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

DATE:	FRIDAY, MAY 12, 2006
TIME:	9:00 A.M.
PLACE:	KALANIMOKU BUILDING LAND BOARD CONFERENCE ROOM 132 1151 PUNCHBOWL STREET HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:09 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Gerald DeMello
Ms. Taryn Schuman
Mr. Tim Johns
Mr. Ron Agor
Mr. Jerry Edlao

STAFF

Mr. Sam Lemmo, OCCL
Ms. Tiger Mills, OCCL
Mr. Russell Tsuji, Land

OTHERS

Ms. Julie China, Deputy Attorney General
Ms. Meredith Ching, K-7
Ms. Alice Machado, D-1
Mr. Steven Lim, K-5
Mr. Ron Self, K-5
Mr. Bob Graham, K-5
Mr. Randy Vitousek, K-1
Ms. Amy Tsuneyohi, K-2
Mr. Terry Rodrigues, D-8
Senator Fred Hemmings, D-8
Mr. Dean Okimoto, D-8
Mr. Lloyd Ching, D-8
Mr. Bill Tam, D-8
Mr. Rodney Funokoshi, K-7
Mr. David Tongg, D-7
Ms. Marry Carroll, K-5
Mr. Earl Hanoa, K-5
Mr. Mich Hirano, K-6
Mr. David Frankel, K-1
Mr. Kali Watson, D-8
Mr. Dave Kendrick, D-8
Representative Tommy Waters, D-8
Mr. Patrick Oka, D-8
Mr. Tom Staton, D-8
Mr. Jonathan Silverstein, D-8

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

Item A-1: Minutes of April 13, 2006 briefing

Members Schuman and Edlao recused themselves.

Unanimously approved as submitted by the remaining Board Members (Johns/Agor).

Item A-2: Minutes of April 13, 2006

Members Schuman and Edlao recused themselves.

Unanimously approved as submitted by the remaining Board Members (Johns/Agor).

Item A-3: Minutes of April 28, 2006

Members Johns and Edlao recused themselves.

The Board amended the minutes as follows:

1. **Add Toby Martyn under the Section "Members"**

2. **Page 18, Item D-14**

   "Item D-4: Lease to the University of Hawaii for Education, Housing, and Related Purposes; Waiakea, South Hilo, Hawaii, TMKs: (3) 2-4-01:por. of 24; 2-4-56:17 & por. of 14.

Member DeMello recused himself.

[~~Unanimously approved as submitted~~] Deferred due to lack of quorum.

Unanimously approved as submitted by the remaining Board Members (Schuman/Agor).

Item K-7: ATF CDUA filed by Kauai Coffee Company for Unauthorized Grading and Grubbing, Excavation, Access Road Construction, Tree Removal, Bypass Ditch Construction; and Request Approval for Future Land Use Activities Involving Operations and Maintenance Activities Related to Alexander Dam, Kauai Coffee Company, P.O. Box 8, Eleele, Kauai 96705, Applicant Rodney Funakoshi, Project Manager, Wilson Okamoto Corporation, 1907 South, Beretania, 4th Floor, Honolulu, Hawaii 96826, Subject Parcel's TMK's: (4) 2-4-008:001, 002, and 016 & 2-4-009:001 and 003.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) noted that there were two supplemental correspondences from Alexander & Baldwin (A&B) asking for amendments to the report and changes to the recommended conditions. Mr. Lemmo acknowledged that he has no problem with their recommendations. He went on to say that A&B originally came in for an after-the-fact approval for unauthorized activities conducted at

the subject site in 2001 due to some problems that arose as a result of a ditch collapse. At the present the after-the-fact application is being processed. In addition A&B proposes to conduct future maintenance activities on the dam. At this time due to some complexities resulting from the floods on Kauai and dam maintenance issues, AB has asked that the two issues be separated and set aside the issue of future maintenance activities for a later date. Mr. Lemmo recommended the Board approve the after the fact conservation district use application for all of the actions that were conducted in 2001 without the Board's authorizations subject to the terms and conditions listed in staff's submittal.

Meredith Ching, representing Alexander and Baldwin was present to answer any questions and provided written testimony.

The Board amended the following:

1. "Discussion" Section

"The proposed use is an identified land use in the Conservation District, according to Section 13-5-23, Hawaii Administrative Rules (HAR), L-1, AGRICULTURE, (D-1), "Agriculture within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry, and L-3, EROSION CONTROL, (D-1), "Erosion control, flood control, and other hazard prevention devices or facilities."

Staff notes the ATF CDUA is for improvements that were conducted without authorization - unauthorized grubbing and grading action, unauthorized excavation of 33,000 cubic yards of soil, unauthorized construction of an access road, unauthorized tree removal, and unauthorized bypass ditch construction - and for future land use activities that involve operations and maintenance activities related to Alexander Dam, the Forebay, irrigation ditch, and appurtenant facilities, and revegetation. [~~Another related issue, but separate from the CDUA, was the landslide that recently occurred during heavy rain. A landslide blocked a 150-foot section of the repaired irrigation ditch The ditch carries water from the 810 million gallon Alexander reservoir to a forebay supplying the Kalaheo hydroelectric plant and Kauai Coffee irrigation system.. With the exception of the emergency spillway the irrigation ditch was the sole means of releasing water from reservoir. Water was released from the reservoir via the spillway, and was overflowing the ditch upstream of the slide and undermining the ditch (causing erosion downstream). Restoration actions were necessary to: 1) prevent excessive erosion to the ditch banks and down slope areas; 2) allow water released from the reservoir to reach Kalaheo hydroelectric plant and coffee irrigation system; and 3) maintain Wahiawa Stream water quality.~~

~~The applicant notes that the emergency repairs to the ditch and access road were intended solely to restore the structures to the same condition as existed prior to the damage. Work would consist of clearing and restoring the ditch and access road, and stabilizing the slope above and below the ditch as necessary to ensure the structural integrity and to minimize potential future erosion. Staff notes on that day emergency authorization was given to Kauai Coffee to make the requested~~

emergency repairs (Exhibit 5). Repairs were completed and the ditch restored to operation by April 12, 2006. However, the applicant notes that they were not able to stabilize the slide area above the ditch, and as a result there remains a potential for another slide to cover the ditch again in the future.

According to the applicant, they intend to install approximately 400 feet of high-density polyethylene (HDPE) pipe in the ditch, anchored by a concrete headwall; additional engineering studies are being conducted to complete the additional work (which is necessary to ensure that the ditch remains in operation in the event of further landslides in the area). The applicant notes that they understand the work is covered by the March 21, 2006 emergency repair authorization, and the work will also be covered by the CDUA. A plan identifying the repair work will be submitted under separate cover (Exhibit 6). Staff believes that the emergency repair work on the irrigation ditch may be extended to take additional measures to ensure that the irrigation ditch remains open, subject to the Department's approval of an engineered plan prior to such action taking place and only if the additional work is deemed as emergency in nature.

Future Maintenance Activities

Staff notes that the Final Environmental Assessment for the project contains a table of "Operations, Maintenance, and Repair Activities" (Exhibit 7, Table 1). The applicant is seeking approval to continue with these activities. Staff notes that some of these activities involve routine maintenance, such as weed control, for which no approval would be required, while there are other uses that could potentially require some level of review and approval from the Department. For instance, Item 7 of Table 1 refers to "general maintenance and landscaping of the surrounding areas in accordance with an approved Soil and Water Conservation Plan, to prevent erosion." These measures could potentially involve modification of landforms, necessitating review by the Department. Staff believes that it would be pre-mature to grant a blanket approval covering all aspects of dam maintenance, beyond routine activities such cutting grass, and clearing debris from ditches.

This is because the Army Corps of Engineers, and DLNR Engineering Branch referenced needed corrective actions for the Alexander Dam, in the March 2006 "Visual Dam Safety Inspection" Report. Based on the recommendation of this report, staff believes that it would be unwise to pre-approve any future work that might be performed under the guise of "maintenance" until the corrective actions required in the "Visual Dam Safety Inspection" report are addressed.

Pursuant to staff's conversation with the Engineering Division, Kauai Coffee Company would need to have a consultant review their report with acceptable methods and/or actions to address the issues in the report. Upon acceptance, the Engineering Division will need to issue a "Dam Construction Alteration and Removal Permit."

~~Thus, staff will recommend that no additional work will be conducted on the Alexander Dam and its appurtenant facilities, with the exception of routine maintenance and the continued emergency repair of the irrigation ditch (if deemed appropriate and emergency in nature), until Kauai Coffee receives the approval of the Engineering Division for a Dam Construction Alteration and Removal Permit. Staff notes that the corrective actions required by a Dam Construction Alteration and Removal Permit could potentially require Kauai Coffee to obtain another CDUP if the required actions require significant changes to the dam or its appurtenant facilities.~~

~~Lastly, staff notes that Kauai Coffee will need to discuss with the Land Division – Kauai Branch the requirements for an Easement on State-owned land(s) for the bypass ditch, and after the ATF CDUA is approved by the Board, submit and expedite an Easement~~]

2. Recommendation 3)

"That this permit is only for the after-the-fact improvements [only] and remedial work to restore the areas affected by the 2001 work [~~If Kauai Coffee wishes to conduct additional repair work on the ditch it shall submit a request with engineered plans to the Department prior to conducting the work. The Department will review the plans in consultation with the Engineering Division and determine if the repair work qualifies as emergency repair work~~];

3. Delete Recommendation 4)

[~~That this permit is for after-the-fact improvements only and does not provide Kauai Coffee with a blanket approval to operate, maintain and repair dam and dam related facilities, beyond routine maintenance.~~]

4. Delete Recommendation 5)

[~~That upon approval of the Dam construction Alteration and Removal Permit, Kauai Coffee will consult with the Office of Conservation and Coastal Lands to determine in a CDUA is needed for the additional corrective work;~~]

Unanimously approved as amended (Agor/Johns).

Item D-1: Issuance of Right-of-Entry Permit to Kauai Island Utility Cooperative on Lands Encumbered by Revocable Permit S-7335 to Kenneth Bray, Wailua, Lihue, Kauai, TMK: (4) 3-9-01:02.

Mr. Tsuji informed the Board that the Kauai Island Utility Cooperative (KIUC) is seeking a right-of-entry permit to conduct soil testing. At present the land is encumbered under a revocable permit to Kenneth Bay. KIUC will need to obtain written concurrence from all users of the subject land. Mr. Tsuji recommended the Board authorize the issuance of a right-of-entry permit to Kauai Island Utility Cooperative covering the subject area under the terms and conditions cited in staff's submittal.

Alice Machado representing the applicant confirmed they will only be testing the soil.

Unanimously approved as submitted (Agor/Johns).

Item D-7: Consent to the Assignment of Grant of Non-Exclusive Easement Bearing Land Office Deed No. 27766, Shang Wen Chen, Trustee, Assignor, to Association of Apartment Owners of 2765 Round Top Drive, Assignee, Makiki, Honolulu, Oahu, TMK: (1) 2-5-5:5 road.

Mr. Tsuji indicated the applicant has formed an Association of Apartment Owners and would like to transfer the easement to the Association. Mr. Tsuji recommended the Board consent to the assignment of Grant of Non-Exclusive Easement bearing Land Office Deed No. 27766 from Shang Wen Chen, Trustee, as Assignor to Association of Apartment Owners of 2765 Round Top Drive, as Assignee subject to the conditions listed in staff's submittal.

David Tongg was present.

Unanimously approved as submitted (Schuman/Agor).

Item K-5: Amendment to Condition 7 & 9 of Conservation District enforcement File No. HA 05-19 Located at Hokukano, Ka'u, Island of Hawaii, TMK (3) 9-5-016:036.

Member Johns recused himself.

Mr. Lemmo pointed out the applicant is requesting an extension in order to comply with the Board's order of January 13, 2006. One of the Board's conditions required the applicant to conduct a study to determine if lighting from the residence has any impact on the hawksbill turtle's behavior. At this time the applicant is asking for an extension until July 12, 2006 to complete the study. In addition the applicants are seeking an amendment to the condition that requires the applicant to work with staff to determine if an after-the-fact subdivision is required. Mr. Lemmo indicated upon review of the land exchange documents, staff believes that an after-the-fact subdivision is not required, however to clarify County tax map records, the Carroll's must obtain the required approval from the County of Hawaii to effect the subdivision/consolidation of the land exchange. Mr. Lemmo recommended the Board approve the amendment for an extension of 90 additional days to complete and submit a report to determine the potential impacts of lights from the Single Family Residence on Hawksbill turtle nesting behavior in the subject area and that the Carroll's obtain the required approval from the County of Hawaii to effect the subdivision/consolidation of the access road land exchange approved by the Board on January 10, 1975 subject to the conditions listed in staff's submittal.

Steven Lim, Attorney for the applicant appeared before the Board. Mr. Lim went on to give the Board a status report on what has been going on since the last time they appeared before the Board. Mr. Lim confirmed that OCCL has approved their "as built" plans and these plans have been given to the county for final approval. OCCL has also approved the applicant's landscaping plan which includes planting of seventeen koa and kamani plants. Mr. Lim noted the turtle study is in progress and their consultant has already been out to the subject site. As

far as the consolidation/subdivision issue, Mr. Lim acknowledged that he has spoken to the county planning office and were essential told that the tax key map is correct. The county also informed him when the subject parcel was consolidated and resubdivided in 2000 that action essentially cured the need to do the consolidation/subdivision that was required in 1970's. Mr. Lim stated he would be working with the planning department on this issue and have them submit a letter to OCCL to confirm this fact. Mr. Lim asked that condition nine be amended to read "The Carroll's shall obtain the required approvals from the County of Hawaii to confirm the subdivision/consolidation of the land exchange of the access road with the subject property within ninety (90) days of the Board's action."

Ron Self, Attorney representing Kau Preservation noted that this has been a controversial approval as 1) the subject structure is built on a graveyard; 2) the area has an enormous amount of endangered species and 3) because of the cultural and historical factors that have existed along this coast for thousands of years. Mr. Self pointed out the subject structure has altered the view plane of the Kau Coast. He also made it know that the hawksbill and green sea turtle nest along the entire Kau Coast. There are also Hawaiian monk seals that travel along the coast and the area is also visited by the Hoary bats. Mr. Self pointed out the Carroll's have denied grubbing and grading the subject area but he provided the Board with a declaration from the individual that conducted the grubbing and grading on the property. He also provided the Board with an Archaeological Burial Record of the subject area and the applicant's building permit application. In closing Mr. Self asked the Board to set aside their previous order and have the applicant remove the subject structure.

Earl Hanoa disputed the claim made by Mr. Lim by stating that the National Park's Service does not allow their employees to conduct private studies. He told the Board they could contact Cindy Orlando from the National Park's Service to confirm this fact. Mr. Hanoa believes the structure was illegal built on an unspoiled coastline. He let it be known the turtles nest about a hundred to two hundred yards from the subject structure.

Bob Graham, a resident of Kau and a retired teacher testified. He spoke of his concern with outsiders coming into the area with real cultural insensitivity as they do not respect the current situation. He feels the Board is just rubberstamping the situation. He spoke of a television interview with Mrs. Carroll in which she stated that she sees nothing wrong with living next to a cemetery. Mr. Graham noted there are 2 chiefess buried on the subject site. He feels this process has been dragging out and the applicant is living in the subject structure that has not been inspected. Mr. Graham feels the applicant has a blatant disregard for the rules. Mr. Graham asked the Board to use common sense and have the applicant remove the subject structure.

Written testimony was received from Donald C. McIntosh and Ronald G. Self.

The Board amended Recommendation 2) as follows

"[~~That condition 9 of Enforcement File HA-05-19 is amended to provide that the [Carrols obtain the required approval form the County of Hawaii to effect the subdivision/consolidation of the land exchange of the access road within 90 days of Board action~~] <u>The Carroll's shall obtain the required approvals from the County of H</u>[<u>awaii to</u>

confirm the subdivision/consolidation of the land exchange of the access road with the subject property within ninety (90) days of the Board's action;

Unanimously approved as amended by the remaining Board members (DeMello/Agor).

Item K-6: Conservation District Use Application (CDUA) MA-3286 for the Replacement of the Waiehu Golf Course Maintenance Building and Associated Improvements Located at Waiehu, island of Maui, TMK (2) 3-2-013:006.

Mr. Lemmo noted the proposed project site is located at Waiehu on the north side of the island of Maui. The proposed action will involve the demolition of three existing maintenance structures and the construction of a new maintenance building and associated improvements. Upon completion and occupancy of the new building, the remaining maintenance building will be demolished. Mr. Lemmo recommended the Board approve this application for the replacement of the Waiehu Golf Course maintenance building and associated improvements.

Unanimously approved as submitted (Edlao/Johns).

Item K-1: Waive Oral Request for a Contested Case Hearing, and Appointment and Selection of a Hearing Officer to Conduct All Hearings for One (1) Contested Case Hearing regarding Conservation District Use Application (CDUA) HA-3269 for Mr. Jonathan Cohen's Request to Construct a Single Family Residence at Paoo, North Kohala, Hawaii.

Mr. Lemmo indicated a public hearing was held on this permit at Spencer Beach Park and at that meeting there was no request for a contested case hearing (cch). He went on to say according to the rules of practice and procedure one has to make a request for a cch at the public hearing and follow it up with a written request. However when this item came before the Board, the attorney for the applicant requested a contested case hearing. Mr. Lemmo noted the Board has the power to waive the requirement for the request to be made at the hearing. Mr. Lemmo recommended the Board waive the petitioners' failure to make an oral or written request for a contested case hearing by the close of the public hearing at which the matter was heard, authorize the appointment of a Hearings Officer of Contested Case HA-06-03 and let the Hearing Officer conduct all the hearings relevant to the subject petition and delegate the authority of selection of a Hearing Officer to the Chairperson.

Chairperson Young noted at the last meeting there were others that requested a contested case hearing relating to this matter. Mr. Lemmo pointed out at the time this submittal was written staff had not received the other petitions for a cch and he chose not to address that issue. Mr. Lemmo announced he would address those petitions when it was received. Mr. Lemmo stated there would be the opportunity for those parties to request to be interveners should there be a contested case hearing.

Randy Vitousek, Attorney for the applicant pointed out the 180 day time extension expired on May 9 and if staff believes there was not a proper request for a cch then there would be no basis to request an extension of the 180 day deadline. Mr. Vitousek disclosed that he was planning to request an extension to the 180 day deadline but was told by staff that he would also need to

request a contested case hearing at the same time. With respect to the interveners, Mr. Vitousek noted they can either proceed with their own contested case hearing or he'd stipulate that they could be viewed as petitioners to join in this contested case hearing as parties.

David Frankel, representing Makai Kamakani O Kohala confirmed at the last meeting they made an oral request for a contested case hearing and followed that oral request with a written request. He pointed out at the last meeting Kakoo submitted a written request for a contested case hearing. Mr. Frankel disagreed with the statement made by staff that the request was late because the public hearing held was not required, it was a discretionary decision. He asked the Board to either amend staff's recommendation to simultaneously waive the time requirement for Makai Kamakani O Kohala and Kakoo as well as Mr. Cohen today or alternatively defer this item to complete everything at the next meeting.

Julie China, Deputy Attorney General stated that according to the rules a public hearing on this matter was required (HAR 13-5-40). She also confirmed that the Board would need to waive the oral request for a contested case hearing.

The Board amended

1) Recommendation 1)

> **"That the Board waive the petitioners' (Mr. Cohen, Makai Kamakani, O Kohala and Kokoo) failure to make an oral or written request for a contested case hearing by the close of the public hearing at which the matter was heard."**

Unanimously approved as amended (DeMello/Johns).

Item K-4: Time Extension for the Processing Period for Conservation District Use Application HA-3250 for the Commercial Use of Hand Quarried Volcanic Ash Located on State Land, Puu Nene, Humuula, North Hilo, island of Hawaii, TMK (3) 3-8-001:001.

Mr. Lemmo acknowledged that staff received two petitions requesting a contested case hearing on this issue therefore the applicant is requesting a sixty (60) day time extension to complete the hearing process. Staff believes that it's not enough time to complete the process therefore Mr. Lemmo recommended the Board amend the applicant's request and extend the processing period for CDUA HA-3250 an additional 120-days (to September 18, 2006) to allow sufficient time to complete the contested case hearing process.

Mr. Vitousek, attorney representing the applicant informed the Board the request for a contested case hearing was done at the December 9, 2005 meeting. Aside from the fact that a hearings officer has been appointed, Mr. Vitousek points out nothing else have been done to move the hearing forward in the last five months. Mr. Vitousek feels that this is a simple application. Mr. Vitousek pointed out staff's submittal states that the applicant wishes to extend the 60 day time extension request and this is not true. He feels people will work better under short deadlines.

Tiger Mills, Planner with OCCL stated that a hearings officer has been selected but she is in the process of blocking out dates for the hearing as well as finding a location.

Unanimously approved as submitted (DeMello/Edlao).

Item K-2: Conservation District Use Application (CDUA) for OA-3274 for the Makaha Valley Fence Project, Island of Oahu, Ms. Donna Kiyosaki, Deputy Manager, Board of Water Supply, City and County of Honolulu, 630 South Beretania Street. Honolulu, Hawaii 96843-0001, Subject Parcel's TMK's: (1) 8-4-002:001 and 014.

Mr. Lemmo announced that the proposed project is located in Makaha Valley. The project is being funded by the military to protect native ecosystems in Makaha Valley. The Board of Water Supply (BWS) will build a large fence enclosure of 100 acres to protect important plant species and three small fence enclosures to protect other areas within the valley. A public hearing on this matter was held on March 6, 2006 at Waianae District Park in which seven participants attend and voiced approval of the proposed project. However, the hunters requested unrestricted access to the project area. Mr. Lemmo noted the area is a closed watershed and the BWS does not allow recreational activities within the area. With regards to native Hawaiian practices, BWS has proposed to provide a fence ladder or walk over so individuals could access the area. As far as the issue of hunting, Mr. Lemmo feels that issue needs to be worked out between the BWS and the hunters association. Mr. Lemmo recommended the Board approve this application to construct the proposed Makaha Valley Fence Project subject to the eleven conditions listed in staff's submittal.

Amy Tsuneyoshi, representing the Board of Water Supply was present. Ms. Tsuneyoshi informed the Board whenever they receive a request from hunters to enter the watershed it is processed through their land division and if their activity is approved a right-of-entry permit approved by the manager of BWS is issued. She also made it known for this project they will conduct a controlled hunt.

Unanimously approved as submitted (Schuman/Johns).

Item K-3: Request to Amend Title 13, Chapter 222, Hawaii Administrative Rules (Shoreline Certification Rules).

Mr. Lemmo indicated the definition of shoreline provides direction and guidance on delineating our shoreline for the purposes of jurisdiction and county setback. The definition of "shoreline" according to § 205A-1, Hawaii Revised Statues differs from the definition under § 13-222-2. The proposed action is to bring the definition of shoreline under the rules into conformance with the definition under the Hawaii Revised Statue. To accomplish this goal, staff would like to delete some language from the rules as follows: "Shoreline" means the upper reaches of the wash of the waves, other than storm or seismic [~~tidal~~] waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or [~~where there is no vegetation in the immediate vicinity,~~] the upper limit of debris left by the wash of the waves." Mr. Lemmo communicated that public hearings were held on Kauai, Maui, Hilo, Kona and Oahu. Approximately 15 individuals testified on the proposed action. While most of the individuals spoke in support of the proposed action rule

amendment, several attorneys submitted written testimony expressing concerns or objections. Mr. Lemmo recommended the Board approve the Office of Conservation and Coastal Land's request to amend Chapter 13-222, Hawaii Administrative Rules inclusive of all amendments as proposed in Exhibit A and authorize the forwarding of rule amendment to the Governor, State of Hawaii, for approval and enactment.

Unanimously approved as submitted (John/s DeMello).

Item D-8: Resubmittal for Forfeiture of General Lease No. S-5707, All Tree Services, Inc., Lessee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:48.

Mr. Tsuji reminded the Board this is a resubmittal that was heard by the Board on two previous occasions. Originally this item was brought to the Board because the tenant was using the subject area as a baseyard and for storage of equipment for his tree trimming business. At the last meeting the item was deferred and the Board asked staff to reconfirm the type of activity going on at the site. Since that time, staff has conducted several unannounced inspections of the subject area and it appears to staff that the tenant is using the area solely for nursery operations. Mr. Tsuji confirmed the tenant has complied with and cured any remaining defaults except for a county violation that came up in April relating to lack of a building permit. Staff has discussed this issue with the tenant and he is in the process of remedying the default. Mr. Tsuji recommended the Board defer this matter another sixty (60) days, in accordance with Staff's comments and recommendations cited in its submittal.

Mr. Tsuji let it be known that the tenant has signed a sworn declaration stating the subject area is solely being used for his nursery operation.

Member Johns had concerns that the tenant continues to accrue additional violations while cleaning up previous violations. With regards to the County violation, Mr. Tsuji noted the tenant failed to acquire a building permit for the structures on the site. He noted that the tenant will be submitting plans for the area which the department will review and there is no guarantee that the plans will be approved. Upon approval from the department the plans will be submitted to the county. Mr. Tsuji also confirmed that Mr. Rodrigues declared that kiawe wood is no longer being sold form the subject site although staff was provided a receipt of kiawe wood purchased after the April 28, 2006 meeting.

Kali Watson, Attorney representing Terry Rodrigues, the tenant appeared before the Board to provide testimony. He disclosed that he does not agree with the use of the property but his client has complied with staff's recommendations so that his lease would not be terminated. Mr. Watson let it be known they've put together an agricultural plan to use the entire property and together with Dave Kendrick conducted a power point presentation of these plans. Mr. Watson's presentation also showed a revised building plan for the site which will be submitted to the department. Mr. Kendrick clarified testimony given at the April 28 meeting in which a statement was made concerning his use of pesticides on plants. Mr. Kendrick informed the Board that he operates an air layering operation which is independent of the tenant's organic nursery. He pointed out the statement made saying that Mr. Kendrick uses pesticides actually deals with his air layering business. Addressing the declaration signed by Mr. Rodrigues, Mr. Watson would like to revise it to more accurately reflect what the situation is especially dealing with his baseyard as it is no longer in Kapolei but in Aikahi. Mr. Watson believes staff's goal

was to get full compliance and he believes that has been achieved. He also noted his agreement with staff's recommendation to defer action for an additional sixty days in order for his client to obtain the necessary department and county building plan approvals.

When questioned by the Board if a building permit was obtained, Mr. Watson noted they were in the process of obtaining an after the fact permit because the department had not approved the building plans submitted and thus could not be forwarded to the county for final permit approval. Mr. Watson announced the structural engineer has redrawn the plans and it will be submitted to the department prior to May 20, 2006.

Mr. Watson noted the declaration signed by his client was done so with the threat of termination of his lease. He declared that the declaration was signed under duress. Mr. Rodrigues stated the original staff submittal dealt with the property being used as a baseyard but upon compliance with that issue staff brought up additional violations. He questioned what's next and when will this come to an end. Mr. Rodrigues further stated that he was lead to believe that he could conduct his tree trimming business on the subject parcel per the application he sent in which was approved by the department.

Senator Fred Hemmings communicated the Board's decision must be a strategic decision no matter how hard the decision is as the buck stops with the department. He believes the issue of government officials being intimated by the threat of lawsuits need to be put aside so the right decision can be made. Senator Hemmings stated that the department must send a message 1) that important agricultural lands must be protected; 2) we must protect individuals complying with the rules and 3) we must protect the integrity of the process.

Representative Tommy Waters who represent the 51st district stated that the farmers are concerned that agricultural lands are being used for non-agricultural purposes. Representative Waters disclosed he visited the subject site and he doesn't feel All Tree Service is farming the land. He believes All Tree Service is in default of the terms of their lease. Representative Waters summarized the situation by communicating that the department has given an agricultural lease no a non-farmer under false pretenses. Lastly, Representative Waters questioned if Mr. Kendrick is subleasing the property from All Tree Service as the terms of the lease state that subleasing is a violation. He also questioned if All Tree Service has W-2 forms, and if they are paying workman's comp or unemployment insurance for their workers.

Dean Okimoto, President of Farm Bureau and owner of Nalo Farms provided testimony. Mr. Okimoto disclosed that in the qualification process the committee looked at the business plan and the viability of the business when qualifying to bid. With regards to the plans submitted he noted that All Tree Service's plans did not indicate a baseyard on the property if it did Mr. Okimoto would've denied the application. He went on to say All Tree Service's business plan was based on growing trees and selling the trees. Mr. Okimoto feels there are too may abuses in which agricultural lands are being used as a baseyard. In closing Mr. Okimoto disclosed that the original plans did not call for an organic farm so why now is there an organic farm.

Patrick Oka a nursery man and landscaper who is helping All Tree Service testified before the Board. Mr. Oka confirmed within the past month he has planted over 100 native Hawaiian palms on the subject property as he believes there is a need for this type of palm. He took offense to the Farm Bureau's characterization that the subject site is an ugly nursery as he feels

he is more qualified to assess the aesthetic aspect of a plant nursery. He feels this nursery is much nicer than a majority of nurseries in Waimanalo. Mr. Oka believes the asset value of the plants on the property when sold would exceed $50,000. He acknowledged he has built unauthorized structures on this property without a permit therefore he feels the department is merely picking on All Tree Service. Mr. Oka stated what the department is doing to All Tree Service is not justified. In terms of subleasing the subject property Mr. Oka believes it is a standard practice being done by everyone in Waimanalo and he sees nothing wrong with subleasing the property.

Lloyd Ching, Owner of Ching's Nursery testified. He feels what All Tree Services is doing complies with the terms of the lease. He believes State government and its officials should represent all people by helping its citizens not tear them apart. Mr. Ching communicated that tree trimming is a part of agriculture and pointed out that there are many parcels in Waimanalo using their property as a baseyard. Mr. Ching announced that he is afraid of the authority the Board holds as he feels the Board can take away his lease which is not fair. He asked the Board to come up with policy that is clear to everyone.

Tom Staton, owner of the property located directly across of the subject property and a farmer for over twenty years testified. Mr. Staton acknowledged he has a master of science degree in botany from the University of Hawaii and knows plants very well. Mr. Staton testimony focused on the history and track record of willful violations by All Tree Service. He spoke of All Tree Service's baseyard a mile away from the subject site, selling of kiawe wood on the property, grubbing and grading on the subject property, lack of a conservation plan which led to major erosion from the property, construction of asphalt parking lot and buildings, and using the subject site for the tree trimming business.
Bill Tam, Counsel for the Waimanalo Agricultural Association spoke of the building violation by All Tree Service. He provided the Board with copies of the original plans signed by the department and pointed out the revisions made on Mr. Watson's power point presentation was not the same. Mr. Tam indicated the building and the restroom was not included on the original plans. He feels there is a pattern and practice of not complying with the terms of the lease and instead the department has received one explanation after another for the violations. Mr. Tam believes All Tree Service has had its due process.

Jonathan Silverstein, a taro farmer and a subcontractor for Mr. Kendrick testified that the subject parcel is a farm despite the statements made by the Farm Bureau. He stated that the issue of lease compliance is dear to him as he is trying to obtain a lease from the department. He conveyed that the subject nursery is clean and employs people and he believes it is a viable business if given the necessary time.

Responding to Mr. Tam claim regarding the building plans, Mr. Watson indicated the original plans showed the restroom has being attached but when it was constructed it was done as a detached unit. He confirmed the plans being prepared for the county will show the restroom as being detached. Mr. Watson disclosed that Mr. Kendrick is working as an independent consultant/partner in this nursery.

When asked by the Board to clarify how revenue from the business is dispersed, Mr. Watson announced that an LLC was created, but there was no sublease. What they are considering is transferring the lease to the alchemy company so there is purely a nursery type of activity going

on. He noted Mr. Kendrick is working on the property not as an employee nor is he under a sublease. Mr. Watson is suggesting that Mr. Rodrigues and Mr. Kendrick set up an account where revenues from the nursery would be deposited and used to pay for the mortgage and other expenses but at present there is no formal agreement between the two gentlemen. Mr. Kendrick acknowledged the majority of stock on the property belongs to himself. As far as their business relationship, Mr. Kendrick stated he has designed the nursery operation to cater to the operation Mr. Rodrigues had in the beginning with the option of a partnership or Mr. Rodrigues would be allowed to buy him out (paying for installation of the nursery, design and concept and the plants).

Mr. Rodrigues stated prior to Mr. Kendrick coming on board he used his resources to clean the property, remove trees and place the ground work on the property to start the nursery. He made it known he did not remove any trees of value.

Mr. Tsuji noted the lease allows for assignments and subleases with prior approval by the Board. He also stated that he did not know if the business relationship between Mr. Rodrigues and Mr. Kendrick is a default of the terms of the lease.

Written testimony was received from Roland Ejercito, Jr.

The Board asked staff to provide clarity on the status of the Lessee's building permit application and a definitive description on the business relationship with Mr. Kendrick.

Approved as submitted (Schuman/Agor).

Yes – Members Schuman, Agor and Edlao.

No – Chairperson Young, Members Johns and DeMello.

Motion fails.

The Board amended the Recommendation as follows

"That the Board defer this matter another [~~sixty (60)~~] thirty (30) days, in accordance with staff's comments and recommendations cited above."

The Board asked staff to provide clarity on the status of the Lessee's building permit application and a definitive description on the business relationship with Mr. Kendrick.

Approved as amended (DeMello/Edlao).

Yes – Members DeMello, Edlao, Agor, Schuman.

No – Chairperson Young and Member Johns.

Motion passes.

Item D-4: **RESUMITTAL – Lease to the University of Hawaii for Education, Housing, and Related Purposes; Waiakea, South Hilo, Hawaii; TMK: (3) 2-4-01:por. of 24; (3) 2-4-56:17 & por. of 14.**

Member DeMello recused himself.

Unanimously approved as submitted by the remaining Board members (Johns/Agor).

Item D-2: **Rescind Prior Board Approval for Set Aside to Division of Boating and Ocean Recreation for Boatyard; Set Aside to County of Hawaii for Park and Related Recreational Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-32:3, 4, 8,19, 87 & 88.**

Item D-3: **Grant of Perpetual, Non-Exclusive Avigation and Noise Easement to State of Hawaii, Department of Transportation, Airports Division, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:41.**

Item D-5: **Grant of Perpetual, Non-Exclusive Easement to Hilo Meishoin for Utility Purposes, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-57:por. 01.**

Item D-6: **Consent to Assign General Lease No. S-5142, Cynthia Lee Kuahuia Baeza, Assignor, to Larry Patrick Kuahuia, Assignee, Milolii-Hoopuloa, South Kona, Hawaii, TMK: (3) 8-9-14:28.**

Item F-1: **Request for Approval to Amend the Scope of Services and Compensation and Payment Schedule for Contract No. 53058 with the University of Hawaii (UH) to Develop an Aquatic Wildlife Conservation Strategy.**

Item J-1: **Request for Approval to Enter into a contract with CSV Consultants to Develop Strategies to Address Ocean Recreation User Conflicts Across the State.**

Item L-1: **Approval for Award of Construction Contract – Job No. 500BH42A, Demolition, Debris Loading, Hauling and Disposal Puu Anahulu Homestead, North Kona, Hawaii.**

Item L-2: **Rescind Prior Board Action of March 10, 2006 (Item L-2), Award of Contract – J00C302A, Maui Baseyard Office ADA Barrier Removal, Kahului, Maui, Hawaii and Approval for Award of Construction Contract - Job No. J00C302A Maui Baseyard Office ADA Barrier Removal, Kahului, Maui, Hawaii.**

Item L-3: **Request for Authorization for the Geological Survey, United States Department of the Interior (USGS) and its agents, employees, and consultants, to enter upon private property for the purposes of investigating, installing, operating and maintaining remote sensing gages and related instrumentation equipment, conducting inspections and hydraulic calculations on and around dams and reservoirs located within**

the State of Hawaii pursuant to Hawaii Revised Statues Chapter 179D and Authorize the Chairperson to negotiate agreements with the USGS.

Item L-4: **Certification of Election and Appointment of Soil and Water Conservation District Directors.**

Item M-1: **Issuance of a Direct Lease – Mokulele Flight Service, Inc., Honolulu International Airport.**

Unanimously approved as submitted (Johns/Agor).

There being no further business, Chairperson Young adjourned the meeting at 12:52 p.m. Tapes 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,

Terry Crowell

Terry Crowell

Approved for submittal:

PETER T. YOUNG

Chairperson

Department of Land and Natural Resources