising those meetings and decisions from this advisory board and then it goes to the Board of Regents.

Member Gon said he is satisfied that NARS does not relinquish their authority or obligation to manage the Natural Area Reserve describing how the public is involved with these agreements, but has found it difficult finding notices for meetings important to him. On ambiguities dealing with future agreements involving the Chair as opposed to the full Board, if this recommendation by staff is intended to allow the Board to review this cooperative agreement, and that the Board is satisfied that it maintains the protection of the NARS, and its obligations to manage does not give up any such obligations or duties then passes it to the Chair to sign as an instrument is one thing, but the way the recommendation is written is vague. Member Pacheco asked if he would he feel more comfortable taking out "to negotiate" and have the Chair sign a cooperative agreement.

Member Agor asked whether Member Gon was ok with revising the recommendation to authorize the Chairperson to sign the cooperative agreement as submitted. Member Gon agreed, but asked to take care in the Board's examination of this because this is the 4th time coming before a body. Ms. Nagata said it was unanimous (at OMKM meetings). Member Gon wanted to remove the ambiguity, "to negotiate," and would be willing to support that. Mr. Conry has no problem with that.

Member Pacheco moved to approve the recommendation and amending by striking "to negotiate" and to sign the cooperative agreement as submitted. Member Edlao seconded it.

**Unanimously approved as amended (Pacheco, Edlao)
Under staff's recommendation delete "to negotiate."**

Item D-9 Approval in Principle of Direct Lease to The Pacific Gateway Center for Multi-Purpose Keehi Community Resource Center and Related Programs Purposes, Honolulu, Oahu, TMK: (1) 1-1-3:3, 204, 205, 206, 207, 211, 212, 138.

Mr. Atta described the area and development issues that staff were agreeable with.

Tin Myaing Thein and Lyn Cabato reviewed the recommendation, agreed with and support it.

Unanimously approved as submitted (Schuman, Edlao)

Item D-10 Reconsideration of Rent of All Maunalaha General Lease (GL) Nos. S-4884 to 4913 (GL4895 was cancelled) for Residential Purposes, Maunalaha Homesites, Makiki, Honolulu, Oahu, TMK: (1) 2-5-24.

Written testimony was received.

Mr. Atta reported on background and staff recommendation was to go with a Board approved policy rental rate.

Charlotte Needham introduced Aunty Eileen, Leina'ala Lopes, Jocelyn Ka'awa, and Uncle Ola, thanking the Land Division and the Land Board. Ms. Needham asked that there be no increase to the lease fee and lobbied the Legislature for improvements, explained how the community maintains the road, described working with OCCL, and asked for a lease reduction to \$1 for their seniors.

Aunty Eileen added that the residents paid for the fire insurance because the State wanted it to be covered which is difficult for some residents to pay \$1,000 and described maintenance of the area.

Ms. Needham noted that the residents pay property tax explaining the difficulty of finding an insurance company to provide property liability coverage.

(Chair Thielen returned.)

Keola Lindsey representing Office of Hawaiian Affairs (OHA) supports the reconsideration of the general lease rents at Maunalaha on the condition that they are affordable for the residents there. OHA encourages the Board to look at that policy and what factors went into it to set the minimum rent for general leases because OHA believes Maunalaha is an exception, a special situation, that this policy should be amended on a case by case basis.

Member Gon asked for the wording of the policy to see what kind of flexibility the Board has.

Member Schuman asked if the Board is limited to minimum rent or is there leverage. Mr. Atta said the policy is for guidance which is not mandated to adhere to targeting for non-profits and that it had broad language saying anything that fostered or promoted a public purpose or the mission of the Department in terms of public trust purposes. It is the Board's discretion to grant a dollar amount.

Chair Thielen described where non-profit organizations would go and would not be applicable to this situation therefore the policy is not completely applicable here. Member Pacheco also noted that the policy is for new dispositions. Mr. Atta acknowledged that. Member Pacheco added that this area has legislative mandates.

Member Gon moved to amend staff's recommendation to say \$120 per year, strike based on the minimum rent policy for new dispositions, and subject it to the rest of the conditions. Member Schuman seconded it.

Leina'ala Lopes asked the Board why the community couldn't get \$1 a year lease like Hawaiians under DHHL.

The Board:

Amended staff's recommendation by keeping the rent at status quo by changing the rent recommendation from "\$480 per year based on the Minimum Rent Policy for New Dispositions" to "\$120 per year." Otherwise, the Land Board approved staff's recommendations as submitted.

Approved as amended (Gon, Schuman)

Item F-8 Rescind Prior Board Action of August 10, 2007 (D-7), Quitclaim of State's Interest, if any, in Remnants 3-B and 4, abutting West Kuiaha Road, to the County of Maui for Road Purposes, Makawao, Maui TMK: (2) 2-7-8:113.

Athline Clark distributed a PowerPoint briefing and written summary, acknowledging that the co-trustee representatives were here, and presented her briefing to the Board.

Member Gon commended the work with the public and the planning process.

Ms. Clark explained that the final approval process will be signed by the 3 co-managers and they turn it over to each of the agencies for approval which within DLNR is the Chairperson.

Chairperson Thielen noted that this is a non-action item briefing.

Item C-2 Authorization for the Chair to Negotiate and Sign a Cooperative Agreement with the US Fish and Wildlife Service and the Wildlife Society, Hawaii Chapter, for the Implementation of the Kaena Point Ecosystem Restoration Project, Kaena Point Natural Area Reserve and Kaena Point State Park, Oahu

Mr. Conry distributed the agreement, described the predator fence project that was developed in New Zealand, and explained the agreement.

The Board expressed interest in the fence and asked about the cost.

Mr. Conry reported that the finalization of the environmental assessment (EA) is not for a couple months.

Chair Thielen acknowledged and recognized staff for a great job on community outreach meeting the cultural concerns. Mr. Conry recognized OHA's letter of support.

Michael Lawaikokanu Kanakakanuwaia, a fisherman whose family is from the Kaena Point area, reported that all the OHA representatives from the area disapproved this fencing because of all the iwi (bones) buried there and denied it all the meetings held because the fishing community doesn't like it. Mr. Kanakakanuwaia said that there never were birds there, significant rocks were moved, and asked if the Board knew the significance of the two white leina (leaping rocks) out there. Member Gon explained leina kauhane are several spots on each island, sometimes each district, where the kupuna leap off back to Kahiki Nui, Kahiki Moe, Kahiki Pu, mahope. Mr. Kanakakanuwaia approved and explained because that place is so sacred with all the iwi a fence built there would hurt it and he finds this unacceptable.

Summer Nemith described her family's association with Kaena expressing the sacredness of this place, which the uhane (spirits) don't use gates and won't recognize, and it can't be blocked. Ms. Nemith questioned whether protecting the mole (birds) to 100% will be the proper balance for the aina (land), finds it confusing with protect these mole over the iwi, and that the mole will still be there whether there is a fence or not. Why spend money on a fence that will desecrate a wahi pana? If this is put through Ms. Nemith would like to contest it, suggested the Board look at the Kapa'akai law, and asked that all cultural impact statements are current and that all community members who have interest are involved.

Member Gon stated that cultural appropriateness is a work in process and the testimony received today could be incorporated into the cultural and environmental assessment where the Board could ask staff to do.

The way it is worded this will not come back to the Board in answer to Member Edlao's question.

DOFAW staff was asked by the Board regarding the fence on how far it will be excavated replying that the posts are dug three (3) feet and the fence about 18 inches below the surface. Mr. Conry suggested having a cultural monitor in place during the excavation.

The Board discussed the 343 process. Mr. Conry noted on page 2 of the agreement regarding completing the environmental assessment 343 process that Fish and Wildlife Service will ensure compliance with Federal Requirements 3 and 4.

Member Gon was concerned with the difference between compliance with the law and recognition of significance of wahi pana because there is always conflict with the strict adherence of the law and recognition of things not so tangible. The native plants and animals are also viewed as the kino (body) of kupuna and their protection is spiritually and culturally significant. It was recognized that for kupuna or leina physical barriers mean nothing to them. Member Gon felt comfortable with building the fence because it will be no impediment to the kupuna to leap off there. Although, the alignment is too close to iwi and wahi pana the route of the fence could be realigned to be included in the cultural and environmental assessment phase because it is important to provide protection for the plants and animals, and to include the Department into this cooperative venture. Member Gon wondered whether or not it is necessary to change the wording to reflect that. Chair Thielen said it is to provide guidance to the Chairperson to ensure that the 343 process including the cultural impact assessment would consider the concerns Member Gon raised regarding the alignment of the fence and any assistance that could be provided during construction like a cultural monitor or somebody from Historic Preservation.

Member Edlao asked about the number of families with iwi that will be affected which are numerous per Mr. Kanakakanuwaia explaining that the families spoke of a curse that will come on people who disturb Hawaiian graves and rocks including putting up a fence.

Chair Thielen explained that the Board is trying to find a balance relating the situation with the dogs getting loose and could devastate everything in the area. Mr. Kanakakanuwaia said the plants and birds will be fine and suggested the Board go with him to Kaena Point to understand the cultural, including the iwi.

Member Agor asked whether staff explored trapping. Mr. Conry said there is a contract with USFW, but the fence increases USFW chances where Member Gon added it's difficult to catch everything. Mr. Conry said staff could bring the EA back to the Board because staff doesn't want to disturb any iwi and noted that this is just to set up the relationship to work together which doesn't give any permits.

Member Gon said he doesn't see how this cooperative agreement interferes with the need for this Board to be compliant with cultural and environmental protection laws and asked for a briefing on the results of the cultural and environmental assessment before this Board to be apprised of the on-going attention paid to those which Member Gon moved to amend. Member Edlao seconded it.

Mr. Conry requested a Board briefing on the cultural and environmental assessment.

Member Pacheco wondered if permits are coming back to the Board which there will be.

Chair Thielen summarized that the Board delegated the Chairperson to sign this cooperative agreement to work with Fish and Wildlife to continue the process of the predator fencing directing staff to consider cultural concerns in the environmental process and cultural assessment when they are mitigating to address public comment. Any construction of the fence would have to come back before this Board because the Board signs off on any permits to approve construction in this area that would first go before the Natural Area Reserve Commission which is a public hearing and then come before this Board for a vote. The Board will evaluate the final alignment and gave staff direction to consider concerns raised today so the public could work with them on going through mitigation and address the comments received on the environmental assessment.

A representative who is coordinating between staff and the families affected asked about a contested case hearing and whether a permit will come back to this Board. Chair Thielen explained the contested case hearing process, reiterated her summary and acknowledged that a permit will come back before this Board.

The Board:

Approved staff's recommendation amending it to brief the Board on the results of the cultural and environmental assessment.

Unanimously approved as amended (Gon, Edlao)

Item D-1 Annual Renewal of Revocable Permits on the Islands of Hawaii, Maui, Molokai, Kauai and Oahu. (Statewide)

Member Pacheco recused himself.

There was no one from the public to testify.

Unanimously approved as submitted (Gon, Agor)

Item D-2 Consent to Mortgage, Land Office Deed S-27965 to Jim K. Aana and Marie E. Aana, Waimea, Kauai, TMK: (4) 1-6-02: Fronting 45.

Item D-3 Set Aside to Department of Land and Natural Resources, Division of State Parks for Addition to Wailua River State Park, Lihue, Kauai, TMK: (4) 3-9-4:1, 2, 8 and 4-2-3-3, 5.

Item D-4 Amend Prior Board Action of December 13, 2002, Agenda Item D-27, Sale of Remnant to 1366 Kinoole Partners LLC & GP Hoaloha, Limited Partnership; Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-25:32.

Item D-5 Consent to Assign General Lease No. S-4545, Honua Hawaii 2000, Assignor, to Boy Scouts of America, Aloha Council, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-04:131,132.

Item D-6 Forfeiture of General Lease No. S-4577, Mauna Ziona Congregational Church, Lessee, former Kalaoa School Lot at Kalaoa 4th, North Kona, Hawaii, TMK: (3) 7-3-04:05.

Item D-7 Termination of Revocable Permit No. S-7425 to Skynet Hawaii, LLC; Issuance of Revocable Permit to Mahalo Broadcasting, LLC, Kalaoa, North Kona, Hawaii TMK: (3) 7-3-49:38.

Item D-8 Rescind Prior Board Action of August 10, 2007 (D-7), Quitclaim of State's Interest, if any, in Remnants 3-B and 4, abutting West Kuiaha Road, to the County of Maui for Road Purposes, Makawao, Maui TMK: (2) 2-7-8:113.

Item D-12 Termination of Revocable Permits No. 5413, Henry Park (Deceased), Permittee; Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-058:023 seaward

Unanimously approved as submitted (Pacheco, Schuman)

Item F-6 Request for Approval for Delegation of Signature Authority to the DLNR Chairperson for Select Special Activity Permits as Authorized under 187A-6, Hawaii Revised Statutes

Mr. Polhemus said that questions were raised whether delegation of signature to the Chair was appropriate and that staff didn't find anything, although this delegation has been happening for 20-25 years therefore staff went back to the Office of the Attorney General to structure a more itemized and prescriptive delegation.

Member Pacheco asked what kind of controls are there for the Department. Mr. Polhemus said in the context of the revised special activity permits. Staff developed a new application form, developed an application check list, biologist signs off, goes to DAR administrator (who determines whether to delegate it), Chairperson receives it (determines whether to take it to the Board), and revise the actual permit itself. There are enough checks and balances.

Marti Townsend submitted written testimony.

Unanimously approved as submitted (Gon, Pacheco)

Item F-1 Request for Approval of a Special Activity Permit for Dr. Phillip Crews, University of California at Santa Cruz, to Conduct Scientific Collection Activities in Certain State Marine Waters, Island of Hawai'i Only, on Sponges, Marine Algae, Invertebrates, and Marine Sediments

- Item F-2** Request for Approval of Special Activity Permit 2009-32 for Dr. Alissa Arp, Hawaii Pacific University, and Designated Assistants
- Item F-4** Request for Approval of Special Activity Permit 2009-30 for Dr. Charles Birkeland, University of Hawaii at Manoa, Hawaii Cooperative Fisheries Research Unit, and Designated Assistants
- Item F-5** Request for Approval of Special Activity Permit 2009-31 for Mr. Eric Whiteman, Nanakuli High School, and Designated Assistants
- Item F-7** Request for Approval of a Special Activity Permit for Dr. Russell Brainard, NOAA Pacific Island Fisheries Center's Coral Reef Ecosystems Division (CRED), to Conduct Scientific Collection Activities in Certain State Marine Waters of the Main Hawaiian Islands, on Coral, Marine Algae, Invertebrates, and Marine Sediments

Unanimously approved as submitted (Agor, Gon)

- Item I-1** Request for Approval to Cancel an *In Situ* Burial Agreement with Larry Wayne Latham for Unmarked Burial Sites Located on his Property in Kaunala Ahupua'a, Ko'olauloa District, Island of Oahu

Staff had requested to withdraw this item.

No public comment.

Withdrawn. (Agor, Pacheco)

- Item L-1** Certification of Election and Appointment of Soil and Water Conservation District Directors
- Item L-2** Approval for Award of IFB-09-001-ENG, Furnish and Deliver Electronic Bid Documents and Addenda Statewide, Hawaii

No questions and no public comment.

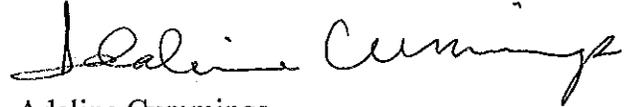
Unanimously approved as submitted (Agor, Edlao)

Summer Nemith asked for a contested case hearing on Item C-2.

Adjourned. (Pacheco, Agor)

There being no further business, Chairperson Thielen adjourned the meeting at 1:00 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:



Laura H. Thielen
Chairperson
Department of Land and Natural Resources