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

DATE: FRIDAY, FEBRUARY 10, 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 9:13 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Ron Agor
Mr. Tim Johns
Mr. Toby Martyn
Ms. Taryn Schuman

STAFF

Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, Parks
Mr. Barry Cheung, Land
Ms. Charlene Unoki, Land
Mr. Richard Rice, DOBOR

OTHER

Ms. Linda Chow, Deputy Attorney General
Mr. William Wynhoff, Deputy Attorney General
Mr. Michael Lee, K-1
Ms. Celeste Laquesta, K-1
Mr. Glenn O Miller, K-1
Ms. Shareen Saito Tam, K-1
Mr. Larry Baird, D-5
Ms. Angela Starke, D-9
Ms. Grace Kido, D-2
Mr. Cam Cavasso, E-2
Mr. Paul Matsunaga, E-2
Ms. Marge Dente, E-2
Mr. Wayne Jacintho, E-2
Mr. Ed Holland, E-2
Mr. Scotty Sagum, E-2
Ms. Linnel Nishioka, K-1
Mr. Kai Markell, K-1
Mr. Henry Chang, K-1
Mr. Walton Hong, k-2
Ms. Moana Keaulana, D-6
Mr. David Bettencourt, D-9, E-2
Mr. Karen Sunahara-Teruya, D-8
Mr. Anthony Locricchio, E-2
Mr. Scott McCaffrey, E-2
Mr. Fred Dente, E-2
Mr. Donn Carswell, E-2
Ms. Linda Vicones, E-2
Ms. Sherry Adams, E-2

ITEM A-2

Ms. Pam Chock, E-2
Mr. Jim Coon, J-1
Mr. Bill Mossman, J-1, J-2

Ms. Marsha Erickson, E-2
Mr. Greg Howeth, J-1, J-2
Mr. Reg White, J-1, J-2

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

Item A-1: Minutes of January 12, 2006 briefing

Deferred due to lack of quorum.

Item A-2: Minutes of January 27, 2006

The Board made the following changes:

Page 1 "Members"

"[~~Mr. Gerald DeMello~~] <u>Mr. Ted Yamamura</u>

Unanimously approved as amended (Johns/Schuman).

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 for Conservation District Use Application (CDUA) OA-3266 for HASEKO (Ewa) Inc.'s Request to Construct Papipi Road Drainage Project.

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands informed the Board a public hearing was held for a Conservation District Use Application (CDUA) for the Papipi Drainage out fall at Ewa Beach. During the public hearing staff informed those present they had a right to request a contested case hearing (CCH) on this issue. Upon closure of the hearing, no request was made for a CCH. Subsequently, staff received a request for a CCH. Mr. Lemmo recommended the Board waive the petitioner's failure to make an oral request for a contested case hearing by the close of the Board meeting, at which the matter was scheduled for disposition, authorize the appointment of a Hearing Officer and delegate the authority for selection of the Hearing Officer to the Chairperson.

The Board questioned Mr. Lemmo as to why the petitioner did not request a CCH by the close of the public hearing. Mr. Lemmo noted he was not sure why the request was not made. He indicated he read verbatim from the law what the public's right was and reiterated that a request should be made prior to the close of the meeting.

Michael Lee appeared before the Board and asked that they approve staff's recommendation. Mr. Lee confirmed that his written request was submitted in a timely manner although is verbal request was deficient. Mr. Lee reminded the Board under Article 12, Section 7 of the Hawaii State Constitution they have the right to protect the traditional and customary practices of the Hawaiian people prior to the issuance of this CDUA. He believes the cultural

assessment for the proposed project does not live up to the guidelines of the Environmental Council for conducting such cultural assessments in its spirit or intent. In closing Mr. Lee humbly and respectfully requested that the Board grant an exemption to the requirement for a timely oral request for a contested case hearing as he is tying to save and perpetuate a better understanding of the amazing cultural resources at risk in Ewa and to perpetuate the collective heritage of all who call Hawaii home.

When asked by the Board if he participated in ongoing discussions with Haseko and the community Mr. Lee replied that Haseko never came to them in the guidelines that they should search out people. Mr. Lee stated that Haseko gathered residents from the area and took them on a walk on the beach as part of their assessment but he noted these individuals were not fishermen or divers from the area. Mr. Lee indicated the results of the assessment stated there were no effects on the limu and no cultural significance in the place Haseko was looking at for the proposed work. Mr. Lee stated Haseko was aware of their existence but choose not to include their group in the meetings.

Linnel Nishioka, attorney representing Haseko let it be known under this fact pattern she does not believe it is appropriate to waive the oral request for a contested case hearing. She pointed out Mr. Lemmo did a very good job at the public hearing notifying the public twice that they needed to make an oral request prior to the close of the hearing. With regards to Haseko's efforts in working with the community, Ms. Nishioka noted the mediation process has been very detailed and everyone was invited to participate. She confirmed Uncle Henry was invited to participate as he was head of the limu project but she does not know the extent of Mr. Lee's participation as he is not a resident of the Ewa Beach area. Ms. Nishioka made the Board aware of the fact that Haseko has gone through the public processes, the SMA process and the Environmental Assessment has already run its course. Mr. Nishoika urged the Board not to waive the requirement for the timely request for a contested case but instead deny the petition as untimely.

Celeste Laquesta pointed out they were one of the organizers that planned the mediation meetings for the Papipi Road Drainage Project. She stated the community was aware that the drainage system would be placed in the area but they did not know the drainage would go into the ocean. She also communicated that the plans for the drainage project were not made available until June at which time the City has already approved the plans. Ms. Laquest revealed Haseko instructed her not to have Uncle Henry, Uncle Glen or the media present at their mediation meetings. Ms. Laquesta stated that she feels Haseko did not treat them like a good neighbor.

Mr. Lee made it known at the public hearing he asked for clarification on what needed to be done to contest the proposed project. He disclosed he did not understand that he needed to contest the proposed project prior to a decision being made. Mr. Lee pointed out Mr. Lemmo read the rules governing the request for a contested case hearing but could not state it in lay terms.

Kai Markell, representing the Office of Hawaiian Affairs (OHA) acknowledged his presence at the public hearing but he did not give advice to the group present today. He indicated at the close of the hearing they expressed that they would like to request a contested case

hearing and received the necessary forms. At that point they were under the impression that they were following the rules. Mr. Markell felt it was not OHA's place to intervene in this action at the meeting.

Glenn O Miller a resident of Ewa Beach conveyed that he was present at the hearing conducted. He felt the mediation was selective (not fair) as the ocean encompasses a vast area therefore everyone in the community should have been invited to the meetings. Mr. Miller feels Haseko invited individuals who were favorable to their project to be included in the mediation process and excluded those against the project. Mr. Miller pointed out prior to the start of the hearing he asked for a contested case hearing but he did not following up with the necessary paperwork. Mr. Miller told the Board he wants to preserve what is left of the limu in Ewa.

Henry Chang told the Board he started this limu project in 1998. He pointed out the area that Haseko plans to place the drainage is the area that he wants to use for his limu project. He thought the proposed project was to place the drainage by the gulch. Mr. Chang confirmed met with Haseko to look at other alternatives. Mr. Chang believes the run off water from the drainage into the ocean will kill the seaweed and all of the invertebrates. Mr. Chang acknowledged he does not know the rules but all he wants to do is to protect the area.

Shareen Saito Tam, Director of Community Relations for Haseko acknowledged they hired and paid for a mediator to conduct the meetings. With regards to who was invited to attend the meeting, Ms. Tam stated an announcement was made at the neighborhood board meetings as to when the mediation meetings were to be held. Ms Tam acknowledged subsequent notices were sent to those that attend the mediation meetings as well as those living in that direct neighborhood.

Written testimony was received from Linnel Nishioka and Michael Lee.

Unanimously approved as submitted (Johns/Agor).

Item K-2: After the Fact (AFT) Conservation District Use Application (CDUA) KA-3259 for Proposed Landscaping and Gate Installation by the landowner Nellie and Cookie Trust, Haena, Island of Kauai, TMK: (4) 5-9-002:025.

Unanimously approved as submitted (Agor/Johns).

Item D-5: Approval in Principle of Acquisition of Interest in Privately-Owned Land at Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-08:03.

Member Johns recused himself.

Charlene Unoki, Assistant Administrator of the Land Division asked the Board for authorization to start discussion and to conduct an appraisal to acquire the subject private property owned by Carlsmith Ball, LLP and Ivan Llui-Kwan et al. Ms. Unoki let it be known the property is approximately 1335 acres and consist of a pristine koa forest of 500 acres. Staff would like to acquire the area and place it under the jurisdiction of the Division of

Forestry and Wildlife. Ms. Unoki recommended the Board provide approval in principle for the acquisition of interest in the Carlsmith Trust Property, approve in principle the above described acquisition of interest under the terms and conditions cited in staff's submittal and authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board and to best served the interest of the State.

Larry Baird, representing the Hawaii Island Land Trust noted his support of staff's recommendation. He asked that his organization be named as an additional user of the appraisal as it impacts their organization.

Unanimously approved as submitted by the remaining Board members (Yamamura/Schuman).

Item D-6: Forfeiture of General Lease No. S-4138, Merlin Keaulana-Dyball and Moana Keaulana-Dyball, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:25.

Ms. Unoki communicated that staff has spoken with Moana Keaulana-Dyball and she has indicated her husband has sent the Department a check for the rental payments is working on obtaining the required liability insurance policy. Ms. Unoki asked that the lessee be granted thirty (30) days to acquire the liability insurance.

Moana Keaulana-Dyball noted her support of a thirty day extension to cure the default.

The Board amended the Recommendation Section to allow the Lessee thirty (30) days to cure the deficiency.

Unanimously approved as amended (Johns/Yamamura).

Item D-9: Issuance of Direct Lease for Private Noncommercial Pier Purposes, Honolulu, Oahu, TMK: (1) 3-6-1:18, 19, 20, 23, 31, 33, 34, 37, 39, 41, 122; 3-7-2:43 seaward.

Member Johns recused himself.

Ms. Unoki reiterated that Act 261, SLH 2000 was enacted to allow the Board to lease by direct negotiations submerged lands for private residential noncommercial piers. Recently the legislature passed Act 129, SLH 2005 which allowed the extension of the deadline for the Department to negotiate these leases. Act 129 also allowed the Department to look statewide if there are other piers that are illegal. At present staff has received twelve (12) applications. Ms. Unoki recommended the Board declare this project will probably have minimal effect and is therefore exempt from the preparation of an environmental assessment and authorize the issuance of a fifty-five (55) year lease to the Applicants listed in staff's submittal.

Barry Cheung, Land Agent with the Land Division stated that there is language in Act 129 in which the legislature urges the Board to use prevailing rates if the lease is to be signed after June 2007.

David Bettencourt stated that it is his opinion that the State can not consider the piers involved to be non-commercial. Should the Department grant a lease for the pier owner he would like the Department to require a signed certificate from the landowner saying the property will not be rented, used as vacation rentals or used as bed and breakfast locations. He believes if the property is rented the pier should be considered commercial use.

Unanimously approved as submitted by the remaining Board members (Schuman/Martyn).

Item D-2: Consent to Assignment, Mortgage and Estoppel Certificate, General Lease Nos. S-3831, S-3840 & S-4647, Kauai, Beachfront Hotel, LLC, Assignor, to Anekona Aloha Ownership LLC, Assignee and Mortgagor, Wailua, Kauai, TMK: (4) 3-9-06:16 & 20.

Unanimously approved as submitted (Agor/Johns).

Item D-8: Amend Prior Board Actions of September 22, 2000, D-9, Grant of Perpetual, Non-Exclusive Easement to Verizon Hawaii Inc., for Utility Purposes at Puuanahulu to Keahole, North Kona, Hawaii, TMK: (3) 7-1-02:01; 7-1-03:01; 7-2-04:04; 7-2-05:08; and 7-3-10:33.

Unanimously approved as submitted (Yamamura/Johns).

Item D-10: Approval in Principle of the Acquisition of Private Lands and Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife, for Addition to the existing Honolulu Watershed Forest Reserve for Watershed Protection and Research, Native Species Habitat Restoration, Endangered Species Recovery, and Forest Recreation, Education and Management, Moanalua, Honolulu, Oahu, TMK: (1) 1-1-12:02, 15 & 35 and (1) 1-1-13:01 & 02.

Member Johns recused himself.

Ms. Unoki communicated that staff would like to begin the appraisal process in hopes of acquiring the subject 3,712 acres in Moanalua. Staff has been working with the Trust for Public Lands in the acquisition of the subject property. After obtaining the property staff would like to turn the property over to the Division of Forestry and Wildlife for its management.

Josh Stanboro, representing the Trust for Public Lands (TPL) noted his support of staff's recommendation. Mr. Stanboro made it known if the Department moves ahead with the subject acquisition TPL may be able to pay the price of the appraisal.

Unanimously approved as submitted by the remaining Board members (Martyn/Schuman).

Item D-12: After-the-fact Consent to Lease of Lands under Governor's Executive Order No. 3736 to the Hawaii State Federal Credit Union, Kapolei, Ewa, Oahu, TMK: (1) 9-1-88:05 por.

Unanimously approved as submitted (Johns/Schuman).

Item D-3: Set Aside to Department of Transportation, Highway Division for Road Widening Purposes, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-03:39.

Darryl Young, representing the Department of Transportation noted his support of staff's recommendation

The Board amended the Recommendation Section by requiring the Department of Transportation to work with Historic Preservation prior to commencing any construction work. All work should be to the satisfaction of Historic Preservation.

Unanimously approved as amended (Martyn/Johns).

Item E-2: Request Approval for Disposition of Recreation Residence Leases at Puu Ka Pele, Halemanu, and Kokee Camp Lots through Direct Negotiations, and Drawing, Kokee and Waimea Canyon State Parks, Waimea, Kauai.

Dan Quinn, Administrator of the Division of State Parks stated that upon review by the Attorney General's Office the recommendations approved by the Board at the September 9, 2005 meeting did not comply with certain laws. Mr. Quinn conveyed that staff look at HRS §171-44 as it applies to and was drafted for this particular area as well as HRS §171-36.2 which gave the area a historic designation (it required the department to adopt certain administrative rules). Mr. Quinn announced that the design standards and the review process established under the rules would apply to all leases. Staff feels that HRS §171-36.2 applies to this area and seems most logical to use this section in determining the disposition method. Mr. Quinn recommended the board; rescind their approval of Item E-1 from the Board meeting of September 9, 2005 and approve entering into direct negotiation for disposition of the recreation residence in accordance with HRS §171-44 following two informal drawings, one for island of Kauai residents, and one for State of Hawaii residents, approve entering into direct negotiations at a nominal rent for the lease of recreation residence to nonprofit organizations holding current leases, approve a third open informal drawing and negotiation process for any leases not disposed during the process outlined above, approve such other terms and conditions as may be prescribed by the Chairperson and that all disposition processes are subject to the review and approval of the Department of the Attorney General.

When asked by the Board why staff chose an informal drawing over an auction, Mr. Quinn responded that the intent was to allow for access to the area by the public at large. Mr. Quinn stated when using an informal drawing the appraised price of the parcel would be the negotiated price. Mr. Quinn noted concern that an auction might drive the rent up to unaffordable prices.

William Wynhoff, Deputy Attorney General let it be known part of the functions of his office is to give advice to the Board in addition his office approves the disposition of State land. Mr. Wynhoff noted the advice his office gave the Board was that the proposed method of disposition was not legal. He clarified to those present he gave the Board advice and not an opinion on the method of disposition. The difference being an opinion is a formal document that is open to the public and is published while advice is confidential. He disclosed the advice received by the Board from the attorney general is confidential and is being treated that way. When questioned by the Board what determines if something is an opinion or an advice, Mr. Wynhoff noted the Deputy Attorney General decides whether it's an opinion or advice and typically if an issue involves a broader spectrum of people it would be an advice. Mr. Wynhoff noted a lot of thought and consideration has gone into their advice letter to the Board and Mark Bennett personally reviewed the letter. The bottom line is at the expiration of the leases the cabins belong to the State if they are left behind. The advice given by the attorney general's office also stated the previous recommendation made by the Board disregarded the fact that the State will own any cabins on the property at the expiration of the lease and the State can not transfer the value of what is the State's property to the lessees. He went on to say, prior to the expiration of the lease the lessee has the right to remove their cabin provided they obtain the necessary permits as the subject areas are within the conservation district. Mr. Wynhoff acknowledged the prior Board approval was sent back because it was not consistent with State law. He noted the proposed recommendation before the Board today has been reviewed and is consistent with State law.

Cam Cavasso, a former legislature appeared before the Board and noted his opposition to the 1985 auction. In his testimony, Mr. Cavasso let it be known the Attorney General's Office can sometimes be wrong in its advice. He believes the Attorney General's advice is right in only two areas, recommendation 4a and 4b which contradict state law. All the other recommendations made at the September meeting should stand. Mr. Cavasso reminded the Board they approved direct negotiations with residence of historical value but staff at State Parks is choosing what method would be used to achieve those means. Mr. Cavasso noted the Attorney General stated there was no way for the former lessee to be compensated for the improvements by the new lessee but he communicated the laws are made by the legislature and if the Department recommends a change the legislature can amend the law to allow for compensation of improvements on their subject property. Mr. Cavasso asked the Board to reaffirm their decision made on September 9, 2005 and strike the part of the recommendation in which the Attorney General has determined to contradict State law.

Linda Chow, Deputy Attorney General let it be known generally the rules state that all leases need to be auction unless there is an exception and in this case she does not seen what exception would apply to allow for direct negotiations with current lessees.

Mr. Wynhoff announced HRS §171-44 was passed in 1965 specifically to allow the Board to negotiated with the then existing lessee and he does not see why it can not be applied in the same fashion.

Anthony Locricchio, an attorney representing several lessees appeared before the Board. He believes the previous recommendation by the Board was a brilliant decision. Mr. Locricchio believes the Attorney General is attempting to seriously limit the power of the Board. He

noted there is specific legislation which allows the Board to directly negotiate with the current lessees. He spoke of the dangerous layout of the roads in Kokee that is not conducive to health and safety in the event of a fire. Mr. Locricchio believes based on the issues of health and safety in Kokee it is a means that allows for direct negotiations with current leaseholders and the Board's previous action should stand. He asked the Board to affirm their previous decision and reject the Attorney General's opinion.

Paul Matsunaga, a current leaseholder spoke in opposition to staff's recommendation. He does not see why the Department can not enter into direct negotiations with the current lessees which are in the best interest for Kokee. He asked the Board to reaffirm the decision made in September. Mr. Matsunaga feels fair access should be weighed against what is good for Kokee. He feels those leaseholders who are taking care of Kokee should be allowed to remain there to nurture the new lessees on stewardship of the land.

Scott McCaffrey, a physician and leaseholder since 1990 spoke in opposition to staff's submittal. Mr. McCaffrey let it be known Kokee has become his family's solace and tranquil from his busy life as a doctor. Throughout the years he has developed a deep respect not only for the Aina but for his fellow cabin owners' dedication to the park. Mr. McCaffrey was upset to learn of the Board's reversal in their decision. He feels the present lessees have literally earned the right to remain there by demonstrating their assistance to visitors, their park work projects, trail maintenance and reopening campaigns as well as road repair and maintenance efforts which were all done at their own financial and temporal expense. Mr. McCaffrey asked the Board to let present cabin owners restore their structures to historic standards and renegotiate their lease.

Marge Dente, a resident of Kauai but not a leaseholder testified in opposition to staff's recommendation. In her opinion an informal drawing is an incredible mistake which will cause bitterness. Ms. Dente spoke of several cabin owners who are willing to remove their cabin from Kokee should they not be able to retain their lease. She feels the cabins reflect a special ambience in Kokee which could be lost should cabins be removed. Ms. Dente asked the Board to approve a process for lease awards to be negotiated with current leaseholders. If all parcels are not negotiated they could be auctioned to the general public.

Fred Dente, a resident of Kauai spoke of his love for Kokee. Mr. Dente stated based on a questionable and secret opinion from the Attorney General, State Parks and the State Historic Division has proposed to do in the current leaseholders by holding a drawing. He went on to say the State will not allow direct negotiations which is allowed under State law nor will they have an auction which is also allowed under State law. He noted many of the current leaseholders are preparing to dismantle or remove their cabins should they not be able to obtain a lease, and in allowing this to happen the State is not succeeding in its preservation of the historical and cultural character of Kokee but is instead destroying Kokee. Mr. Dente pointed out new lessees could be faced with an empty lot which may or may not have water or electricity thus they will also be required to build a cabin in the "Kokee Vernacular" style which has yet to be developed by the State and which will cost a lot of money. In closing, Mr. Dente believes to preserve and protect the historical and cultural landscape of Kokee the fairest solution would be to negotiate directly with the current leaseholders, which is allowed under HRS 171-36.2. If the State chooses not to do that, then an auction of all leases should

be held where the current leaseholders will at least have a chance to retain their precious stake in this most sacred place. He thinks it would be a disaster for Kokee if the State pus the leases into a blind drawing. It would be the opposite of Aloha Aina.

Motion made at 11:20 a.m. by Member Johns made and second by Member Yamamura to move into Executive Session to consult with the Attorney General on the advice given to the Board with regards to issues pertaining to the Board's powers, duties, privileges, immunities and liabilities

Mr. Locricchio voiced his objection with the Board going into Executive Session as he believes that the conditions for an Executive Session under state law have not been met and should the Board go into an Executive Session based on the phantom opinion by the Attorney General the problem will only be compounded. He feels any questions the Board may have with regards to the advice given by the Attorney General should be done in public.

Chairperson Young noted under Section 92-5 the Board has the right to consult with their attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Members Johns and Yamamura withdrew their motion.

David Bettencourt let it be known that he is not satisfied with the Attorney General's opinion in two areas: 1) The first being that all citizens in the State of Hawaii are equal therefore the State should not create a privilege class of citizens by restricting the first part of the drawing to residents of Kauai only; 2) The renewal of the leases for four religious organizations constitute the establishment of religion. He believes there are native Hawaiian organizations should have equal access to these properties. Mr. Bettencourt questions why the incumbent non-profits groups should be allowed direct negotiations instead the State should allow all non-profits to negotiate for a lease.

Motion made at 11:35 a.m. by Member Johns and second by Member Martyn 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.

Unanimously approved to move into Executive Session (Johns/Martyn).

The meeting resumed at 11:50 a.m. Chairperson Young told the members of the public that one of the questions discussed in Executive Session was if the Board had the power to use direct negotiations for the recreational residences in Kokee.

Wayne Jacintho, a leaseholder spoke in strong opposition to an informal drawing for the recreational leases in Kokee as he feels the process is unfair. Mr. Jacintho reminded the Board in 1919 the Kokee leases were primarily an entity for the residents of Kauai. He disclosed until 1965 the State owned the land and the lessee retained ownership of the cabin but due to a mistake in 1965 a surrender clause was written into three leases which were later compounded in 1985. As staff's recommendation reads today, Mr. Jacintho feels it eliminates any chance at all for him or his family to retain their property. He feels the request

by staff will cause the destruction of the very community the State professes to want to protect. Mr. Jacintho preference would be 1) to negotiate directly with all the current leaseholders under HRS 171-36.2 and set the lease term at 30 or 35 years; 2) Classify the cabins as Contributing or Noncontributing and negotiate with all by allowing 1s, 2s and 3s to upgrade their cabin; 3) mandate membership in the Leaseholders Association; and 4) increase the number of empty lots to satisfy the issue of "public access.

Donn Carswell, a leaseholder let it be known that the cabins in Kokee have a lot of mana and history and the current leaseholders would prefer an auction over an informal drawing because they would at least have a chance to bid on the lease they currently hold. If an informal drawing were to be held they feel they would not have a chance on holding on to their lease. Mr. Carswell said it is human nature to say if they lose their lease they'll take the cabin off the property or dismantle it. He feels if the State wants to hold a drawing they should use the twenty three lots that are currently available and allow direct negotiations with the current leaseholders.

Member Martyn left the meeting.

Ed Holland, a caretaker of four lots on water tank road believes the fairest solution would be an auction. Mr. Holland also stated that the bidders should be bonded and if an existing lessee was not able to retain his or her lease the new lessee would pay the appraised value of the cabin.

Linda Vicones spoke in agreement with the testimony given by Mr. Cavasso and Mr. Jacintho. Ms. Vicones asked the Board to restore their original motion made in September. She also feels those lessees whose cabins were rated a 1 or 2 should be given the option to upgrade their structure.

Scotty Sagum, Manager of the Lodge at Kokee spoke of his concern with the health and welfare of people visiting Kokee. He spoke of a time when an individual was lost and he relied on the help of the leaseholders to find this missing person. He believes this type of service is invaluable.

Sherry Adams spoke of her concern with regards to the fairness of the system the State is implementing. Ms. Adams spoke of her family's history on Kauai and in Kokee. Ms. Adams conveyed that she would like to have an opportunity to retain her lease.

Pam Chock spoke in opposition to staff's recommendation and instead requested that the current leaseholders be allowed to negotiate directly with the state. Should direct negotiations not be allowed her second option would be an auction. Ms. Chock told the Board she has been gracious in sharing their cabin with others and have never been asked by anyone about how they would obtain their own cabin. She believes people would like to go to Kokee and spend a weekend there but not have the responsibilities of maintenance of the lot. Ms. Chock asked the Board when making their decision to make a decision that is in the best interest of the people of Kauai.

Marsha Erickson, Executive Director of Hui O Laka stated that no body should be able to make a decision the benefit individuals on a discriminatory basis. At the same time she feels the Board needs to find a way to preserve the invaluable cultural and historical landscapes of Kokee and Waimea Canyon State Parks. Ms. Erickson conveyed that Hui O Laka has come forwarded at this late date because of the State's intention to hold a public drawing for the recreational lots in Kokee. She spoke of her organizations commitment to preserving the cultural landscape of Kokee. Ms. Erickson made it known the people and their stories are an integral part of the landscape and are also part of the public legacy of Hawaii. Ms. Erickson asked the Board for one month's time in which her organizations would report on the feasibility of a lease with Hui O Laka for a number (not all) of the recreational cabins for the purpose of preserving the cultural landscape and history of Kokee and interpreting it for the broader public. They will consult with State Parks, Historic Preservation as well as statewide preservation organizations and experts to more fully assess the potential for creating a legal and management paradigm to meet these goals.

Member Johns left the meeting but before doing so he noted his support for changing staff's recommendation to dispose of the recreational residence by an auction and eliminating the offending portions similar to what Mr. Cavasso recommended.

Mr. Bettencourt made a suggestion that the State start off by auctioning the empty lots. At the end of that auction anyone wanting an empty lot but was not able to acquire a lot would be allowed to participate in a second round of auction which would be for the developed lots. Mr. Bettencourt also suggested the Board require bidders to have a $500 bond in place prior to being able to bid for a lot. He communicated his belief that the State could buy out the existing leaseholder's right to remove their structures (which might be the salvaged value of the materials) then the State could have that amount tacked on to the lease.

Motion made at 12:35 p.m. by Member Agor and second by Member Yamamura 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.

Unanimously approved to move into Executive Session (Agor/Yamamura).

The meeting resumed at 12:42 p.m.

Written testimony was received from Deborah Jacintho, Scotty Sagum, Roselle Bailey, Sherry & Robert Miller, Peter Baldwin, Frank Hay, Lissa Dunford, Juan Wilson, Wayne Jacintho, Craig Millett & Susan Stayton, Ned Dana, Sam Blair, W. Carmen Wong, Scott McCaffrey, Erik Coopersmith, Elizabeth Freeman, Linda Faye Collins, Donn & Gale Carswell, Fred & Marj Dente, Eleanor Snyder, Annette Cassidy, Pam Chock & Malcom Smith Jr., Julia Sueoka and family, Sybil Frances, Patricia Sheehan, Deborah Luckett, JHR Plews, and Kathy Clark.

The Board amended the following Recommendations:

1) **Recommendation 1)**

"The Board approves entering into [~~direct negotiation~~] <u>an auction</u> for disposition of the recreation residence."

2) **Recommendation 3)**

"[~~The Board approves a third open informal drawing and negotiation process for any leases not disposed during the process outlined in 1, above.~~] <u>The Department will retain approximately nine (9) cabins for State use.</u>"

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

Mr. Bettencourt asked the board to hold the auction prior to the expiration of the current leases.

Item E-1: Permission to Enter into a Revocable Permit with S.M.C.A., Inc. for the Food and Rental of Swimming Equipment at Hapuna Beach State Recreation Area (HB), Island of Hawaii.

The Board amended the Recommendation Section by waiving Condition 14) of the Revocable Permit.

14. [~~Prior to termination or revocation of the subject permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the permit. The Board, at is sole option, may refuse termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.~~]

Unanimously approved as amended (Yamamura/Schuman).

Item J-1: Report to the Board on the Review of Prior Administrative Rules Changes Relating to Fee Increase for the Small Boat Harbor Proposed in 2001 and deferred at that time.

James Coon, representing The Ocean Tourism Coalition (OTC) asked that the Board defer this item for two more meetings as some of the Board members present when this matter first came before the Board was not present. Mr. Coon feels that every Board recommendation to

the Division of Boating and Ocean Recreation (DOBOR) pertaining to this issue has been circumvented by DOBOR. He spoke of the considerable time spent on compiling the comprehensive rules package which went out to public hearings but due to some typographical error and the need to go back out public hearing DOBOR chose to piece meal the package. Mr. Coon would rather have the entire package go to the Board rather than having it piece meal. He spoke of their frustration in working with staff on issues that they might not agree on.

Chairperson Young told Mr. Coon he would get DOBOR to supply whatever is remaining in the package to OTC so they can see what if there are in issues they are in disagreement. Greg Howeth announced that he participated in the meetings and discussions held beginning in 2002. Mr. Howeth spoke of his agreement with Mr. Coon's testimony. Mr. Howeth stated that agenda items J-1 and J-2 should be treated as one package and asked that both items not be heard until such time the comprehensive plan can be placed together. Mr. Howeth supplied the Board members with his written testimony which outlined specific areas of concern they have with the comprehensive fee package.

Bill Mossman, representing the Hawaii Boaters Political Action Association concurred with the testimony received by Mr. Coon and Mr. Howeth regarding the postponement of Items J-1 and J-2 until at least two board meetings from today in order to allow those involved some time to come up with the comprehensive plan. Mr. Mossman spoke of the conditions of our boating facilities and the need for increased revenue to repair those facilities. Mr. Mossman reminded the Board of their previous action of November 19, 2005, in which the Board required DOBOR to meet with the constituencies involved to review the fee proposal proposed in 2001 for the expressed purpose of going through it and picking out the items that should be included in the comprehensive package which was due July 1, 2005. He went on to speak of the lack of attention paid to the various revenue generating sources DOBOR has. Mr. Mossman felt there were numerous sources of revenue addressed in the 2001 proposal that are worthy of inclusion in today's proposal, one of these issues being the Passenger Vessel Fee. He noted if the minimal fee increases proposed in the 2001 proposal were implemented a very conservative total cruise ship revenue would exceed $2 million. This cruise ship passenger fee revenue would by itself, exceed the total revenues of the amendments being proposed in J-2. In closing, Mr. Mossman recommended that these Amendments be held to give DOBOR the opportunity to examine the "other revenues" addressed in the 2001 fee increase to create a more complete package that addresses "fairness" and fiscal responsibility, especially addressing the increase of Cruise Line Passenger Fees.

Chairperson Young clarified that the issue of Cruise Line Passenger Fees has already come before the Board. At that point the Board instructed staff to send the matter to the Attorney General's Office to make sure the fees were consistent with the law. He went on to disclose that federal law dictates that the cruise ship passenger fees must only go towards the operation of the cruise ship. It should not be a revenue generating program. There was also a question to the legality of a two tier passenger fee.

Reg White, Vice President of Operations for Paradise Cruise suggested the Board defer action. Referring to Mr. Howeth's testimony, Mr. White pointed out those recommendations

included in his written testimony was the result of a four year effort by staff and interested community members. He reminded the Board of their November 2004 meeting in which they directed staff to meet with the interested constituencies to put everything into one comprehensive package. Mr. White asked the Board to defer action until staff can comply with their previous directive. Lastly, Mr. White noted that DOBOR continues to operate without a plan so if revenue is generated he would like to know how DOBOR intends to spend the money.

Chairperson Young noted he will ask DOBOR to bring the package forward for consideration.

Written testimony was received from Hawaii Boaters Political Action Association, Lahaina Divers, Ocean Tourism Coalition, Ala Wai Marina Community Association and The Makai Society.

No Action.

Item J-2: Recommendation to Amend Hawaii Administrative Rules Chapter: §13-234-3 Mooring Rates at State Boating Facilities; § 13-234-4 Mooring Rates, offshore & at anchor; § 13-234-5 Mooring without Permission; § 13-234-25 Fees for Commercial Vessels; § 13-234-34 Recreational Ramp Fees.

Chairperson Young asked Mr. Rice, Administrator for DOBOR if want is recommended in staff's submittal the same recommendation that was in the November 2004 package. Mr. Rice confirmed the submittal was identical to what was submitted in November 2004 except for changes made to form by the Attorney General's Office.

Bill Mossman, representing the Hawaii Boaters Political Action Association emphasized the need to postpone decision making on this item for a couple of months in order for a comprehensive look at the package. He would like staff to address the lack of a comprehensive approach and the manner in which the fees are administered to the different user groups in the harbor. He feels there needs to be fairness in the application of fees.

Greg Howeth again stressed the importance of a comprehensive package and asked the Department to follow the recommendation made by the Board which instructed DOBOR to bring back to the Board a comprehensive package, the fees together with the rule package. Mr. Howeth asked the Board to defer action on this issue until their directive is followed. Mr. Howeth pointed out in staff's summation they contradict the recommendation by the Board to return with a comprehensive package by stating "Given the proper time & resources certain areas within the rules will be re-visited but perhaps not as an omnibus package." He believes DOBOR has no intention of following the Board's directive.

Reg White, Vice President of Operations for Paradise Cruise stated that the fee package is a reasonable package and would like to commend the Division. Mr. White especially agreed with the way DOBOR placed the two increases of ten percent should they get the bonding as it proves to the legislature they can pay the money back. Mr. White feels we need to look at

the cost to run the harbor. He explained when the slips at the Ala Wai went out of service the cost to operate the harbor did not decrease therefore the cost to handle each boat increased and that is how we need to view things at each harbor. Mr. White also asked the Board to look into parking fees as a way to generate income which is not covered in the present package but was covered in the original package.

Chairperson Young conveyed that he understood the concerns of those who testified that the proposed rules were not part of the package but he also understands the significant need for funding that the fee package will provide and encouraged the passage of this submittal.

The Board amended the Recommendation Section by adding the following

"4. The Division of Boating and Ocean Recreation shall work with the applicable boating interest and bring back to the Board the remainder of the rule package by July 2006."

Written testimony was received from The Makai Society, Hawaii Boaters Political Action Association, Glenn Shiroma and Ala Wai Marina Community Association.

The Board instructed staff to include the people here at today's meeting as well as Jim Coon in their meetings.

Unanimously approved as amended (Yamamura/Agor).

Item L-1: **Approval for Award of Goods and Service Contract – IFB-06-001-0 Furnishing and Delivering Electronic Bid Documents and Addenda on Compact Disc; Reproduce, Bind and Deliver Plans and Specifications Add Addenda from Plans, Specifications and Related Documents.**

Item L-2: **Approval for Award of Construction Contract – Job No. H10C616B, Sand Island State Recreation Area, Renovate Comfort Stations 1, 4, 5 & 6, Honolulu, Oahu, Hawaii.**

Unanimously approved as submitted (Yamamura/Schuman).

Item I-1: **Award of Historic Preservation Federal Grant-in-Aid to County of Kauai for: 1) Hiring of consultant for Poipu Beach Park Mauka Archaeological Preserve; 2) Developing Kauai Historic Preservation Review Commission website; 3) Hiring of consultant to update historic resources inventory for consideration of eligible buildings; and 4) Training of Kauai County Cultural Resources Commission and staff.**

Unanimously approved as submitted (Agor/Schuman).

Item D-4: **Grant of Perpetual, Non-Exclusive Easement to Steven C. Anderson for Access and Utility Purposes, Keahialaka, Puna, Hawaii, TMK: (3) 1-3-07:23 and 1-3-08:12.**

Motion to Defer
Unanimously approved to defer (Yamamura/Schuman).

Item D-1: **Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Addition to Puu Ka Pele Forest Reserve at Waimea, Kauai, TMKs: (4) 1-5-01:01 and (4) 1-5-03:09, 13, 16, 20, 22, and 27; and Game Reserve Purposes at Waimea, Kauai, TMK: (4) 1-5-01:02 and (4) 1-5-03:07, 08, 10, 15, 17, 19, 21, 24, and 40.**

Item D-7: **Approval of Sub-Lease of Private Property with Robert K. Cabos, on Behalf of the Department of Labor and Industrial Relations, for File Storage Purposes at Papaikou, Hamakua, Hawaii, TMK: (3) 2-7-33:18.**

Item D-11: **Grant of Term, Non-Exclusive Easement to May S. Ishimoto for Seawall and Filled Land Purposes, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-01:35 seaward.**

Unanimously approved as submitted (Schuman/Yamamura).

There being no further business, Chairperson Young adjourned the meeting at 1:45 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