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

DATE:	FRIDAY, NOVEMBER 17, 2006
TIME:	9:00 A.M.
PLACE:	KALANIMOKU BUILDING LAND BOARD CONFERENCE ROOM 132 1151 PUNCHBOWL STREET HONOLULU, HI 96813

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

MEMBERS

Mr. Peter Young
Mr. Ron Agor
Mr. Samuel Gon III
Ms. Taryn Schuman
Mr. Tim Johns
Mr. Jerry Edlao
Mr. Robert Pacheco

STAFF

Ms. Charlene Unoki, Land
Mr. Dan Quinn, State Parks
Mr. Ed Underwood, DOBOR
Mr. Francis Oishi, Aquatics
Mr. Sam Lemmo, OCCL
Mr. Paul Conry, DOFAW
Ms. Dawn Heggar, OCCL

OTHERS

Mr. Vince Kanemoto, Deputy Attorney General
Marsha Erickson, E-1
Karen Diamond, C-1
Louis Watson, F-4
Antoinette Lee, F-4
Sue White, F-4
Tony Costa, F-4
Frank Farm, F-4
Georgia Handle, F-4
William Aila Jr., F-4
Cha Smith, F-4
Mac Poepoe, F-4
Darrell Tanaka, F-4
Luis Peloho, F-4
Leimana DeMata, F-4
Donna Kahalehui, F-4
Hailey, F-4
Pauline Sato, F-4
Dr. Anthony, F-4
Tim Lui Kwan, K-2
Michael Cheung, F-4
Dede Harin, F-4
Kim Hum, F-4
Carl Jellings, F-4
Mr. Apo, F-4
Kelvin Ching, F-4
Randy Kosaki, F-4
Charles Burrows, F-4
Judy Caparita, F-4
Dale Bonar, F-4
Haunani, F-4
Leimomi Kang, F-4
Shawn Bannell, F-4
Bruce Anderson, F-4
Heidi Guth, F-4

Terrence George, F-4
Ellen Tong, F-4
Linda Paul, F-4
Jane Duncan, F-4

Minu Alsion, F-4
Shannon Cronen, F-4
Correen Knudsen, F-4

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

Item A-1: Minutes of October 27, 2006

Member Schuman recused herself

Unanimously approved as submitted (Edlao, Johns)

Item E-1 Request Approval to Enter Into a 20 Year Lease Through Direct Negotiations With Hui O Laka, a Hawaii Eleemosynary Corporation for the Civilian Conservation Corps Camp and Kokee Museum Site in Kokee State Park, Waimea, Kauai.

Mr. Dan Quinn, Administrator of the Division of State Parks, reported that the Hui O Laka has been operating the Kokee Museum since 1954. This submittal is primarily requesting a lease that will include the Civilian Conservation Corps Camp (CCC Camp) and will remove from the lease the recreation, residential cabin. He is requesting to amend some of the conditions; one being to shorten condition #4, to highlight that the property is historic property and is subject to the State's Historic Preservation project review process. The rest of the conditions are general and the lease will include more specific conditions.

Marsha Erickson, Executive Director of Hui O Laka, testified in support of Staff's recommendations. She had some comments for consideration; one on the 2nd page of submittal dealing with the character of use. It reads that "the character of use would be solely for the operation and maintenance of cultural and educational programs and displays for the general public". She is encouraging to add "and park management," which would allow Hui O Laka to provide overnight housing for park volunteers and visiting researchers. She also disagrees about the use of the cabin because it is integral for their operations. The cabin is being used for onsite supervision and security purposes.

Mr. Quinn noted that the cabin is located in Puu Ka Pele which is rather far from the actual site. Rather he would like accommodations to be closer to the museum.

Dr. Anthony testified that if the Board approved the recommendations of Staff, they will be setting a precedent for other non-profits who might be interested in making similar arrangements with the State. He hopes that they will treat other applications in an even-handed manner such as this one.

Member Johns suggested adding a provision in the lease that would allow them to stay in present cabin but have the option to relocate.

The Board:

Amend Background section, page 2 of submittal to read:

"...The proposed lease area will [~~not~~] include the Hui o Laka recreation residence cabin that is currently the subject to GL-5126 that has it leased premises an area of .72 acres at Puu Ka Pele and the Kokee Museum but does not include the CCC camp. Previously, in 1985 the Board gave permission for the Hui o Laka Executive Director to maintain their principal residence at the Puu Ka Pele cabin, whereas the other recreation residences leases do not allow full time residency. If this lease is approved by the Board, <u>the Puu Ka Pele Cabin and lot, currently under</u> GL-5126 that expires December 31, 2006 [~~will be unbundled and the Kokee recreation residence will go to a revocable permit with the other 96 recreation residences~~] and the Kokee museum and the CCC camp will be covered by this proposed lease.

Amend Staff recommendations:

"[~~3. All new construction and renovation will require the approval of the Chairperson.~~

~~4. The lessee shall not at any time during the lease term construct, place or remove form said premises any permanent structure or improvements of any kind and description whatsoever except with the prior approval of the Board and upon such conditions and the Board may approve.~~]"

<u>3. All construction and renovation will require the approval of the Chairperson, and, as the CCC camp is a significant historic property listed in the National and State Register of Historic Places, any new construction, alteration of the existing structures, or change in landscaping undertaken by the lessee that could affect this historic property shall be done in a manner that maintains the integrity and character of the property and in compliance with the State's historic preservation project review process (HRS §6E-7 and 8; HAR §13-275).</u>

<u>4. Any permanent improvements constructed or erected by the lessee upon the demised premises shall become the property of the lessor upon expiration or termination of the lease.</u>

<u>10. Allow Hui o Laka to stay in the present cabin, but the State shall retain the option to withdraw land and buildings for the lease with 6 weeks notice to the lessee should a more appropriate location for the Executive Director become available."</u>

Unanimously approved as amended (Johns, Agor)

Item J-1 **Cancellation of Revocable Permit No. B-03-06, Magic Island Petroleum, Permittee, Ala Wai Small Boat Harbor, Honolulu, Hawaii, Tax Map Key: 2-3-37:30**

Item J-2 **Requesting Final Approval of Amendments to Chapter 13-242, Hawaii Administrative Rules, as They Relate to Cruise Ship Fee Increases and Requesting Authorization to Submit the Approved Rule to the Governor for Final Adoption.**

Chairman Young reported that there were Sunshine Law concerns regarding both of theses items due to typographical errors. Therefore, the Attorney General's Office has advised the Board to withdraw these items and it is anticipated that they will be acted upon in December.

Unanimously approved as withdrawn (Johns, Gon)

Item D-7: **Resubmittal: Sale of Reclaimed Land to Eddie D. Holmes and Lorraine M. Holmes, Kahaluu, Oahu, TMK: 4-7-10:13, seaward. (ODLO/AL)**

Ms. Charlene Unoki, Assistant Administrator for the Land Division, asked for an amendment. Staff would like to delete recommendation number 4, which is the requirement for the deposit. Rather, they will just go through the regular process in which they hire an appraiser to have a value determined.

Unanimously approved as amended (Johns, Schuman)

Item D-4 **Reconsideration of Rent under General Lease No. S-5149 to Honolulu Academy of Arts, for Youth Education and Art Center Purposes, Honolulu, Oahu, TMK: (1) 2-4-2:20 (ADMINISTRATION/Charlene)**

Unanimously approved as submitted (Johns, Pacheco)

Item C-2 **Ka'u Preserve: Request for Enrollment in the Natural Area Partnership Program, Approval of the Long-Range Management Plan, Authorization of Funding, and Conservation District Use Approval for Activities Identified in the Long-Range Management Plan.**

Member Gon recused himself.

Unanimously approved as submitted (Edlao, Agor)

Item C-1 **Accept Dedication of a Perpetual Trail Easement by Landowner of an Existing Coastline Trail and to Include this Trail Easement as a Part of the Na Ala Hele trail and Access Program and Relinquishment of**

Right to Re-establish Trail Along or Near the High Water Mark: Moloa'a, Kauai, Hawaii, Tax map Key, (4) 4-9-11:1.

Mr. Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW), asked for an amendment on page 3; Remove [VI] box.

Karen Diamond, on behalf of the Sierra Club, wanted a deferral until the following agencies have an opportunity to review and comment on the proposed agreement and survey: Kaua`i Historic Preservation Review Commission, Kaua`i County Public Access, Open Space & Natural Resources Commission, and Sierra Club, Kaua`i Group of the Hawai`i Chapter. They believe that in the absence of a Na Ala Hele Citizen Advisory Group on Kauai, the public's interest would be better served with a third party review. They requested that a site visit be arranged to allow the public and the agencies noted above, to see the proposed trail easement because the correct delineation of this culturally significant asset is important to the public. Another concern was the request for "relinquishment of right to re-establish trail along or near the high water mark" and requested that acceptance of the certified shoreline wait until the end of winter. Finally, they were concerned with DOFAW's recommendations to Board on Page 4. They question the accuracy of Finding 1B and have concerns about Finding 1D that the State will quitclaim to the landowner all other remaining interests the State still has or may have.

Curt Cottrell, Na Ala Hele Program Manager, reported that attention was brought to this item due to a pending CDUA/SMA process taking place for this area. For both of the processes, the public asked for the ability to restore shoreline access. He reiterated that Kauai does not have an active Trail and Access Citizen Advisory Group, [~~but~~] and reported that it was due to years of lack of quorum. The alignment of the easement was what the public was interested in so when they went out to do the survey, they assumed that the easement chosen would suit the public because it provided shoreline access roughly along the trail in use. There was some deviation along the alignment to connect it to next adjoining property owner's fence, where there was an existing gate. There is a contentious situation on claiming the trail in the next parcel so they are land banking the trail and putting it under the Na Ala Hele jurisdiction for regulatory purposes and the land owner offered to do a long term maintenance and management of the feature via a MOA. In absence of a Trail and Access Advisory Council, Staff went on, what they felt to be "a good faith effort" to service the community based on their comments during the SMA process. While they are unsure if the trail is in fact the historic trail, Staff feels that they have provided a line across the ground that they felt was safe and manageable over time to the next adjoining parcel and ultimately to get from Moloa'a Bay to Larson's Beach. Staff believes they are serving the public interest with this board action.

Mr. Conry reported that the trail did not have to be reestablished at the original location. Therefore, they are trying to reestablish something that is agreeable to the landowners.

Curt Cottrell reported that he was unsure if the trail alignment in use was the same historic trail because of a tsunami that took place in the 40s which altered the land. When

Staff went on site, they followed the alignment that everyone was walking. There is a slight deviation at the terminus heading towards Larson's Beach at the next adjoining property to connect it to the gap where there is an old gate in the fence. The shoreline does not give them a lot of room to navigate because of cliffs and sloping hill, therefore, the trail is in the relative area that people have been walking for quite a while.

Member Agor wished for more exhibits before making a decision.

William Tam had photos at his office and asked if the Board would defer until the end of the meeting. He reported that it is a time sensitive issue because this has held up a number of other permits and if it was to be delayed, they would need to ask for deferrals from the other agencies involved.

Dede Harin, resident of Kauai, reported that this is a prime lobster and diving area. Any shoreline must remain free access shorelines to Native Hawaiians.

Item deferred until later.

Item K-2: Conservation District Enforcement File MA 07-15 Regarding Unauthorized Construction of a 100,000 Gallon Potable Water Tank; Unauthorized Construction of a Road/Utility Easement; Unauthorized Drainage Easement; Unauthorized Placement of Utility Poles; Multiple Unauthorized Tree Removal; Unauthorized Grubbing, Grading and Land Clearing; Unauthorized Accessory Fence Structure Located at Wailuku, Maui, TMK (2) 3-3-002:001

Member Edlao was concerned with only the contractor being fined and questioned why the landowner and county did not bare the burden of some of the fines. Therefore, he would like to defer this item until Staff figures out how they are going to split the fine.

Mr. Lemmo reported that the developer is being fined because he was the one responsible for obtaining the permits. They are trying to focus enforcement action on the actual violator and not just the landowner. He does not want a case against the Maui County because it would never be resolved. The developer was there and willing to resolve this today

Tim Lui Kwan, attorney for the developer, reported that the developer is willing to take responsibility for the violations. The developer was developing the adjoining parcel for a subdivision and the plans were approved for the water tanks. At the time, the engineers and planners believed, on the basis of the County zoning maps, that the property in question was in the agriculture district. They got a grading permit for the tank site, a building permit for the tank, permits for the road way, and got a variance. It was inspected an approved, but as they were building the subdivision, the County learned that their maps weren't correct and the area was in conservation district. They are willing to take responsibility because they should have verified the zoning themselves. They feel the landowner should not be fined and neither should the County because they have been

marinating the site since it was turned back over to them almost 2 years ago. The developer wanted to resolve the issue today and is in agreement with the recommendation.

Approved as submitted (Edlao, Johns).

Item K-4: Conservation District Use Application for an After-the-Fact Seawall and Drainage Outlet.

Unanimously approved as deferred (Johns, Edlao)

Item F-1: Request for Final Approval to Establish New Hawaii Administrative Rules, Chapter 13-65, Wailua Reservoir Public Fishing Area, Kauai.

Francis Oishi, from the Division of Aquatic Resources, reported that the Attorney General had reviewed the draft rule and the inclusion of definitions for certain terms along with some minor language changes for legal clarity.

Unanimously approved as submitted (Agor, Johns)

Item F-4: Request for Final Approval to Amend Hawaii Administrative Rules, Chapter 13-75, Rules Regulating the Possession and Use of Certain Fishing Gear, to Include Rule Amendments for the Use of Lay Nets.

Member Gon recused himself.

Mr. Oishi reported that 9 statewide public hearings were held in which more than 500 people attended and 192 of those people testified. 1047 people provided written testimony, 850 were in favor of the proposed rule changes. At the hearings, approximately half of those who testified were in favor and half were not. The division received petitions from:
Fair Catch and Fair Catch Youth: 286 signatures against the proposed changes.
Molokai: 400 signatures
Anahola, Kaui: 1300 signatures
Tamashiro Market: 1300 signatures

Based on the public comments and Staff's evaluation, the Department recommends the following changes:

1) Amend the definition of gill nets
2) Repeal of section 12 which is a general gill net section.
3) Allow a maximum of 250 feet of lay net use provided that one net, up to 125 feet is registered to one fisherman and the other net, up to 125 feet is registered to a different fisherman.
4) Allow the use of lay nets in streams, or mouths of streams provided that nets are not set beyond the half way point of the stream or the stream mouth at the location of the set.

5) Provide for immediate seizure by the Department of any lay net that is not in compliance with the lay net rules.
6) Lay net prohibited areas as described in tables and maps at the end of the Chapter shall Sunset in 5 years and provided that the Department may amend the Sunset provision or prohibited areas by Board action at a publicly noticed meeting.
7) Provide specific rules for Molokai.

At the advice of the Attorney General, a motion was made to go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Motion to go into executive session, unanimously approved (Edlao, ?)

Board went into executive session at 10:05 am

Meeting back in session at 10:32 am

Chairman Young reported that they had discussed the issue that because the proposed rules has now been amended and is different than what was specifically taken out to public hearing, can the Board can act on them today or do they need to go out for further public hearing. Based on consultation from the attorneys, non-substantial types of amendments can be acted on and based on testimony today, we can make further non-substantive types of amendments. There is one section of the proposed rules that deals specifically with Molokai and it is felt that that section is substantive. Therefore, based on testimony today, the advice of the Attorney General was that it should not be acted on today. However, if authorized by the Board, it could go out for further public hearing and then can come back to the Board for final hearing.

Louis Watson, resident of Kaneohe, testified that he believes it is wrong for BLNR to decide where people can fish. If you take fishing away there will be more homeless; fishing helps to sustain lives. One handful of people shouldn't be able to decide rules for everyone else. Must abide by common sense in order to live together.

Inaudible name, spoke in Hawaiian first and stated that he is from Hilo and spoke of the ineffectiveness of the Burial Council. Gave an example of a burial site being found and the distress the people have with the Government. He believes that Hawaiians have divine rights given to them by the Ali'i and the BLNR has no authority to create this rule.

Michael Cheung, comes from a fishing background, testified that he was brought up to fish, both commercially and recreationally. They catch fish to feed the general public. He feels people coming to Hawaii need to be educated on our laws and needs better enforcement. Asks BLNR to take a look at our rules and give DOCARE more money and manpower to enforce the rules. Believes DOCARE has enough rules to enforce.

Antoinette Lee, President of the Association of Hawaiian Civic Clubs, read written testimony in opposition. Asked for a deferral until DLNR can meet with the Native Hawaiian Community.

Dede Harin testified that her families are fisherman. She is total agreement on some of the regulations on the nets, especially the tagging. Does a lot of night lay net and to allow only 2 nets equaling 250 feet they would have to work their way along the shoreline. She believes that if they stop lay netting at night, they are going to create criminals because at night is when the menpachi and aweoweo run.

Sue White, Green Peace and Earth Trust, urged the BLNR to listen to the Hawaiian Civic Club and have them involved with the enforcement issues will be important to the future of the monk seals, turtles, and Hawaii fisheries. Strongly supports registration of the nets and asks the Board to consider allowing the transfer of nets. She also is asking the department to give fishermen instructions on how to release turtles and seals if caught in the nets.

Kim Hum, from the Nature Conservancy, read written testimony in support of rules. However, they are concerned with the Sunset provision, the inclusion of paipai, and nets should not be allowed in river mouths.

Tony Costa, Hawaii near shore fisherman, opposed to proposed rule amendments. Read written testimony and provided copies of a publication from the University of Florida Cooperative Extension Service on what happens after the ban. He also asked the Board to defer action.

Carl Jellings showed pictures of the fishing techniques that he uses. He showed a net that a seal got caught in. In all of his years of fishing, he has never killed a turtle of seal. His nets are normally in the water for 40 minutes. He showed the amount of money generated from catching menpache and u'u. He targets certain fish. He is in favor of having I.D. nets and if I.D. is not present, it will be confiscated. He also feels that the rules do not protect the seals because the seals are hungry and want the fish.

Frank Farm, read written testimony and feels the State is missing comments from the real stakeholders. He is disappointed with the process the Department used, i.e. amendments made and public not able to testify to these amendments. He asked for a deferral.

Mr. Apo, testified that people that make the law are putting them in poverty. These rules hurt the Hawaiians and spoke of the effects of cargo nets killing the turtles and seals. The Hawaiians will perish at the hand of BLNR. His issue is one of fairness. He asks BLNR not to ban gill nets for people who use it as a source of income.

Georgia Handle, told BLNR that the seals are returning from the North Western Hawaiian Islands and we need to give priority to protect them. She hopes that the State will not ban native Hawaiian cultural rights. She asks the State to create a statewide ban

on gill nets but allow exception for Hawaiians. She also submitted a petition to create statewide ban on gill nets.

Kelvin Ching, lifetime resident of Kahalu'u and representative of Kaneohe Regional Council Fishing, believes this issue was started by people blaming fishermen for depletion of resources. He wants science to shows the cause of the decline in the fish population. He questions whether the Department really knows how many fish there are. In summary, he believes there should be no ban on gill nets until studies are done to back it up.

William Aila Jr. testified that as a Hawaiian he supports the submittal, but would love see it go back to the kapu system. Submitted written testimony.

Randy Kosaki, marine scientist and concerned fisherman, supported the proposed amendments and asks BLNR to look at banning gill nets statewide. However, he would like to eliminate the 5 year Sunset clause from the regulations.

Unidentified speaker feels that rules are against native Hawaiians and believe the Department is against their race. They ask that the BLNR to go and take to the community if they are making any changes to the rules.

Cha Smith, Executive Director of Kahea, noted her support of the original proposed rules. However, she doesn't believe the amendments will have the same support because it weakens provisions. She is concerned with the Sunset, 2 fishermen, paipai fishing, and fishing in river mouths. She asks the BLNR to approve the original rules.

Charles Burrows testified that his organization works to restore native ecosystems and habitats. He spoke of our responsibility to conserve and protect our resources. They support the original rules, but feel the amendments weaken the rules. They favor the Sunset provision if the fish stock increases with yearly reports to back this up.

Mac Poepoe testified that monk seals don't belong here, it was brought here. As for turtles, if it gets caught in the nets, he eats it; it's food. If the Department bans the gill nets in Molokai, people won't listen. They will continue to do what they're doing. He feels that Molokai is different and should have is own rules.

Judy Caparita testified that the provisions for Maui were set by its people. She was raised on fish, goat, deer, and wild pig. The people have to be pono to take care of their resources. They know how to take care of their resources. Molokai agrees with departments rules but asked for 3 provisions.

Ms. Caparita's sister testified that it is not pono for Hawaiians to fight Hawaiians.

Darrel Tanaka testified in favor of the ban. He feels that each island needs to speak for themselves. He spoke as a voice for Maui. He stated that since the meeting is on Oahu, not all opinions are being heard. He believes that irresponsible net fisherman caught three

times in violation should have their nets taken away. He is in support of the original rules and does not support the sunset provision.

Dale Bonar, marine biologist, testified in support of original rules. He spoke on the decline of fishes and at the meeting held on Maui, people have asked for an outright ban on gill nets. He believes that the sunset amendment would put the reefs back to the way it was. He stated that gill nets should be banned permanently.

Luis Peloho was concerned with coral reefs and fish depletions. He supports the original rules and is against any amendments to soften the rules. He believes that the sunset amendment and allowing nets to be strung together should not be allowed.

Haunani asked why the intelligence of the Hawaiian people is being questioned. They have been here for many years and know how to take care of their resources. The responsibility should be placed in the peoples' hands, not the government.

Leimana DeMata, resident of Hawaii, touched on the spiritual connection of the Hawaiians with the ocean and the land and asked that the decision be deferred as there are different conditions on each island.

Leimomi Kang, Association of the Hawaiian Civic Club incoming president, asked that the BLNR defer decision until Native Hawaiians can give their input. She believes that the value is in the malama of the ocean and the land. Their lifestyle is being impacted by western rules and policy and would like the Hawaiians to be empowered with the ability to make decisions on this land.

Donna Kahalehui stated that she privileged to be Hawaiian and that their responsibility is to the resource first. She is in support of the rules but requested that BLNR speak to the communities as each has its own needs (i.e. fishing for subsistence).

Shawn Banell spoke about the Hawaiian monk seal and stated that there are 80-100 seals left around the Hawaiian Islands. He feels that the seals need our protection and therefore is in support of the proposed rules.

Hailey felt that it is hard for the kapu system to continue. She spoke on the decline of the reefs and felt that the rules are something that must happen.

Bruce Anderson, representative from the SHORE and Oceanic Institute, stated that there is no single action except banning gill nets that would protect nearshore fisheries. He pointed out that undersized fish will not survive even if let go. He is in support of the original rules but not the amended rules. He believes that the paipai methods should be dealt with separately and asked BLNR to approve original rules. Written testimony provided.

Pauline Sato, resident of Oahu and on behalf of Malama Hawaii, testified in support of original rules and is concerned with the sunset rules and wanted the paipai rules looked at separately. Provided BLNR with testimony from other people.

Heidi Guth, representative from OHA, opposed a statewide ban on gill nets until staff has met with all of the communities. She spoke of the department's willingness to listen to the community and make necessary changes. They support the proposed amendments.

Terrence George, Vice President of the Castle Foundation, testified in support of the original rules and opposes the efforts to weaken them (i.e. sunset and 2 nets). He gave statistics on the large amount of people supported restrictions.

Minu Allison testified in support of the rules and read written testimony.

Ellen Tong, Hawaii Audubon and Hawaii Pacific Fisheries, testified that she grew up gill netting in Kaneohe Bay. She is in support of gill net regulations and a ban because her priority is the next generation. She is worried that fishing might end with the next generations and indiscriminate take of all ocean resources.

Jim Anthony testified in opposition to the rules. He believes that rules are premature and that the staff submittal is fatally flawed and selective. He said that Staff submittal is grounds for the BLNR to rethink this issue and defer action. Staff's approach was flawed and he believes that they should go to each section of an island and meet with them. He believes that if the design was not flawed, Staff would have presented a different set of recommendations. He pointed out that there is no scientific information to show that gill nets are the cause of the depletion of the fish stock. He asked that the BLNR defer action.

Shannon Cronen testified in support of the original rules and questioned to process that was used to conduct the poll.

Linda Paul stated that monofilament nets have destroyed fish populations and underwater environments. Provided written testimony and urged the BLNR to pass the rules.

Coreen Knudsen agreed with K. Hum's and S. Cronover's testimony. She spoke of the 75% decline of the fish population and that in the last 2 years, 4 monk seals have been killed.

Jane Duncan provided written testimony and is in support of the rules, but wishes to remove sunset amendment.

The Board:

1. **Approved the proposed rules with the following changes:**

   a) Increased the commercial fishing depth allowance from 80 feet to 100 feet.

b) Changed the time allowed to use lay net from between 1 hour before sunrise to 1 hour after sunset, to between 2 hours before sunrise and to 2 hours after sunset.

c) Include new definitions and updated maps (as proposed at the 11/17 Board meeting)

d) Include a change to the provision allowing the department to immediately seize any lay net not in compliance with any provision of the rule.

2. Send the Molokai rules and all other opposed amendments, including the 250' maximum length allowance for lay nets, an allowance for use of lay nets in rivers and streams, and 5-years sunset provision for lay net restricted areas, brought before the Board today, back out for public hearing

3. The department will continue to create and amend the existing lay net rules and come back to the Board with a new set of proposed amendments, taking into consideration native Hawaiian gathering rights and the ability for the Board to move forward on additional community based management plans. Also, to take into account methods used by responsible fishermen.

Unanimously approved as amended (Johns, Schuman)

Item F-2: Request for Approval to Hold Public Meetings and hearings to Repeal Hawaii Administrative Rules Chapter 13-92, Opihi, and Amend Hawaii Administrative Rules Chapter 13-95, Rules regulating the Taking and Selling of Certain Marine Resources, to Include Amended rules for the Take of Opihi and for the Take of Spiny Lobster, Kona and Samoan Crabs.

Chairman Young wanted to clarify that the catch and quart size included the shell and that the size limit is based on shell size at its narrowest point. He also raised some questions brought to him by some fisherman. One question dealt with whether there is a difference between opihi at the intertidal range versus in deep water, possibly due to reproductive activity. Mr. Oishi responded that those are just the opihi's habitat. Another question was whether these rules could be used across the board, for all species of opihi. Dan Pohemus, Administrator for the Division of Aquatic Resources (DAR), responded that it could, but there are size differences between the species.

Darell Tanaka is in favor of an increase in size and asks that DAR maintain the standard of measure. He highly recommends an across the board size limit (1 ½ inches at widest diameter/point) and a bag limit is needed before passed.

The Board:

Amend rules to change the size to 1 ½ inches for all species.

Unanimously approved as amended (Johns, Edlao)

Item F-3: Request for Approval to Hold a Public Hearing to Amend Hawaii Administrative Rules, Chapter 13-51, Kahului Harbor, Maui Fisheries Management Area.

Unanimously approved as submitted (Edlao, Johns)

Item C-1: Accept Dedication of a Perpetual Trail Easement by Landowner of an Existing Coastline Trail and to Include this Trail Easement as a Part of the Na Ala Hele trail and Access Program and Relinquishment of Right to Re-establish Trail Along or Near the High Water Mark: Moloa'a, Kauai, Hawaii, Tax map Key, (4) 4-9-11:1.

Mr. Cottrell reported that they had reached an agreement and that Ms. Diamond noted her agreement with the wording of the recommendation.
He proposed amending item 1d to read: Accepting the land owner's dedication of a perpetual easement will best facilitate management of trail by the State and in turn to perfect title, the State will quitclaim or grant to the land owner whatever remaining or inchoate interest the State still has or may have in the trail as provided in land patent No. 10095 as set fort in the attached survey description.

The Board:

Amendment to Staff Recommendation:

"1.
d. Accepting the land owner's dedication of a perpetual easement will best facilitate management of trail by the State and in turn to perfect title, the State will quitclaim or grant to the land owner whatever remaining or inchoate interest the State still has or may have <u>in the trail as provided in land patent No. 10095 as set fort in the attached survey description</u>."

Unanimously approved as amended (Agor, Johns)

Item D-1: Amend Prior Board Action of September 8, 2006 (Item D-3), Cancellation of Revocable Permit No. S-7309 to George B. Fernandes and Issuance of Revocable Permit to Michael J. Fernandes for Pasture Purposes; Wailua, Kawaihau, Kauai, TMK: (4) 4-1-9:08. (KDLO/Joanne)

Item D-2: Cancellation of Revocable Permit No. S-7255 to George Santos and Issuance of Month-to-Month Revocable Permit to Gwendolyn Naomi Santos for Pasture Purposes; Honomu Homesteads, Hawaii, TMK: (3) 2-8-10:03. (HDLO/Gordon)

Item D-3: **Amend Prior Board Action of April 22, 2005, Item D-6, Termination of Revocable Permit No. S-7139 to Big Island Radio; Issuance of Revocable Permit to Skynet Hawaii, LLC, for Radio Tower Site at Kalaoa, North Kona, Hawaii, TMK: (3) 7-3-49:38 (HDLO/Wesley)**

Item D-5: **Consent to Assign General Lease No. S-5123, Floyd A. Miller, Jr., Trustee of the Floyd Miller Revocable Trust, dated January 16, 1998, Assignor, to Mark David Melen, Assignee, Fort Ruger, Diamond Head, Honolulu, Oahu, TMK: (1) 3-1-042:portion of 14. (ADMINISTRATION/Charlene)**

Item D-6: **Amend Prior Board Action of October 13, 2006, Agenda Item D-10; Authorization to Execute Leases for Private Noncommercial Pier Purposes issued after June 30, 2006; Wailupe and Kaneohe, Oahu: TMK: (1) 3-6-1:34, 4-4-18:74, 4-4-37:35, 4-5-58:37, 4-7-10:40, 4-7-30:15 seaward. (ODLO/Barry)**

Unanimously approved as submitted (Johns, Gon)

Item K-1: **Conservation District Enforcement File KA 06-72 Regarding Alleged Unauthorized Construction of Chain Link Fence Within the Conservation District Located at Wainiha, Hanalei, Kauai, TMK (4) 5-8-009:025.**

Ms. Dawn Hegger, from the Office of Conservation and Coastal Lands, asked for a deferral.

Karen Diamond reported that the fence was constructed below the high wash of the waves and would like the fence removed in a timely manner before someone gets hurt. She feels that lateral access should not be blocked.

Unanimously approved as deferred (Agor, Johns)

Item K-3: **Conservation District Use Application (CDUA) HA-3370 for the After the Fact Radio Repeater Site Located at Pu'u Honuaula, Kaupulehu, North Kona, Island of Hawaii, TMK: (3) 7-2-001:001**

Unanimously approved as submitted (Pacheco, Gon)

Item L-1: **Approval for Award of Construction Contract – Job No. B71DO71B, Replace Floating Dock "F" at Ala Wai Small Boat Harbor, Oahu, Hawaii**

Item L-2: **Certification of Election and Appointment of Soil and Water Conservation District Directors.**

Unanimously approved as submitted (Johns, Pacheco)

Item M-2: Issuance of a Direct Lease – Schuman Aviation Company, LTD. Honolulu International Airport

Member Schuman recused herself.

Unanimously approved as submitted (Johns, Agor)

Item M-1: Amendment to Issuance of a Direct Lease Together with a Construction Righ-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1)9-1-14:24 (Por) and (1)9-1-74:37 & 38

Item M-3: Issuance of a Long-Term Lease U.S. Department of Agriculture, Animal, Plant and Health Inspection Services, Wildlife Services for Office Kahului Airport.

Item M-4: Issuance of a Long-Term Lease U.S. Department of Agriculture, Animal, Plant and Health Inspection Services, Plant Protection and Quarantine for Office at Kahului Airport.

Unanimously approved as submitted (Johns, Edlao)

Item M-5: Issuance of Direct Lease – Helicopter Consultants of Maui, DBA Blue Hawaiian Helicopters, Lihue Airport.

Member Pacheco recused himself.

Unanimously approved as submitted (Johns, Edlao)

There being no further business, Chairperson Young adjourned the meeting at 2:30 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,

Lauren Yasaka

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources