WAIKĪKĪ IMPROVEMENT ASSOCIATION

Testimony of Rick Egged
President, Waikiki Improvement Association
Before the
Board of Land and Natural Resources
Friday, October 10, 2024
In consideration, of

1. J-1A: Reissuance of a Revocable Permit to Blue Water Shrimp International, LLC, Permittee, for the Period Beginning October 1, 2024, Through November 30, 2024, situated at Ala Wai Small Boat Harbor, Honolulu, Oahu, Tax Map Key: (1) 2-6-010:003

Aloha Chair Chang and Members of the Board:

My Name is Rick Egged, representing the Waikīkī Improvement Association (WIA). The WIA is a membership organization consisting of major stakeholders in Waikīkī including, landowners, hotels, retailers and restaurants, the businesses that serve them and those interested in the future of this important part of our community and economy.

The Waikīkī Improvement Association (WIA) supports this submittal from the Boating Division.

The site being discussed has great potential for benefit to the State and the community. The current use was only meant as temporary until long term plans can be completed.

However, the short term tenant has in our opinion fallen far short of executing adequate stewardship of the property. There have been complaints about inadequate sanitation, and maintenance of the site. Approval of the submittal should provide adequate time to correct the issues and return the area to an acceptable condition.

Thank you for the opportunity to testify.

From: Donna Lee
To: DLNR.BLNR.Testimony
Subject: [EXTERNAL] Testimony for BLNR meeting Oct 11, 2024
Date: Thursday, October 10, 2024 3:33:33 PM

RE: Agenda items J-1A and J-1B

Dear Land Board,

I am a 15-year Waikiki resident and homeowner, an employee at University of Hawaii Manoa, a natural resource economist, an avid sailor and outrigger canoe paddler. I am also a part-time musician and band manager.

I am writing in support of the Blue Water Shrimp Corp, permit holder for the lot located in the Ala Wai Small Boat Harbor. I support renewal of their lease permit, I approve their request for an exemption from an environmental assessment, I strongly endorse their proposal to use the adjacent vacant dirt lot for parking during business hours.

Their establishment, Pau Hana Place, is a well-run and well-designed business and an asset to the local community. It's become a gathering space for residents and visitors where people can relax, get a bite to eat, enjoy the waterfront, and listen to live music.

Use of the lot as a food truck stand, outdoor dining space, and casual event destination is ideal for the location. All of the activities are low impact on the resources. Furthermore, the presence of the business provides a benefit to the State in terms of protecting the waterway by keeping the area clean; preventing an accumulation of weeds, dirt, and trash; and keeping the area safe from vagrants, vandals, and illegal dumping. These benefits accrue to the State at no cost to DLNR.

The business sells reasonably priced meals and snacks. I've not seen their financials, but I assume their profit margins are pretty low and they depend on volume to survive. Having access to parking can definitely help the business thrive. Currently the adjacent dirt lot is vacant and unused. We can all agree that parking spaces are a precious resource in Waikiki! It's my understanding the permit holders did all the work to clear, clean and grade the lot to make it safe for parking and at their own expense. It seems reasonable to me to allow them to use the lot at least until DLNR is able to come up with a higher and better use for the space because it does not make sense to let it sit empty.

Thanks for listening.

All the best,
Donna Lee, Ph.D.
2442 Kuhio Ave, 96815

HAWAIʻI STATE LEGISLATURE
Ka ʻAhaʻōlelo Mokuʻāina ʻŌ Hawaiʻi

STATE CAPITOL
415 SOUTH BERETANIA STREET
HONOLULU, HAWAIʻI 96813

Testimony of
State Senator Sharon Moriwaki
State Representative Adrian Tam

Before the
Board of Land and Natural Resources

Friday, October 11, 2024
9:00 am
DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor / & Online via Zoom

Subject: In consideration of agenda item J-1A: Reissuance of a Revocable Permit No. 138 to Blue Water Shrimp International, LLC, Permittee, for the Period Beginning October 1, 2024, Through November 30, 2024, situated at Ala Wai Small Boat Harbor, Honolulu, Oahu, Tax Map Key: (1) 2-6-010:003 (por.) and :016 (por.)

We request the Board's support of the Waikiki community in cancelling Revocable Permit No. 138 to Blue Water Shrimp International, LLC, (BWSI) effective October 31, 2024. The permittee has failed to abide by the permit terms and continues to disrupt the lives of residents as well as impeding the improvement of the harbor and entrance to Waikiki. Terminating the permit will allow the department to proceed with creating a more inviting and functional public space for this gateway to Waikiki.

On behalf of our Waikiki residents, we have contacted both the Division of Boating & Ocean Recreation (DOBOR) administration and Board Chair Chang to address the numerous and continuing resident complaints regarding the permittee and the excessive noise pollution it creates at inappropriate hours. After the Board approved a 90-day extension of the BWSI Revocable Permit 138 at its June 28, 2024 hearing, we believed BWSI would comply with the permit terms, but we have continued to receive the same complaints. The permittee's blatant disregard of the contract terms and its neighbors during this extension period should be sufficient evidence for cancelling the permit as soon as practicable.

"Pau Hana Place" is on the parcel that abuts Ala Moana Boulevard and is just over a few hundred feet from the nearest condo - Harbor View Plaza at 1676 Ala Moana Blvd. Amplified noise from live music and chain sawing are excessively loud and have been disturbing residents living across the street. These violate the permit which allows BWSI the "playing of conversation-friendly "Hawaiian" music at low volume…from 9:00 am to 9:00 pm."

OFFICE OF SENATOR SHARON MORIWAKI
Hawaiʻi State Senate, District 12 - Ala Moana, Kakaʻako, McCully, Sheridan, Waikīkī
415 South Beretania Street, Room 215 | Honolulu, Hawaiʻi, 96813
Phone: (808) 586-6740 | Fax: (808) 586-6829 | Email: senmoriwaki@capitol.hawaii.gov

The Ala Wai Small Boat Harbor is part of the city's Waikiki Special Improvement District (WSD) and, as such, should be in compliance with the Honolulu Department of Planning & Permitting's WSD Design Guidelines (dated August 2021). The intent in creating the special district guidelines was to promote a strong, cohesive sense of place that is attractive, safe and inviting for both residents and visitors. It also emphasizes the maintenance of a positive visual experience of the ocean from Ala Moana Boulevard. Continuing the BWSI permit will hinder the department from complying with the WSD guidelines and vision.

We understand the Waikiki Improvement Association has advised the Board Chair of the WSD requirements and has indicated the Waikiki Business Improvement District Association is more than willing to work with DOBOR to improve the harbor to make it more inviting to residents and visitors. The University of Hawaii Community Design Center's (UHCDC) vision report for the ASWBH published just a few years ago also provides design options to improve the parcel to be more inviting and enjoyable for visitors and residents.

For these reasons, we respectfully request that the BLNR cancel Permit No. 138.

Sincerely,

SHARON Y. MORIWAKI
Senator, Senate District 12

ADRIAN K. TAM
Representative, House District 24

Enclosure

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

4 SAND ISLAND ACCESS ROAD
HONOLULU, HAWAII 96819

July 18, 2022

City and County of Honolulu
Department of Planning and Permitting
Attn: Mr. Dean Uchida, Director
650 South King Street
Honolulu, Hawaii 96813

Subject: Blue Water Shrimp International LLC Revocable Permit at Ala Wai Small Boat Harbor – City and County Permits

Dear Director Uchida,

At its March 24, 2022, meeting under agenda item J-2, the Board of Land and Natural Resources (BLNR) authorized the issuance of a revocable permit to Bluewater Shrimp International LLC (Bluewater Shrimp) for food service and playing of conversation-friendly music at Ala Wai Small Boat Harbor. A condition of the authorization is that Bluewater Shrimp acquire all the necessary County permits including Zoning Variance, the appropriate SMA permit, a Major Special District Permit and comply with all applicable conditions in Exhibit F, which are comments from the City and County Department of Planning and Permitting (DPP). The Board submittal is attached as **Attachment I**. In pursuit of county permits, the applicant has been advised to acquire a statement from DLNR addressing how the proposed permit fulfills the public purpose for use of Public Precinct zoned land.

The following addresses this request. The proposed action is located at the gateway to Waikiki. The area is currently vacant, undeveloped, lacks ground cover and landscaping. The public restroom is often vandalized and shut down for long periods of time. There are accounts of illicit activities in this area and at times people have taken up residence under the bridge.

The applicant proposes to provide 24/7 security, landscaping, food service, open seating, soft Hawaiian music and public restroom maintenance. The improvements, maintenance, security, and presence would be an improvement to the area and would be a benefit to the public.

In addition, the revenue from this permit would help to fund improvement and maintenance of the facility. This rationale has been supported by prior legislation and with the support of the City and County. At its November 9, 2012, meeting, under agenda item J-1, the Board Approved an Exemption to City & County SMA permit requirements subject to Act 153, 2011 and thru the Request for Proposal (RFP) process

and preemption of City and County of Honolulu Land Use Ordinance subject to Act 197, 2011, the State's sovereign powers. See **Attachment II**.

Act 197, 2011, states (page 1, lines 14 to 18) "Ala Wai boat harbor includes certain assets within its facilities that are underused and if properly developed could potentially generate revenues that would enable not only its own continued improvement and maintenance but the improvement and maintenance of the rest of the facilities." See **Attachment III**. Though the applicant's proposal is not being done through the RFP process, the proposed action can be justified by the same rationale as stated in Acts 153 and 197.

Further, the FONSI Environmental Assessment (EA) recommends "a small informal restaurant" in the haul-out area with "landscaping". It also states under "Dining Conveniences": "The only food and drink services presently available within the harbor complex are the yacht clubs, a few vending machines, and one or two mobile food distribution wagons which operate near the parking lot in the lagoon area." "It is, therefore, recommended that two permanent snack bars be constructed in the interest of aesthetics and boater-public convenience." "In addition, it would be highly desirable to design the facility in such a way that would enable patrons to be served out-of-doors where they might dine in leisure and observe the activity within the marina. Care should be taken to assure that the exterior eating area would not inhibit the view of the marina . . ." "It would be oriented towards boat owner cliental." The proposed action is consistent with the EA. To conserve resources, an electronic copy of the EA can be provided upon request.

The applicant is proposing a concept that addresses many of the concerns in the prior Board approvals and EA. As the gateway to Waikiki, DLNR-DOBOR believes that the security, landscaping, outdoor dining area, restroom maintenance, and soft Hawaiian music would be an improvement to the vacant dirt lot and other safety challenges. Pending a new RFP, the applicant's proposal would be a welcome improvement to the existing appearance and safety of the area and would be a benefit to the public.

If you would have any questions, please feel free to contact Carl Young, DLNR-DOBOR property manager at (808) 587-1965.

Thank you,

Ed R. Underwood
Administrator

Atts:
I Board Submittal March 24, 2022, J-2
II Act 153, 2011
III Act 197, 2011

Cc: Blue Water Shrimp International LLC

From: Kate Thompson
To: DLNR.BLNR.Testimony
Subject: [EXTERNAL] Aloha Athena, you can print these 4 pages instead of the entire document I had attached to my testimony
Date: Thursday, October 10, 2024 9:13:22 AM

DAVID Y. IGE
GOVERNOR

HIGHWAY DESIGN BRANCH, ROOM 688A BRIDGE DESIGN SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 600 HIGHWAY DESIGN SECTION, ROOM 609
HYDRAULIC DESIGN SECTION, ROOM 636 TECHNICAL DESIGN SERVICE, ROOM 688

RIGHT-OF WAY BRANCH, ROOM 691

FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors JADE T. BUTAY ROSS M. HIGASHI EDWIN H. SNIFFEN DARRELL T. YOUNG
TRAFFIC BRANCH, ROOM 602
MOTOR VEHICLE SAFETY OFFICE, ROOM 511

STATE OF HAWAII DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

August 5, 2016

IN REPLY REFER TO:
HWY-RM 3.91421

Board of Land and Natural Resources State of Hawaii
Honolulu, Hawaii

Oahu

Amend Prior Board Action of September 9, 2010, Item M-1 to Clarify the Relevant Particulars of the Subject Remnants; Authorizing the Department of Transportation to Dispose

of Portion of Parcel B (AMB-1 parcel) and Dewey Lane Remnant (PR-1 parcel), Honolulu-Pearl Harbor Road, Federal Aid Project No. U-44(9), Kalia Section, at Kalia, Waikiki, Honolulu, Oahu, Hawaii, Abutting Tax Map Keys (1) 2-6-009:002 & (1) 2-6-009:003

BACKGROUND:

On September 9, 2010, under agenda item M-1, the Board authorized the Department of Transportation ("DOT") to dispose two remnants, identified as Remnant Parcel AMB-1 (also known as Portion of Parcel B, Hilton Remnant Parcel, and Parcel B-2), (4,014 square feet) and PR-I (49) square feet), pursuant to 171-52, HRS, at fair market value for the reimbursement of the Federal Aid Project. A copy of the approved submittal is attached as **Exhibit 1.** As noted in the 2010 submittal, the disposition was done pursuant to the Memorandum of Agreement dated February 13, 2007 ("MOA") executed by DOT and Hilton Hawaiian Village, LLC ("HHV"). In September 2007, Hilton Hawaiian Village LLC., transferred the interest in the properties to Hilton Resort Corporation ("HRC") a Delaware corporation_

It was later determined that while DOT and Hilton intended the MOA to cover any and all remnants, the MOA did not specifically refer to the PR-I parcel. In light of this, DOT is presenting this submittal to the Board in order to amend the prior Board action of September 9, 2010.

The MOA governs the disposition of the AMB-1 parcel. Pursuant to City Council Resolution 02-226, CDI, FD1 regarding the approval of the conceptual plan for the construction of a high rise tower and other improvements at the Hilton Hawaiian Village, Department of Planning and Permitting (DPP) required Hilton at their own expense, to construct, in accordance with and in compliance with the requirements of all applicable

public agencies, the following; 1) improvements to Dewey Lane; 2) signalized intersection at Dewey Lane and Ala Moana Boulevard; 3) pedestrian plaza at the corner of Dewey Lane and Ala Moana Boulevard; and 4) pedestrian walkways and associated areas along Dewey Lane and around the Hilton Lagoon.

The City Council also required the Hilton to provide 15 on-site parking stalls at reduced rates for the general public use. They approved the plans based upon the general interest of the public and the public amenities proposed which would produce timely demonstrable benefits to the community and the stability, function, and overall ambiance and appearance of Waikiki.

The MOA memorialized the requirement imposed by DPP and the City Council in addition to certain understanding between Hilton and DOT related to the DOT required Waikikian roadway improvements, Ilikai Remnant Parcel, the AMB-1 parcel (Hilton Remnant Parcel),

and the AMB-1 improvements desired by DOT. The AMB-1 parcel was to be conveyed to Hilton pursuant to Hawaii Revised Statute **("HRS")** 171. The purchase price for the AMB-1 parcel was to be determined pursuant to the appraisal process as provided by HRS Chapter 171.

The parties acknowledged and Hilton agreed to maintain the AMB-1 parcel as open space for non-commercial uses to benefit the public, and the appraised value of the AMB-1 parcel is to reflect this intended use of the AMB-1 parcel.

The DOT obtained a procurement exemption from the State Procurement Office that permitted the Hilton to make improvements in the area near the Dewey Lane intersection at Ala Moana Boulevard. The DOT sought the exemption to accelerate the installation of improvements and to minimize disruption to traffic. The exemption authorized improvement work by Hilton. The MOA provided that the maximum amount that may be credited to the Hilton for the purchase price of AMB-1 parcel was $2,241,825. Hilton incurred $2,303,732.50 to improve the AMB-1 parcel area. The appraisal established the purchase price for AMB-1 parcel at $405,600.

Since the MOA did not address the PR-1 parcel, Hilton will purchase the PR-1 parcel from the Department of Land and Natural Resources (DLNR) directly and will not use any of the credit from the MOA toward the purchase of the PR-1 parcel. An appraisal, discussed below, established the purchase price for PR-1 parcel at $5,000.00.

REMARKS:

Recently, DOT provided the conveyance document to the Department of the Attorney General ("AG") for review and approval. AG returned the conveyance document not approved as to form with issues regarding the proposed sale.

Subject Remnants

According to the MOA attached as **Exhibit 2,** the remnant identified as AMB-1 parcel is identified therein, which is a portion of the current Ala Moana Boulevard. When DOT

requested for Board's authorization in 2010, PR-1 parcel was also included in the request. Both AMB-1 parcel and PR-1 parcel were deemed surplus to the highways needs and with a configuration and size unsuitable for development or utilization as a separate unit. DLNR has recently claimed ownership of the PR-1 parcel and has requested DOT to include the parcel PR-1 parcel as part of the Land Board submittal to approve the remnant determination and approval of the sale for PR-1 parcel. DLNR will receive the proceeds from the sale of the PR-1 parcel. The subject remnants are identified as tax map key (1) 2-6-009: abutting 002 and 003, which are owned by HRC. Accordingly, HRC will be the grantee of the proposed sale.

Appraisal

Using a DOT approved appraiser list, Hilton hired an independent appraiser to conduct a appraisal for the AMB-1 parcel and determined the fair market value for AMB-1 parcel to be

$405,600.00. Pursuant to the MOA, DOT agreed to allow HRC credit the improvement cost over AMB-1 parcel not exceeding an amount of $2,241,825 toward the purchase price of AMB-1 parcel.

DOT appraisers have checked the appraisal according to DOT's standards for scope of work and highest and best use and found that the appraisal and methodologies are acceptable to DOT appraisal standards and requirements. DOT branch manager has approved the fair market value for AMB-1 parcel.

Hilton has also hired a independent appraiser (Sanford D. Goto), Inc.) to conduct a appraisal for the PR-1 parcel. The appraisal determined the fair market value for PR-1 parcel to be $5,000.00. HRC will pay DLNR $5,000.00 for PR-1 parcel.

Both the AMB-1 parcel and the PR-1 parcel are ceded lands. A MOA was entered into in 2007 which contemplated that the fee to AMB-1 parcel would be conveyed to Hilton in return for construction services provided to the State for improvements to Ala Moana Boulevard from the Ewa side of Hobron Lane to Kalakaua Avenue. The MOA further provided that Hilton could be credited up to $2,241,825 in construction costs toward the purchase price. As stated above, a procurement exemption was obtained to permit Hilton to make these improvements on behalf of the State. The appraised value of the AMB-1 parcel is $405,600. Hilton incurred construction costs of $2,303,732.50. Because the construction costs exceed the appraised value, there will be no cash transfer for the fee to AMB-1 parcel.

Further, because the AMB-1 parcel and PR-1 parcel are remnant parcels, legislative approval for the sale is not required pursuant to HRS section 171-64.7(b).

According to HRS 264, the Director of Transportation, acting alone or in cooperation with any federal, or local agency, may plan, designate, establish, regulate, vacate, alter, realign, widen, improve, maintain, and provide control access facilities for public use whenever the director is of the opinion that traffic conditions, present or future, will justify the special facilities.

HWY-RM 3.91421

The AMB-1 parcel was part of the existing road at the time of the widening and did not use Federal funding for the acquisition of the parcel, and PR-1 parcel was also part of a existing Public right-of-way therefore no FHWA approval was required. DOT initiated the project in 2007 with the execution of the MOA, and the 2010 Board submittal seeking the Board's authorization to sell two remnants. Subject to approval of today's request, the conveyance document would be approved by AG following by the signature of the Chairperson, and the entire project will be finalized.

RECOMMENDATION: That the Board amend its prior action of September 9, 2010, item M-1 by replacing its entire Recommendation Section with the following:

1. Find that the subject land PR-1 parcel and AMB-1 parcel are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and therefore, by definition is a remnant pursuant to Chapter 171, **HRS.**

2. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Keys: (1) 2-6-9:002 and

   (1) 2-6-9:003, provided that the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

3. Authorize the sale of the subject remnants AMB-1 parcel and PR-1 parcel to Hilton Resorts Corporation covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

   A. The standard terms and conditions of the most current deed document form, as may be amended from time to time;

   B. Review and approval by the Department of the Attorney General; and

   C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

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L:

DAVID Y. IGE
GOVERNOR

HIGHWAY DESIGN BRANCH, ROOM 688A
BRIDGE DESIGN SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 600
HIGHWAY DESIGN SECTION, ROOM 609
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FORD N. FUCHIGAMI
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EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:
HWY-RM 3.91421

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI
601 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

August 5, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Oahu

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requested for Board's authorization in 2010, PR-1 parcel was also included in the request. Both AMB-1 parcel and PR-1 parcel were deemed surplus to the highways needs and with a configuration and size unsuitable for development or utilization as a separate unit. DLNR has recently claimed ownership of the PR-1 parcel and has requested DOT to include the parcel PR-1 parcel as part of the Land Board submittal to approve the remnant determination and approval of the sale for PR-1 parcel. DLNR will receive the proceeds from the sale of the PR-1 parcel. The subject remnants are identified as tax map key (1) 2-6-009: abutting 002 and 003, which are owned by HRC. Accordingly, HRC will be the grantee of the proposed sale.

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Hilton has also hired a independent appraiser (Sanford D. Goto), Inc.) to conduct a appraisal for the PR-1 parcel. The appraisal determined the fair market value for PR-1 parcel to be $5,000.00. HRC will pay DLNR $5,000.00 for PR-1 parcel.

Both the AMB-1 parcel and the PR-1 parcel are ceded lands. A MOA was entered into in 2007 which contemplated that the fee to AMB-1 parcel would be conveyed to Hilton in return for construction services provided to the State for improvements to Ala Moana Boulevard from the Ewa side of Hobron Lane to Kalakaua Avenue. The MOA further provided that Hilton could be credited up to $2,241,825 in construction costs toward the purchase price. As stated above, a procurement exemption was obtained to permit Hilton to make these improvements on behalf of the State. The appraised value of the AMB-1 parcel is $405,600. Hilton incurred construction costs of $2,303,732.50. Because the construction costs exceed the appraised value, there will be no cash transfer for the fee to AMB-1 parcel.

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1. Find that the subject land PR-1 parcel and AMB-1 parcel are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and therefore, by definition is a remnant pursuant to Chapter 171, **HRS.**

2. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Keys: (1) 2-6-9:002 and (1) 2-6-9:003, provided that the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

3. Authorize the sale of the subject remnants AMB-1 parcel and PR-1 parcel to Hilton Resorts Corporation covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

   A. The standard terms and conditions of the most current deed document form, as may be amended from time to time;

   B. Review and approval by the Department of the Attorney General; and

   C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

FOR

Ford N. Fuchigami
Director of Transportation

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson

PHONE (808) 594-1888

FAX (808) 594-1938

STATE OF HAWAI'I
OFFICE OF **HAWAIIAN** AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, **HAWAI'I 96817**

HRD16-7954

August 22, 2016

Ford N. Fuchigami, Director
State of Hawai'i Department of Transportation
Highways Division
601 Kamokila Blvd.
Kapolei, HI 96707

Re: Request for Comments on the Amendment of Prior Board of Land and Natural Resources Action of September 9, 2010, Item M-1, to Clarify the Sale of Remnant Parcels AMB-1 and PR-1
HWY-RM 3.91421
WaikikI Ahupua'a, Kona Moku, O'ahu Mokupuni
Tax Map Key (1) 2-6-009:002 and (1) 2-6-009:003

Aloha Mr. Fuchigami,

The Office of Hawaiian Affairs (OHA) is in receipt of your draft submittal to the Board of Land and Natural Resources (BLNR), sent by email to OHA staff on August 5, 2016. The State of Hawai 'i Department of Transportation (DOT) is proposing an amendment to the BLNR prior action of September 9, 2010, agenda item M-1, authorizing the DOT to dispose of two remnant parcels, AMB-1 and PR-1, pursuant to Hawai'i Revised Statutes (HRS)§ 171-52. The disposition was done through a Memorandum of Agreement (MOA) dated February 13, 2007 between the DOT and the Hilton Hawaiian Village LLC., which in September 2007 transferred the interest in the properties to Hilton Resort Corporation, a Delaware Corporation (Hilton).

It was later determined that the MOA between the DOT and Hilton did not specifically refer to remnant parcel PR-1, although the intent of the MOA was to transfer both remnant parcels, AMB-1 as well as PR-1. In light of this discovery, the DOT is requesting the BLNR to amend its prior Board action of September 9, 2010 to include the sale of remnant parcel PR-1 from the State of Hawai'i Department of Land and Natural Resources (DLNR) to Hilton for the appraised value of $5,000.

OHA is aware that both remnant parcels are compliant with HRS §171-52(a)(2), however, we disagree with the DOT's narrow reading of HRS § 171-52. The DOT states in its Recommendation (1) to the BLNR that the remnant parcels AMB-1 and PR-1 are compliant with HRS § 171-52 based solely on referencing HRS § 171-52(a) and dismissing the additional requirements of the statute HRS § 171-52(a)(l) and (2).

HRS§ 171-52(a) defines a remnant as follow:

> The term remnant means a parcel economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics. As a remnant may be
> (1) land acquired by condemnation which is in excess of the needs for which condemned;
> (2) vacated, closed, abandoned, or discontinued road, street or alley or walk, railroad, ditch, or other right-of-way.

In order for a parcel to be deemed a remnant, it should meet one of the two criteria in HRS§ 171-52(a)(l) or (2), as the statute should be read in its totality. OHA applies the statute in its entirety and would like to encourage the DOT in doing the same for all future reviews of remnant parcels.

Remnant parcels AMB-1 and PR-1 both meet the requirement of HRS §171-52(a)(2) as both parcels were part of a discontinued right-of-way. Therefore, OHA has no concerns with the disposition of the remnant parcels AMB-1 and PR-1 to Hilton for their appraised value of $405,600.00 and $5,000.00 respectively. Additionally, OHA understands that both parcels are ceded lands and requests that should the BLNR move forward with the remnant sale, both transactions be included in the annual accounting of the public land trust receipts of revenue provided by your agency to the DLNR, as required by Act 178, Session Laws of Hawai'i 2006.

Mahalo for the opportunity to comment. Should you have any questions, please contact Jeannin Jeremiah at 594-1790 or by email at jeanninj@oha.org.

'O wau iho no me ka 'oia 'i 'o,

Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

KC:jj

**Please address replies and similar, future correspondence to our agency: Dr. Kamana'opono Crabbe Attn: OHA Compliance Enforcement 560N. Nimitz Hwy, Ste. 200 Honolulu, HI 96817*

History:

RE: FW: Request review of land board submittal for remnant sales

Kai Markell to: **Wayne.Y.Iwamasa@hawaii.gov** **08/26/2016 02:42 PM**

Cc: **Anita Manzano, Jeannin-Melissa Russo-Jeremiah**

This message has been replied to.

Aloha Wayne! In this particular case, yes...that is correct. Have a great weekend... kai

On Aug 26, 2016 2:37 PM, Wayne.Y.Iwamasa@hawaii.gov wrote:
Hi Jeannin,
Thanks for sending! Just checking to make sure, OHA is ok with DOT to sell the two remnant parcels to Hilton as long as we set aside 20% of the sale (credit) to OHA per act 178.
Thanks
Wayne

From: Jeannin-Melissa Russo-Jeremiah <jeanninj@oha.org>
To: 11'Wayne.Y.Iwamasa@hawaii.gov'11 <Wayne.Y.Iwamasa@hawaii.gov>,
Cc: Anita Manzano <anitam@oha.org>, Kai Markell <kaim@oha.org>
Date: 08/25/2016 03:31 PM
Subject: RE: FW: Request review of land board submittal for remnant sales

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Aloha e Wayne,

Attached is the pdf signed copy of OHA's response.
The original is being mailed today.

Jeannin

From: Wayne.Y.Iwamasa@hawaii.gov [mailto:Wayne.Y.Iwamasa@hawaii.gov]
Sent: Thursday, August 25, 2016 10:05 AM
To: Jeannin-Melissa Russo-Jeremiah
Cc: Anita Manzano; Kai Markell
Subject: RE: FW: Request review of land board submittal for remnant sales

Hi Jeanin,
Thank you! Appreciate all your help!
Wayne

From: Jeannin-Melissa Russo-Jeremiah <jeanninj@oha.org<mailto:jeanninj@oha.org>>
To: 111Wayne.Y.Iwamasa@hawaii.gov111 <Wayne.Y.Iwamasa@hawaii.gov<mailto:Wayne.Y.Iwamasa@hawaii.gov>>,
Cc: Kai Markell <kaim@oha.org<mailto:kaim@oha.org>>, Anita Manzano <anitam@oha.org<mailto:anitam@oha.org>>
Date: 08/25/2016 09:56 AM
Subject: RE: FW: Request review of land board submittal for remnant sales

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Hi Wayne,

The letter was sent up for signature on Monday, as soon as I receive the signed letter I will email you the pdf and will mail the original. I'm hoping to have the letter back by tomorrow.

Jeannin

From: Wayne.Y.Iwamasa@hawaii.gov<mailto:Wayne.Y.Iwamasa@hawaii.gov> mailto:Wayne.Y.Iwamasa@hawaii.gov]
Sent: Thursday, August 25, 2016 9:55 AM
To: Jeannin-Melissa Russo-Jeremiah
Subject: Re: FW: Request review of land board submittal for remnant sales

Hi Jeannin,

Thanks for talking with me last week regarding the OHA approval for the remnant sale. I plan on submitting the request to the land board for the Sept 23 meeting and will need to submit the request to the Chair by Sept 7. I can wait for the hard copy to come if if mailed early next week.

Thanks
Wayne

From: Jeannin-Melissa Russo-Jeremiah <jeanninj@oha.org< mailto:jeanninj@oha.org>>
To: [111]Wayne.Y.Iwamasa@hawaii.gov[111] <Wayne.Y.Iwamasa@hawaii.gov< mailto:Wayne.Y.Iwamasa@hawaii.gov>>,
Date: 08/18/2016 01:31 PM
Subject: FW: Request review of land board submittal for remnant sales

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Aloha e Wayne,

My name is Jeannin Jeremiah.
I am in Compliance Enforcement at OHA, and will be responsible for reviewing the remnant sale.

I plan to have the response out by next week and will gladly email you a courtesy copy once signed by our CEO.
Is there a deadline you needed our response by?

Let me know if you have any other questions or concerns,
Jeannin

[cid:image001.png@01CF138E.F4592380]

Jeannin-Melissa Kapuakawekiu Russo Jeremiah
Office of Hawaiian Affairs
560 N. Nimitz Hwy., Suite 200, Honolulu, HI 96817
(808) 594-1790
jeanninj@oha.org<mailto:jeanninj@oha.org>

From: Wayne.Y.Iwamasa@hawaii.gov<mailto:Wayne.Y.Iwamasa@hawaii.gov>
mailto:Wayne.Y.Iwamasa@hawaii.gov]
Sent: Tuesday, August 16, 2016 1:04 PM
To: Sterling Wong
Cc: Keala Lindsey
Subject: RE: Request review of land board submittal for remnant sales

Hi Sterling,
Just checking in on the review process, can you let me know when you anticipate completing your review?
Thanks
Wayne

From: Sterling Wong <sterlingw@oha.org<mailto:sterlingw@oha.org>>
To: Keola Lindsey <keolal@oha.org<mailto:keolal@oha.org>>, "'Wayne.Y.Iwamasa@hawaii.gov'" <Wayne.Y.Iwamasa@hawaii.gov<mailto:Wayne.Y.Iwamasa@hawaii.gov>>,
Date: 08/08/2016 01:48 PM
Subject: RE: Request review of land board submittal for remnant sales

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Mahalo!!!

From: Keala Lindsey
Sent: Monday, August 08, 2016 1:24 PM
To: 'Wayne.Y.Iwamasa@hawaii.gov'
Cc: Sterling Wong
Subject: FW: Request review of land board submittal for remnant sales

Aloha Wayne- apologies for the delayed reply. I have copied Sterling Wong, the ORA-Public Policy Manager on this response. Sterling and his team will be the ones to work on this request, and any others in the future.

Take care, Keala

From: Wayne.Y.Iwamasa@hawaii.gov<mailto:Wayne.Y.Iwamasa@hawaii.gov>
mailto:Wayne.Y.Iwamasa@hawaii.gov]
Sent: Wednesday, August 03, 2016 10:23 AM
To: Keala Lindsey
Subject: Request review of land board submittal for remnant sales

Hi Keola,
I work for the Department of Transportation, Highways Division (DOT) and we are in the process of selling two remnants to Hilton.. I am submitting a land board submittal and understand that we need to have the Land Board Submittal approved by OHA prior to having the Land Board approve the sale.
We are selling two remnants AMB-1 (4014 square feet) and PR-1 (49 square feet) to the Hilton in accordance with a agreement made between DOT and Hilton.

Both are ceded lands and 20% of the funds of the sale will be set aside for

OHA.

Both parcels fit the description of remnant parcels per the HRS 171-52 definition.Remnant - a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics.

Can you please review and let me know if you need any additional information for your review.

Thanks
Wayne

MINUTES li'ORTHE
ETING OF THE
BOARD OF LAND AND NATURAL RESOURCES

DATE: THURSDAY, SEPTEMBER 9, 2010
TIME: 9:00A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI **96813**

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

MEMBERS

Laura Thielen
Rob Pacheco
Jerry Edlao
David Goode
Ron Agor
Dr. SamOon
John Morgan

STAFF

Mark Young/DOCARE
Ed Underwood/DOBOR
Curt Cottrell/PARKS
Randy Kennedy/DOFAW
Sam Lernrno/OCCL
Morris Atta/LAND
Paul Conry/DOFAW
Lisa Hathaway/DOFAW
Russell Tsuji/Acting Land Deputy

OTHERS

Colin Lau, Deputy Attorney General
Mike Brant, M-4
Eric Leong, M-3
Jim Dittmar, J-3
Chipper Wichman, C-2
Lynn Cabato, D-15
Yvonne Yarber Carter: E-4, D-3
Kathleen,Kong-Kaulupali, E-4
Brock Stratton, E-1
Lieutenant Colonel Mitsayoshi, D-3
Senator Kokubun: C-1, D-3
Heidi Meeker, M-4
Janice Takahashi, M-S
Rory Frampton, D-10
Trae Menard, C-2
Alan Rito, C-2
Haunani Kalama: C-l,D-3, E-4
Keoki Carter: D-3, E-4
Ed Boteilho, D-4
Rick Campbell, D-3
Kat Brady, D-3
Kano Kajihiro: C-1, D-3

E>tt\1•1i- !I.

about the project. Ms. Meeker reminded the Boanfthat this Land Board approved the acquisition of this property on July 11, 2008.

Mike Brant representing Gentry Homes was present.

Unanimously approved as submitted (Morgan, Gon)

Item M-5 • Ac ept Conveyance of 4S.068 Acres from Hawaii Housing Finance and Development Corporation to the Board of Land and Natural Resources and Set Aside to the Department of Education for Kapolei High School at Honouliuli, District of Ewa, Oahu, Tax Map Key No.: (1) 9-1-016:074.

Janice Takahashi, Chief Planner with Hawaii Housing Finance and Development Corporation {HHFDC) said that Karen Seddon sent here regrets and related that HHFDC acquired 800 acres of Kapolei land from DLNR where the 45.068 is part of. She asked the Boar<f s approval. •

Unanimously approved as submitted (Morgan, Edlao)

ItemM-3 Amendment to Prior Land Board Action of A:ilgust 28, 2009 Under Agenda Item M-1, As Amended, Regarding Issuance of a Lease by Direct Negotiation to Seafood Hawaii, Inc., Unit FV3, Domestic Commercial Fishing Village, Pier 38, Honolulu, Harbor, Oahu

Eric Leong representing Department of Transportation, Harbors Division Property Management spoke on this item asking for appr9val.

Unanimously approved as submitted (Goode, Edlao)

Item D-10 Grant of Term, Non-Exclusive Easeme t to Koolau Properties, LLC for Seawall Purposes, Spreckelsville Beach Lots, Wailuku, Maui, Seaward of Tax Map Key: (2) 3-8-002:051.

Morris Atta, Land Division Administrator communicated that this item involves seawall encroachment on State lands. Staff consulted with Office of Conservation and Coastal Lands (OCCL) who had no objections to granting a term, non-exclusive easement to Koolau Properties, LLC. Staff recommends issuing the standard fine for an·area larger than 100 square feet and to go ahead with the easement.

Rory Frampton representing Koolau Properties, LLC testified that they agree with.staff's recommendations and conditions.

Unanimously approved as submitted (Edlao, Goode)

Alan Rietow, Chairperson for the Kauai Invasive Species Committee on Kauai testified in support of the invasive weed control and they've partnered with 1NC.

Unanimously approved submitted (Agor, Pacheco)

Item D-15 Issuance of Direct Lease to Honolulu Community Action Program for Preschool and Related PrograDII and Administrative Services Purposes, Kunia, Oahu, Tax Map Key: (1) 9-2-5:i2

Mr. Atta reminded_ the Board had approved in principle and this item is to approve the actual lease. There is an issue with HCAP (Honolulu Community Action Program) requesting a waiver of the non-profit minimum rent or in kind contribution. Staff recommended against that and he wanted to alert the Board

Lynn Cabato representing HCAP testified that she was here to answer any questions, but as far as the conditio raised by staffHCAP is in agreement.

Unanimously approved as submitted (Morgan, Gon)

Item E-4 Establishment of a Volunteer Curato hip Agreement for a Section of Lapakahi State-Historical Park, orth Kohala, Island of Hawai'i

Curt Cottrell representing State Parks conveyed that staff stands on their submittal.

Haunani Kalama, the Kakou Omua for Na H umana La'au Lapa'au O Pa a Auwae (NHLLOPA) testified that they've been at Lapakahi for 17 years caring for the area and iwi (bones). They've assisted staff with activities and helped staff rebuild after storms and the earthquake. She asked for approval.

Member Oon acknowledged and thanked NHLLOPA for stepping forward and assisting.

Yvonne Yarber Carter, a haumana (student) with NHLLOPA testified relating her training and perpetuating what Papa Auwae shared by working with them and the community. Take care of the land and the land will take care of you. Ms. Carter described NHLLOPA and asked to move forward.

Keoki Carter, a haumana of Papa Henry Auwae testified while NHLLOPA was with Papa Auwae they _leanied about Lapakahi and how to care for tt relating the challenges to malama (care) Lapakahi after the earthquake and asked for the curatorship to continue the up keep and to share wiJh the community which Mr. Carter asked the Board to consider.

Kathleen Kong Kaulupali, a haumana of Papa Auwae from Oahu testified that she goes to Lapakahi to help care for the land and for future gener tions. They appreciate the DLNR for providing this·opportunity and they want this curatorship/partnership to continue their work and cultural practices.

ltemE-1 **Requesting Approval to Issue Month-To-Month Revocable Permits (RP) Pursuant to HRS Section 171-5S, to Two Commercial Compa ies: Aloha Kayak Company and Kona Boys, Inc. for Landing and Launching Kayaks to Kaawaloa, Kealakekua Bay State Historical Park, to Include Parking at Napoopoo Landing as Part·of a Guided· Kayak Tour, on Terms and Conditions to be Negotiated by the Chairpenon.**

Mr. Cottrell said on the advice of the·Offic of the Attorney General he needs to amend the title by removing the comma after Kona Boys to read "K.ona Boys Inc." Previously four kayak companies were eligible to get revocable permits to operate kayak tours in Kealakekua Bay. Adventures in Paradise and.Hawaii Pack and Paddle had fulfilled those requirements based on the previous Board action and have been operating on year to year RPs. Subsequently the two other kayak companies - Aloha Kayak Company and Kona Boys Inc. have submitted all the paperwork necessary to qualify to be eligible under the conditions prescribed by a previous Board action. .Staff recommends authorizing the Chair•to issue two additional month-to-month RPs pursuant to 171 to Aloha Kayak Company and Kona Boys Inc. for landing and launching commercial kayaks at Napo'opo'o to Ka'awaloa Flats.

Chair Thieler,. noted that Mr. Cottrell joined State Parks after Chair Peter Young and before her tenure.

It was asked by Member Pacheco whether the permit was renewable at the end of the State fiscal year or at the end of the anniversary date. Mr. Cottrell said anniversary date, but staff is moving to have all their RPs come up at the end of the calendar year.

Brock Stratton representing Kona Boys Inc. and Aloha Kayak thanked staff for getting this submittal in and hoped to move forward with the permits and related the tours they will·give. He noted at the Konawaena meeting that the community wants these tours and he appreciated getting the permit(s).

Unanimously· approved as amended (Pacheco, Morgan)
Amend staff's agenda title by deleting the comma afte Kona Boys to read "Kona Boys Inc." Otherwise the submittal was approved.

9:56PM RECESS

10:05PM RECONVENED

Item C-1 Acceptance of a_Hearing Master Report on a Public Hearing for a Proposed Addition to the Natural Area Reserves System, and Withdrawal of Portions of Governor's Executive Ord rs 1225 and 1588 and Re-Set Aside as an Extension of Puu Makaala Natural Area Reserve, and Immediate Management Right-of-Entry, for TMK (3) 2-4-08:09 (POR), South Hilo, Hawaii *(RelatedtoItem D-3)*

2}Then recommend to the Governor the issuance of an Executive Order to set those aside as a Natural Area Reserve.

3) Grant the Department an immediate right-of-entry to continue managing the area.

Mr. Conry said Lisa will speak on the area proposed for withdrawal.

Lisa Hathaway representing DOFAW pointed out on the map the area that will be excluded from the Natural Area Reserve is approxm1:ately 600 acres in the interior outlined in orange and the area outside of that is about 6600 acres. Mr. Conry said the areas that are not withdrawn are the areas necessary for operations of the facilities. There are about 600 acres that are not being proposed for withdrawal to be put in the NARS which are reserved for Item D-3 or other future use.

Chair Thielen said that because the proposed use for Item D-3 is for the purpose of the Youth Challenge Academy they would invite the applicant up to explain lhe proposed use to the Board as part of the presentation where she asked staff to come up.

Item D-3 Cancellation of Governor's Executive Order Nos. 1225 and 1588 and Reset Aside Portion to State of Hawaii, Department of Defense, for Youth ChalleNGe Academy and Hawaii Army National Guard Training Purposes, with an Access and Utility Easement Reserved to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-4-08:09 por.;

Cancellation of Governor's Executive Order No. 3678 and Grant of Perpetual Non-Exclusive Easement to Department of Defense for Access and Utility Purposes, Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-4-08: por. & 1-8-12: por. ***(Related to Item C-1)***

A number of written testimonies were distributed.

Mr. A«a; reported that Land Division's role is to facilitate coordinating the withdrawal of lands for the NARS as well as accommodating a request from the Hawaii Department of Defense (DOD) for use for the Hawaii Youth Challenge and training purposes. But, staff had to coordinate the mechanics of getting that land set aside from Public Safety to DOD and accommodating the various use issues because easement issues were built in this request. The Land Divisicm's portion is based on DOD's request to occupy the improved areas from the former Public Safety's Kulani Prison that are shown on DOFAW's map. In order to do that staff cancelled the set aside from Public Safety (DPS) and issued a new set aside to DOD for the purposes they a.re requesting building into that certain easement rights. There are some ancillary issues regarding the use of Stainback Highway which staff had to accommodate by building in certain easements that were granted to either DOFAW or DOD. As for the actual use of the area, it is more appropriate for the applicant to speak to that.

Colonel said DOD is actively speaking with the Three Mountain Alliance (TMA) participating in their quarterly meetings to give the Alliance updates and actively providing access to both DLNR and TMA personnel. Mr. Campbell said the YCA is interested in any partnerships-that benefit the cadets in the long run leading up to jobs. Youth Conservation Corp. is one of the organizations they are interested in working with to learn about the pristine areas and why they need_protecting and is the reason why they are working with Three Mountain and NARS.

Member Pacheco asked whether the funding is strictly for the YCA or is it tied with the National Guard training. Mr. Campbell said it is strictly for the YCA and comes from the Secretary of Defense where 75% is federally funded and 25% funded by the State. The cadets do not participate in any National Guard activities and are there for the program to fulfill their high school diploma.

Member Pacheco asked what are the requirements for the Academy to qualify for funding in terms of land tenure. Long term lease, own the land? Mr. Campbell said a minimum 25 years MOA between DPS and the Academy. The Academy would be tenants of a National Guard compound.

It was asked by Member Pacheco after the cadets graduate from the Kalaeloa program will these cadets go to the Kulani program or are there new cadets expanding the Kulani program? Mr. Campbell said there is a program called Job Challenge and there is one in Louisiana primarily·state funded. It takes cadets from each of the programs that graduate who are interested in going into :vocational technical and would come to Kulani to work in the 6 month program. They would be trained certified in safety and health and other things. Cadets would continue training at Kulani after graduating.

The Board noted that you may testify on one or the other or both Items C-1 and D-3.

Colleen Cole, Coordinator for the Three Mountain Alliance (TMA) read from their written testimony describing who they are and supports the addition of the forested lands surrounding the former Kulani Correction Facility to Puu Makaala Natural Area Reserve (NAR). She went on to describe the forest, the benefits - increased watershed value, increased biological resources, protection of cultural resources, increased ecosystem services and recreation. The lands here are most vqlnerable because they lack any type of designation ensuring preservation or management. The TMA has supported and will continue supporting the management of this area. The community supports this proposal and whatever happens to the former Correctional Facility should not change the surrounding forest needs which deserves the designation of long-term protection and dedication afforded by the Natural Area Reserves System for future generations.

Member Goode asked whether TMA manages the surrounding areas or the 6600 acres. Ms. Cole said the 6600 acres and she confirmed that they receive funding yearly.

Kat Brady, Coordinator on Community Alliance on•Prisons testified that they support the NARS designation as long as access for Native Hawaiians is not denied. They are in

Member Goode asked that b ed on the Senator's testimony the 6600 acres is the best thing for that parcel and it's the 600 you want to defer action on. Per the NARS commission testimony it is a prime candidate that is already matched. Sounds like the original 600 acres of the former Kulani Prison is the heartache. Senator Kokul?un confirmed that was correct and spoke about the previous day's site visit looking at the 600 acres where it was commented that much of the 600 acres could be considered as part of the N.AR, to be restored for that purpose and that is why he thinks ifs important to have further discussion to get more detailed information with exactly what the needs are. The Senator said he would like to see Kulani re-open as a correctional faciiity, There are some areas that need to be discussed to get more information on and not sure what the rush is. They need to be_thoughtful in the decision making.

Member Pacheco asked Senator Kokubun whether the footprint at the facility is around 300 acres. The Senator said there is lots of potential and he would agree with ¢.at amount reiterating the need for more detailed information. Chair Thielen said that it's always possible to add more acreage tp- the NAR so why not support adding that minimum amount into the NAR and continue the conversation. There was a concern with access issues if the prison were to re-open and that means stopping the effort on the NAR pending the decision on the prison. Senator Kokubun said if the prison were to re-open there is a good worltjng relationship between TMA and the Kulani inmates. What the Chair said is doable, but the Senator's concern with respect to the proposed uses those needs would either be highly restricted or there needs to be discussion about that. The use of the Boy's School could involve fly overs and would have a direct impact to the threatened bird species there. The Chair clarified her question that she understands the Senator's concern about transferring over to the DOD and their uses, why hold off the designation to the surrounding NAR even if later in the discussion it would be determined its better for more land to go into the NAR. Why not support that effort? Senator Kokubun said he does support that effort. He just wants to look at this as a comprehensive whole which is his inajor concern and made it very clear to the Board membei:s that he does support the program for the NAR especially after seeing what is up there..His concern is he doesn't want to piecemeal this parcel comparing it to Kahoolawe as an island within an island with resources there found no where else. There is.a need to take the right comprehensive approach and the right protocols to see that what is done the.re is appropriate.

Chair Thielen said that the Legislature has the authority to disapprove a Governor's Executive Ordertransferring property and asked if this Board were to move forward with the transfer the Legislature would have the option next session to say we are going to put a hold on this and initiate public discussion on the future use of the property. Is that corre.ct? The Senator nodded n confirmation. And it is his understanding under the MOA between the DPS and DOD that the property could be pulled back to reopen as a prison even if it's during that 25 year period. The Departments could say we are not going to continue with this transfer and restart the facility and that option is on the table. The Senator acknowledged that.

NARS. These are options that woul not be explored if we didn'-t have a broader community discussion about these options. Military training, in their experience and history, is incompatible with protecting these vital natural resources and cultural resources of Hawaii. The military has hundreds of thousands of acres of land lost to us for other uses because of military contamination. There is over 600,000 acres under National Guard jurisdiction which is larger than the rest of DOD where Mr. Kajihiro questioned why the need for this p cious parcel. The proposal for training snuck in because it wasn't brought up before which is an example of mission creep where one mission grows to move into other areas that originally was not intended and we can't afford to have that happen with this parcel. Mr. Kajihiro urged the Board to exercise its wisdom to get all the information and involve the public in that discussion to make an informed decision. Reject the proposal for Item D-3. A precautionary tale is the Superferry and we can't afford that to happen to this parcel.

Karen Kahoolani from Oahu testified that as a child she spent a lot of time in the area in question and opposed Item D-3. She reiterated that military training is incompatible with protecting Hawaii's rare, endangered species and their habitat. The affected community has not been fully informed about the DOD plan that public hearings must take place and further options on the use of the land must be considered like establishing a Hawaiian based healing center and asked to defer Item D-3.

Marjorie Ziegler representing Conservation Council for Hawaii testified that they are a wildlife organization committed to protecting native plants, animals and eco-systems for future generations who are long time supporters of the NARS and supports Item C-1. They oppose Item D-3 reiterating previous testimony that this is not the area for military training that there are more appropriate developed areas for that type of training. Ms. Ziegler's concern was the- military will say one thing, but it changes over time and they can do this training at Pohakuloa. The training and Youth Chalienge is not compatible in this area. Move forward with the NARS designation. Her organization supports Senator Kokubun's suggestion to have the larger discussion on the 600 acres. She noted that she didsubmit written testimony.

Pat Reas testified that she has a son who is a cadet with the Hawaii YCA and prior to entering it he got into a lot of trouble due to peer pressures. After 9 weeks his attitude has totally changed. He is more outspoken and has goals now. Ms. Reas couldn't be more proud of him since she is a single parent The Youth Challenge is a good program. More youths are dropping out getting into trouble, crimes and this is a place for them to go which has a positive affect on these young men and women.

It was asked by Member Gon where this program was located and if that was the only location. Ms. Reas said Kalaeloa is the only location she knows of. It would be nice to have another location so her son can further his education.

Richard Pomaikai Kinney, a Hawaiian Kingdom National Royalist distributed his written testimony and read from it. He spoke against the use of Kulani Correctional Facility by the military powers of the United States for warfare. Under the laws of the Hawaii State

negatively to most of us born and raised here, Native Hawaiians and kama'aina. Mr. Monet supports the Sena r and others who said to defer this matter. Give it over to more talk to a new Board Chair and deal with the issue down the road with the new people at the top and give the people and democ y a chance.

Michael Kumukauoha Lee who is a Native Hawaiian practitioner of lapa'au related his background and who his family is. Mr. Lee testified that he opposes Item D-3 and supports Item C-1. If you take the Youth Challenge out of the,picture this would be an easy decision. He has family members in the military whom he related and this situation with the military needs to be taken out. If it is not deferred he will push for a contested case based on his family genealogy which was approved by the Oahu Burial Council on April 14, 2010 and as a Native Hawaiian lapa'au practitioner recognized in the First Circuit Court. Mr. Lee hopes that the testimony given will help as a whole to postpone decision on Item D-3 and allow public hearings. Item C-1 is very admirable.

Henry Curtis representing Life of the Land testified that they oppose Item D-3. Hawaii ranks 5th in the United States in the fiµlure of recidivism and its interesting in the last few years we have closed Hale Na'&:u for mental health and ulani for having the best sex offender treatment program in the country and leads him to believe whether the State wants to be #1. Mr. Curthi likes the NARS.

Chair Thielen explained under the Sunshine Law this Board cannot discuss items that they will be taking a vote on except in front of the public. We are about to go into Board deliberation and discussion. We have not had a ch ance to talk about either of these item s together as a group. We may discuss tlrings amongst ourselves. We may have questions and may call staff or other people up to ask questions for clarification. It does not open public testimony. This is an opportunity for the Board to discuss amongst itself, but they do that in public. Then the Board may make a decision to take action and if so will take a vote in front of you.

Member Agor asked whether the funding for the Youth Challenge depends on military exercises. Lieutenant Colonel Mitsayoshi answered no it is not. Member Agor asked whether he saw the Youth Challenge and the prison co-existing. The Lieutenant said no sir. Member Goode asked why not? Mr. Campbell said the two are incompatible because you have felons. The (Youth Challenge) program is designed so that felons cannot get into the program. The facility is large, but is not that large. The housing areas are contiguous to have inmates on one side and students on the other, but you'll have a **mix.**

The Chair noted there is one dining area and she asked Mr. Campbell to describe what areas the YCA will use that was formerly the prison site. Mr. Campbell said they call them barracks because it's military terminology where there are 7 in a semi-circle. The administration building is in the middle and the dining facility is attached to that. The shop area is below the barracks and administration area. There is a classroom area, a gymnasium, a carpentry shop and. a visitor center that they plan to use as their visitor center as ell and that is separate from everything else.

it is something they would have to look at because of the amount of money they have to operate with it would be difficult to pay a lease. There is no financial return back. Member Pacheco said if lease tenns were agreeable to that it is something your fimding could exist under which Mr. Campbell acknowledged.

Chair Thielen asked that earlier Mr. Campbell mentioned a minimllllll time requirement to get the Federal funding. What is the minimum time requirement he needs to get the Federal grants? Mr. Campbell said at least 25 years because the Federal Government wants to make sure there is a return to them. The cost for operating the program every year is expensive and the Federal Government needs to see there is going to be time to spread the money out so it's used properly. Member Morgan said he understands on the business capital side of it, but if you are just graduating kids on a yearly basis you don't need to advertise that at all. The Chair asked whether they are competing with other states for Federal grants. Mr. Campbell said they are guaranteed the funding and have to show they are using the money properly. The Chair asked in order to get that Federal guarantee is what you have to show the 25 year commitment for and Mr. Campbell confirmed that. Member Pacheco asked whether the funding is annually and have to re-apply every year for the funds and Mr. Campbell confirmed that. Member Pacheco said that there is no long term commitment of DOD funds for the program because they could pull the plug next year. Mr. Campbell said correct The Lieutenant Colonel explained that the Federal Government won't even consider letting you start the program if you cannot commit to them that you already have an established facility to run the program for 25 years. Chair Thielen said you don't get into the pool of the block grant unless you meet that criteria if the Federal G vemment de-fimds the program, but as long as the program is funded your in there. The Lieutenant Colonel confirmed that. The Chair said what you are putting in each year is not a competitive application its more saying your continuing to meet the requirements of the program and asked whether it is a formula funding the way the funds are allocated. Mr. Campbell couldn't say.

Member Pacheco asked whether to consider DOD as a sister agency. Chair Thielen asked Mr. Atta the State DOD is a State agency and is a sister agency as far as procedurally done by EOs is still State of Hawaii. Mr. Atta said the managerial jurisdictional use of property is through. the set aside that is signed by the Governor.

Member Gon asked how closely tied are Items C-1 and Item D-3. If Item D-3 were to defer can Item C-1 proceed with the NAR program for that area? Mr. Conry acknowledged that is how Item C-1 is structured that it can proceed. Member Gon asked if there was a NARS designation for the majority of the lands surrounding the 600 acres that's in contention the ultimate fate of those 600 acres and the ability of managing or the facility using agency or entity would be equal with regards to the NAR. Do you foresee any difficulties in working out co-management or other cooperative uses of those lands? Mr. Conry said they would work with their partners. If you are talking about the designation of the 600 acres they have a partnership agreement with DPS and will have one with DOD or Youth Challenge. Staff will try to bring in the landowners in partnerships. Lisa Hathaway, DOFAW staff said they are willing to work with whoever is at the facility. They've partnered well with Kulani and will work with YCA or

Member Pacheco was concerned with non-use of those facilities and whatever happens in the interim if they are not being used there will be deterioration of valuable State assets and it is their job to protect those. He would like to see the facilities used in some way. He is glad to hear from DOD that is not a deal breaker for them because the training aspect is inappropriate for that area for many reasons. There was the impression that the training came in when the door opened for YCA which he is uncomfortable with plus the lack of public input. They had public hearings on the NARS, but nothing for the disposition of the land to DOD from DPS. The Boy's School area and the pasture area need to be managed for conservation. All the resources up there, the quality of them are unsurpassed and need to be moved into our highest protection status which is the NARS as soon- as possible. He has questions for YCA's ability to operate because the operational costs are tremendous particularly water, water treatment, sewage because there is no water up there and they will have to truck water up - an incredible cost.

It is Member Pacheco's understanding that the land was EOed for a particular purpose for the prison now thafs not happening that the land can't be used by DPS for any other purpose than running a prison and asked is that correct? Mr. Atta said that the EO says it's for a prison or related purposes and they are not using it for that PlllJlOse. Technically, ies under their (DLNR) set aside. The lands are supposed to come back to us.

Member Pacheco asked whether there is a timetable and there is none per *Mi.* Atta.. The way it's worded is if it ceases to be needed for that purpose it's suppose to come back to us (DLNR). It's subjective. Member Pacheco said that the land could tay with DPS indefinitely. Mr. Atta said that we have situations like that with other set asides which is a long time concern of Land Division that lands have been set aside to oth r agencies that are not being used for the purposes as stated in the EO and yet the agencies have been hanging on to them. A form of land banking which has been a long term issue the Department has had. The law does state that it has to come back to us (DLNR). Member Pacheco asked lets say we are following the law and land comes back to us and we have no idea what to do with this land would it go to Land Division as unencumbered lands and Mr. Atta confirmed that. Member Pacheco asked if that land did go to Land Division then it would be available for a long term lease agreement with a sister State agency that we could do a nominal lease amount. Is that correct? Mr. Atta confirmed that. Once it becomes unencumbered lands it would be subject to whatever management decisions the Board decides to make. Member Pacheco said that it's possible to bring the land back in to DLNR as far as the facility land of 600 acres and then do a long term lease back to the YCA or DOD. Mr. Atta said he imagines that's possible. Again, your concern is the maintenance of the facilities because they are valuable assets, but if they were to pull it back to Land Division it would be difficult for us to maintain it. Member Pacheco asked whether DPS has any legal responsibilities to the facilities or anything. If this land stays with DPS would they be required to maintain the facilities? Mr. Atta said technically they are because that is what the management jurisdiction is. They are supposed to maintain it. As a government agency they (DPS) have a duty to maintain public resources. Whoever has control over the land has a duty to maintain it and currently that responsibility is with DPS.

Member Morgan asked he heard him say that the monies are available now and if we don't get it somebody else might and that's for this year. Is there an implication for future years? Because what we are looking at is starting a YCA on a State facility that might further in disrepair. If we don't get it this year will it impact our future ability to start up a YCA? The Adjutant General said the current YCA has been running 16 years and there are certain expectations that you will get it. lfwe give it up this year I can't say with any degree of certainty what their chances are next year. His sense is if they decide not to take it this year and come back next year they will look at them with a funny eye and wonder how serious are you? He isn't saying it was right, wrong or different all he knows is in his perspective he wanted this campus and was very aggressive to get a whole new campus.

Member Pacheco asked Mr. Campbell mentioned that they wanted to start operations next January? Mr. Campbell said the first class is scheduled to start the 3rd week in January. There is a transition of changing the campus from an incarceration institution to an education institution. The Chair asked whether students are applying now and Mr. Campbell confirmed that. If they did not have Kulani would they be able to meet those ctimmitments at Kalaeloa? Mr. Campbell said about 400 applications will come in where 150 will go to Kalaeloa and 100 to Kulani.

Member Edlao asked if they gave the EO to Youth Challenge can they-take it back. Mr. Atta said the Board can, always request the Governor to cancel a set aside or issue a new one. The ct of a set aside can always be taken back by the Governor with the recommendation of the Board and subject to disapproval. The Chair said that if the set aside were defined exclusively for the use of the YCA and specifically excluded the military training if that is something the applicant wants to take off the table and the Board wants to consider legally, at that point, they have a set aside for a particular limited purpose. Is that correct? Mr. Atta confirmed that. The Chair asked what is the remedy if that were to be expanded beyond the purpose of the set aside. Mr. Atta said any use beyond the purpose of the set aside is not authorized. He would assume the remedy would be for the Board to approach the agency and tell them not to do that because it's a use outside of the purpose of the EO. The Board retainsjurisdiction of all other uses outside of the specific purpose of the EO and pnly the Board could authorize that use subject to the approval of the Governor and the Legislature. Whatever purpose that the set aside states the agency receiving that authority must stay within the confines of that purpose and can't go outside of that.

Member Edlao said it was said whether they wanted to utilize that as a prison again which could happen, but then again he'll be confused with the aspects for the youth and these 2 aspects cannot be combined together. Chair Thielen said that what the Board member is saying is this is a question for this Board. To her whether the prison should have shut down or not there was a debate about that, but the reality is it has closed. Our role as the Board is taking a look at the land management of the area. Whether that area re-ups as a prison, whether the Legislature chooses to disapprove a transfer down the line because there certainly a process at the Legislature with public testimony, whether there is other entities that come forward to talk about a public health facility there - she thinks

the site now. Mr. Atta said under the submittal the DOD is given immediate right-of-entry _for the use until the set aside docwnent is :finalized Member Pacheco asked there will be a survey and Mr. Atta said that is the requirements of the applicant.

Member Pacheco asked we have done a lot of set asides on the Board. Is there any precedent for public hearings or public infonnation hearings on the disposition of the land? That is a big problem he has with this that the Board is being asked to make a long term decision on a very important piece of property that has a loi of potential uses for the public referring to Item D-3. We got very little public input on it and most of the public input they got on it is against it. Do you r call the Department ever doing any kind of public hearings for executive set asides? Mr. Atta said talking generally he is not aware for set asides that has ever been the case. Actual dispositions for uses we do certain kinds of leases and we have statutory requirements for public hearings like in the case of renewable energy on ag lands that recently passed legislation that says they have to have public meetings on the island where that action is talcing place. For set asides I haven't seen that similar requiremen,ts being the norm.

Chair Thielen said one of the things she was surprised because of the issue that came up about the Legislative disapproval is why it is written into the law for set asides. One or the other house may disapprove a set aside by resolution with a 2/3rds majority or a majority of both houses by resolution. There is subsequent s sions an opportunity for public hearings and resolutions to be brought forward to disapprove a set aside where in this case it would revert back to whatever the status quo is a resolution back to the Department or set up subsequent discussion.

Member Edlao asked whether there were any other entities interested in this property. Atta said he hasn't had a chance to discuss that with the Hawaii District land agent. The Chair said the only thing she heard today was a possible health center, but there are funding questions and how it would pay for itself.

Member Pacheco agreed with the Chair to move the surrounding lands around Kulani into the NARS is an important opportunity for them and he can't conceive of another designation for that land. He would hate for us to lose that opportunity for Item C-1 and supports accepting staff.s recommendation on Item C-1. He is prepared to make a motion on that, but he is still uncomfortable with Item D-3 even without the training.

Member Gon said before we do that there was a reason for the Board to take the 2 items into consideration together which forms that block and he was concerned by a statement made with regard to environmental law requirements going into the future and the timing of these things and the precedent that would be set making this decision particularly on Item D-3. He moved to _go into Executive Session in order to consult with their attorney on questions and issues relating to departmental permits, and questions and issues -pertaining to the board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it.

12:40PM EXECUTIVE SESSION

Ms. Hathaway said that is around 5 acres. The Chair said that wouldn't substantially change the acreage, but it would change where they would not have the ability to use that lµ'ea. Member Goode asked whether it would go to DLNR. Chair Thielen assumed it would go into the NARS. Member Goode asked whether that changed their motion for the NA.RS.

Randy Kennedy representing DOFAW said that when they send the EO on they can make minor changes. They can. add parcels. It can be done.

Chair Thielen said approximately 600 acres because she doesn't think the acreage for the Boy's home .and the road is that large. They would have to amend C-1 to say that the Board accepts staff's recommendation, but amend it so that the road and Boy's Home would also be included in the N.AR.S. Amend D-3 to exclude the road and Boy's Home and have the remaining portion transferred to DOD subject to the condition that they not use it for military trair\ing and it is for the exclusive purpose of the Hawaii Youth Challenge Academy.

Member Agor accepted that amendment for his motion. Member Morgan seconded it.

Chair Thielen summarized that the motion and the second is to support the recommendation in D-3 with the following amendments:

1. Exclude the road leading up to the Boy's Home and the Boy's Home itself.
2. That the portion transferred to DOD would be specifically limited for the purpose of the Youth Challenge Academy and specifically exclude military training.
3. And, the DOD be required to hold a public informational hearing in that community to explain the Youth Challenge Academyprogram.

Member Pacheco described the cattle pasture, nursery facility and piggery and asked whether they are better suited for the NARS. Chair Thielen said after talking with DOD that what they will be doing there with the youth is similar to what was done with the prisoners. One staff person is still there and shared that staff person with DOD and will be working with Department of Ag on some technical training. They could call them and have it be the scope of the meeting. Have them come back with a recommendation to the Board whether that area remain DOD or come back to the NARS. Member Pacheco asked whether that is something done later or is there a way the language proposal allows for that negotiation to happen. The Chair said we can ask DOD now whether the pasture is a component of the YCA. Mr. Campbell said that the pasture would be for cattle and agriculture purposes. It will give them many more options for the program.

Member Gon suggested amending recommendation items 2b and 4b by deleting [Hawaii Army National Guard training purposes, or for]. Chair Thielen agreed to remove any reference to training and any other reference to training to be deleted. She reiterated adding a condition limiting to Youth Challenge Academy excluding military training and add a condition for the public informati<;mal meeting.

Item D-18 **Cancellation of Governor's Executive Order No. 2850;**

Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Hana Boat Launching Ramp Site and Related Purposes;

Set Aside to the Department of Transportation, Harbors Division for H a Wharf and Related Purposes; and

Authorize the Issuance of a Management and Construction Right-of-Entry to the Department of Land arid Natural Resources, Division of Boating and Ocean Recreation and the Department of Transportation, Harbors Division, Hana, Maui, Tax Map J{eys: (2) 1-21-4:36 and seaward of the County Road and Parcel 1.

Mr. Atta conveyed that staff is here to talk about the details of the work on the area.

Dana Yoshimt1111 representing the Department of Transportation testified that the Hana wharf has been condemned. Along side of it is a boat launching ramp that serves the recreational purposes of the local fishing community. Staff has had meetings with the -community about the Hana Wharf Development Plan to. find options. Most of the community's concerns were the boat launching ramp. DOBOR has proposed and contracted to improve that boat launching ramp. Due to a shortage of funds they were not able to proceed with that contract. DOT agreed to partner with DOBOR to meet the shortfall in the l;>udget' and proceed with the project.

It was questioned by Member Goode whether this boat ramp serves bigger boaters. Mr. Yoshimura said only recreational·boaters - small :fishing boats.

Member Goode asked about the wharf development where Mr. Yoshimura said that project is on-going. They are doing a re-development study for that wharf and options will yet to be seen about the end of this year. The options are demolish the wharf, renovate it or renovate it in a different fashion. The Chair said this allows some .improvement to go forward which will benefit people in the short term to get in the water.

Unanimously appro"'.ed as submitted (Edlao, Goode)

Item D-17 Approve the Withdrawal of-Approximately 2,176.822 Acres from General Lease No. S-4475, K.K. Ranch, Inc., Lessee, Parcels 7-A **por. and 7-B, Government Land of Kalopa and Ka'ohe 3, Hamakua, Hawaii, Tax Map Keys: 3rd/4-4-14:02 por.** & **03;**

Approval In Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of such 2,176.822 Acres for Addition to the Mauna

Mr. Conry said they constructed the fence. Part of the deal is staff would cooperate under a grant. The Chair wanted to clarify that DLNR is not taking on the responsibility to maintain that area. Mr. Conry said that is covered under an easement given to the Federal Highways that is going for another 2-112 years.

Mr. Tsuji asked because this is in relation to the Saddle Road Project Phase I & Phase II and the Palila Mitigation Area has to be perpetual in nature for the fund of this fence and can we count on it. Dave Geddeon of the Federal Highways Administration d their commitment is under a 10 years easement plan which was entered by the Hawaii DOT. As well as a 10 year Palila Mitigation Plan issued by th_e U.S. Fish and Wildlife Service and they will work with them to ensure these lands are set aside long term.

Chair Thielen asked if the_reason for the permanent set aside is because of these federal requirements is your agency going to commit to continuing the repair and maintenance needed to keep that fence in operating condition. Mr. Geddeon asked for perpetuity. The Chair said even what he is willing to commit to. Mr. Geddeon said the current commitment is to November 2012 and have not looked beyond that where that question has never come up before. The Palila Project is not responsible for the Saddle Road Project. They have made a commitment to the Palila Recovery, Qut at some point their oQligation ends and then it becomes the Fish and Wildlife Services' responsibility and/or the DLNR if that is one of their purposes.

Chair Thielen clarified that staff can commit to meeting the actual repair and maintenance at this time that they can do under the Federal grant, but they are not provided alternative funding for perpetuity which is something we all have to keep working to figure out what to do and there are negotiations continwng on the Federal level she assumed. There may be further coμunitments from DOT as part of that consultation. Mr. Conry suggested calling up the Les e to identify. It was his understanding that there is some design problems with the fence and those can be resolved over the next l or 2 years, but the funding support is coming through Federal Highways. Longer support- the U.S. Fish and Wildlife continues to support the palila restoration on Mauna Kea. He thinks the issue Mr. Moniz has is a design flaw. Mr. Moniz said his issue is the failed design of the fence. It is way overbuilt for cattle. He doesn't want to do something long term.

Member Goode suggested since you're going to rent re-opening why not take responsibility for the fence after 10 years and adjust your rent accordingly because you are out there everyday. It would be cost effective. Mr. Geddeon said there aren't so much deficiencies of the fence, but the ones on Mr. Moniz's property are problematic. They can be fixed.

Mr. Moniz said as far as taking out the infrastructure that was left up there was because when-the easement was placed there was a discussion in the 2001 Board meeting that if grazing was to be used that the ranches affected would have the first right to graze those areas which is why they left the pipelines. H has a couple metal tanks and a few miles of J)ipe that he can't afford to buy nowadays where he would like to take it out and use it

understanding with Lessee regarding the terms, conditions and duration of the bligations for repair and maintenance of the fence. Otherwise, the Land Board approved stafrs recommendations as submitted. The Land Board also directed the Board Secretary to have the minutes reftect the Department's (DOFAW) commitment to work with the U.S. Dept. of Transportation (Highways), subject to available federal funding, t repair and maintain the above referenced fence.

Chiμr len asked Mr. Conry to report back to the Board on the progress of the MOA.

Unanimously approved as amended (Pacheco, Agor)

ItemK-2 **Amendment to Conservation District Use Permit (CDUP) OA-2670 to Construct a Marina Entrance Channel at Honouliuli, Ewa, Hawaii by Haseko (EWA), Inc. on State of Hawaii Submerged Land at Honouliuli, Ewa, Oahu; TMK: Makai of plat (1) 9-1-012**

Sam Lemmo representing Office of Conservation and Coastal Lands reminded the Board that they approved on April 2 , 2000 a decision to develop the Haseko Marina and dredge the ocean channel. July 2001 the Board approved. an amendment to reduce the size of the marina. Later the Board approved another amendment to reduce the size of the marina which was later rescinded. Today Haseko is asking the Board to reduce the size of the.marina. Staff recommended approval. It would result in an amendment to reduce the size of the marina from approximately 70 acres to 54 acres which are subject to all conditions.

Chair Thielen asked the reason Haseko withdrew their request to reduce tlie size of the marina and the reason they rescinded that decision was. Mr. Lemmo said there was a req1.1:est for a contested case hearing and at that time it was during the economic down.town where Haseko didn't want to pursue the matter. Once the matter was rescinded the contested case was no longer relevant. However, they are back today seeking to reinstate that approval. The Haseko representative is here.

Yvonne Izu representing Haseko answered the Chair's question on why they withdrew their request. The Board actually approved this request and at the time Mr. Mike Lee asked for a contested case. Initially, the Department recommended he be denied a contested case for lack of standing. At the time the agenda item was for a denial Mr. Lee raised another issue and the Board determined to allow him to amend his petition. The marina was about a year old bythat time and it was during the economic downturn. It wasn't in Haseko's best interest to do a contested case and they didn't want to spend their resources in that way. The economy is improving and the future looks good now which is why Haseko is coming back. At the time Haseko withdrew its request they did reconsider whether they wanted to go ahead with the 70 acre marina or pursue a 54 acre marina. There has been a lot of d scussions with community groups and they support the 54 acre marina which is why Haseko is back to ask that.

to unilateral agreements that they were responsible. for where Mr. Omalza wrote letters to politicians and people of concern about that llllilateral agreement which hasn,t come true. He is going to file for a contested case_hearing because he felt throughout his years, starting with the drainage, the wall. the downsizing of the marina. the alignment of the golf course eventually overflowing and flooded Oneula ;Beach Park. Plus they should be up io par on the EIS since Haseko hasn't done one since over 20 years ago. The community is concerned because thefve isolated -the community. He opposes the shrinkage because Haseko has not spoken to them about it.

Alicia Maluafiti, Board Treasurer for the Hoakalei Folllldation testified that they are tasked with stewarding the archaeological, cultural and preservation sites on the Ewa plains_ fol,lilded by Kupuna Arline Eaton and Aunty Mary Serrao. Aunty Arline has worked with Haseko and the previous developers who fonned their organization so that Native 1-fawaiians have· a say. They have worked collaboratively and in a·coordinated effqrt with Haseko on these developments. The Hoakalei Fou,ndation supports the reduction of the marina. Ms. Maluafiti said she could not live on the Ewa· plain without the developers who brought affordable- housing to their area. Most of the community sees the opportunity and they will do everything in their power to ensure that the Native Hawaiian issues are addressed and since that time Haseko has been wonderful partners to them. They've come before you in the past so that you know there is·a voice for Native Hawaiians and the many cultural issues. Also, did you know our Ewa Neighborhood Board was suspended for 2 months because they fought so much. Hawaiian Memorial Park sat down with their Foundation because they liked the model in which the Hawaiian community came together to work and collaborate with the developer and Hawaiian Memorial is using that model. It is better to work together instead of constantly hammering each other because the bottom line is in the long term it is not going to be in the community's best interest. Aunty Arline has repeatedly addressed a number of the issues that Mr. Lee had brought up: They had a community workshop to have everyone hear Mr. Lee's issues. Our Foundation Board is in disagreement with Mr. Lee with the statements and accusations he makes. The Foundation not only uses their own mo'olelo (stories) from kupun but they have their own scientists, cultural experts and arc aeologists. Mr. Lee did not mention that these burial sites are from visions he had. Not from fact or science or even verifiable data. This is simply inwfighting amongst Hawaiians and has nothing to do with the reduction of the marina. This project is something Ewa has not had and this is an opportunity to educate local people and the malihini that will use this marina.

Chair Thielen apologized that she was trying to spare the emotional that they appreciate the work and focus they do and that the Board understands the problems going back and forth.

Chair Thielen asked Ms. Izu whether her client has thought through the ramifications with court cases and everything else and what this will do to their timetable and plans if this goes through a contested case hearing. Ms. Izu said if there is a contested case they are willing and ready to go through it.

ltemJ-2 REQUEST FOR APPROVAL TO I ITIATE RULE-_MAKING PROCEEDINGS REGARDING COMPREHENSIVE AMENDMENTS, REPEAL, OR NEW SECTIONS TO TITLE 13, SUBTITLE 11, OCEAN RECREATION AND CO STAL AREAS, PARTS I, II, and III, HAWAll ADMINISTRATIVE RULES; IN THE AREAS OF PART I - SMALL BOAT HARBORS: CHAPTER 230 -· GENERAL PROVISIONS (definitions, resid ncy); CHAPTER 231- OPERATIONS OF BOATS, -SMALL BOAT HARBORS, AND PERMITS. (use permits, mooring permits for vessels owned by business entities, length- of stay aboards on transient vessels, exchange of berths, vessels as principal places .of habitation, personal partners of permittees, vessel·inspections, issuance & reissuance of commercial use permits); CHAPTER 233 - MOTOR VEHICLE AND PARKING RULES (administratio_n of parking rules by authorized representatives, parking permits & decals); CHAPTER 234 - FEES AND CHARGES (reduction of late fees and interest, gear locker fees, permit processing fees, passenger vessel fees, service charges on dishonored negotiable instruments; vessel inspection fees, commercial vessel fees for bo ting facilities other **than** small boat harbors); PART II - BOATING: CHAPTER 243 - VESSEL EQUIPMENT REQUIREMENTS (repeal of recognition of marine examination decals); CHAPTER 244 - RULES OF THE ROAD; LOCAL AND SPECIAL RULES (.;,peration of power d:riven.vessels; authorization for regatta, marine parade, boat race or exhibition); PART III - OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES: CHAPTER 256 - OCEAN RECREATION MANAGEMENT RULES AND AREAS (commercial use permits including high speed boating & water sledding, fees, thrill craft operations, recreational thrill craft operations, tow-in su ng, Kauai tow-in surfing and thrill craft operating areas, North Shore Kauai Ocean Recreation Management Area Rules (commercial vessel operation requirements, commercial use permits, reporting requirements for permit holder changes, fees, Anini Ocean Waters, Hanalei Bay Ocean Waters, Kee Beach/Lagoon Ocean W ters), South Shore Kauai Ocean Recreation Management reas (Nawiliwili Bay• Restricted Zones, ·Koloa Landing Restricted Area, Wailua River Restricted Area, Kihouna Bay), Windward Oahu Ocean Recreation Management Area (definitions, Kualoa Water Restricted Zones, Kaneohe Bay Ocean Waters and commercial use permits, restrictions on large & small full service permits, large snorkel tour, & small saiUsnorkel tour, & glass bottom boat tour permits; replacement vessels, shuttling restrictions, _permit issuance & revocation, temporary mooring of commercial vessels at Heeia Kea Small Boat Harbor), Ka:rieohe recreational tbriil craft zone.

Numerous written testimonies were distributed to the Board.

prevented you from coming in within the 90 day period prior to the rule expiring that prevented you from renewing that mooring permit then the Board should grant them the ability to reinstate their permit which is in this rule package as well.

Board Member Edlao asked whether the catwalk and bow stem mooring can be applied now. Mr. Underwood said staff started July 2010, but at this point staff is going to put a moratorium on it until they look at it. 1t could continue as writtetrthere or maybe amend the whole mooring category itself because there is no bow stem mooring in our harbors. There are Mediterranean moored vessels and suggested amending it to address that category of mooring and go from there.

Member Pacheco asked whether there are people with 2 boats sitting next to each other that are paying different rates for the same mooring. Mr. Underwood said there are, but not on the Big Island. There are a few on Maui and Oahu where staff is looking to address that now and are in discussions.

Member Agor inquired at the end of the County road at Hanalei -there is a ramp and is it a County or State ramp where Mr. Underwood replied it is County.

It was also asked by Member Agor whether they can regulate tourists walking in the water and jumping into a boat. Mr. Underwood said that is where the big issue is. He b lieves the 9tli Circuit Court of Appeals said you cannot tell a commercially documented boat that it cannot traverse over the waters. It's got the right to be there. How do we address that issue? We could do it by land by regulating how many vessels land on the beach, but if a vessel is out on the water and people walk over a sand bar to get to that vessel he doesn't believe they can prevent that. It is the County's jurisdiction regarding people walking on the water from the· land and would have to address the land sid activities. Those are the commercial rules that staff pulled back on. What can or can't they do? If a vessel can pull off d stay 3 feet offshore and load and off load passengers throughout the State than it will be a free for all. That is what staff wants to get a handle on in Hanalei Bay now. We have rules in front of us that we can use and we could go back and tweak it more if the community wants, but right now there is nothing. Chair Thielen said it was her understanding, and Pam (Matsukawa) who is the Deputy AG on this who would know more, under Cayetano's term commercial activity was banned on the water in Hanalei. The 9th Circuit issued a rule you can't ban uncier the interstate commerce clause, but she thinks the door is open to do reasonable regulation but that would get into the commercial rules and capacity limits of Hanalei Bay and wha·twould be reasonable under Federal Laws or the State's. Pam Matsukawa, Deputy Attorney General said that we can still regulate for safety and the environment, but we cannot stop a licensed vessel from dealing with commercial activities in Hanalei Bay. The way the Hanalei rule had been amended was to regulate for safety and environment without discriminating against commercial vessels. It's not safe to have a propeller amongst the swimmers or you don't allow it. It's not only the motored powered commercial vessels that can't come in the swimming area. The rule is intended to regulate for safety and the environment even handedly. And, it also addresses who can land on the ground. If you're offshore and you have a Federal license to do commercial activities we can't stop

Barbara Robson and Carol Wilcox from Hanalei where Ms Wilcox testified relating some family history at Hanalei. She was part of the 1976 North Shore planning process and subsequent updates. She sat qn the ad hoc meeting for the North Shore oating Plan. SJ:le was the Coastal Zone Management Planner and helped shepherd through the Hanale1 Estuary Management Plan. Ms. Wilcox is testifying on the rules that refer to Hanalei which is Section § 13-256-39 and her 1:ecommendation to the Board is to withdraw this section and deal ith itseparately. The issues here are who has jurisdiction and who will take the lead responsibilities of the commercialization of Hanalei Bay and Beach. What you decide here will affect every place else in Hawaii because if the boats can have commercialization in Ha,nalei they can do it anywhere. These proposed normal rules assume the Department of Land and Natural Resources will take the lead.. And, they also seemed to assume the commercialization of Hanalei Bay is a permitted activity and she thinks there are some problems with those assumptions.

1) That over this long period of debate on these issues in Hanalei it is her opinion that the Legislature and administration court decisions is that the County should take the lead in planning the level of commercial activity, if any, in Hanalei Bay and the North Shore generally.
2) That any level of commercial activity which expands over the Hanalei Estuary Management Plan limits will trigger an environmental impact statement.
3) These rules ignore the intent of the County that history shows to minimize to the maximum extent possible of commercial activity in the North Shore in the water.

'.fo support these conclusions she thinks the Department is in support of these by its action last year by turning over the beach area around Black Pot Park to the County. There was discussion on the Board at that time on the intent and said it was so the County could manage for recreational purposes and it was made clear at that time it would not be for commercial purposes which was part of the set aside or action that it was. Subsequent to that the County of Kauai initiated the Black Pot Park Plan to deal with all of these issues. There is a process now. The communi_ty has met with DOBOR and other County Representatives to draft language in anticipation to what these rules would look like. Ms. Wilcox understands that language which has been agreed to or discussed by the community has been recently deleted and submitted the language that is before the Board today. This is problematic both from a procedural and consequential point of view. It was suggested they could revise this language during the course of these hearings for these rules; however, the difference is so great that the changes if it went back to the original would be so significant would probably have to go back out for hearing agajn. Ms. Wilcox suggested takipg the issue of the North Shore out and deal with it separately. And, to put out the implementation of these rules, if they were to pass, an implementation of giving out additional commercial permits would trigger an EIS. The human, financial and economic cost has been enormous. She believes this is the opportunity to rectify a lot of damage that has been done in our community as a result of previous actions and decisions. Ms. Wilcox conveyed the history of this area since 1976. These rules as they stand are not collaborative and would tear their community apart again. She urged the Board to remove this section from the rules and to proceed with them separately. Ms. Wilcox left a copy of her testimony with the Board.

the option when people are sitting down and things get amended to do it before the public hearing then it may not trigger another public hearing after that. If it looks too complicated then drop it out. Not saying that it will go forward to final rules over community opposition, but to allow the process to start and maybe have some extra work done with extra people at the table on Hanalei Bay rules before we get to the public hearing on- Kauai.

Ms. Robson referred to items #10 through 15 that these are specific examples of what are in the existing rules and what are in the proposed rules. When we read that we see the whole thing being opened up potentially for commercial use. Currently, there are specific areas for commercial use and the commercial use is going to impact the recreational use. We're concerned with the peopl who live there and the people who come for recreational purposes being driven out of the water by commercial people like surfboard schools, etc. The Chair agreed and said we lost our Deputy AG who had to go to another meeting. That is the one that needs to be in there with you explaining why. Are we getting the advice about what has to be in there because of the court case?- It's your attorney in there to say did you consider this? At the end of the day we have to listen to the Deputy AG, but we have the choice. We are not going to amend the rules. At least then that information comes back to us. Ms. Robson noted one of the issues with #17 d 18 on the list is this landing on the shoreline without a permit. She related 205A regarding going to court and right now it's in an ingress, egress zone. And the wrong definition is being used in the proposed rules. They will be in touch with Member Agor.

Stephen Holmes has a yacht at the Ala Wai Yacht Harbor since 2005 testifie(i reiterating that there was no community meeting or input. He related difficulties of taking off from work for the yearly run to run hi boat having to take off days to get 1 run done. There is no haul out facility to fix their boats. Staff is not enforcing existing rules wµere some boats never move once a year and staff hasn't billed the current boat owners since Il.llle 2010 because staff is overworked.

Chair Thielen said the law requires active boats in the harbor and asked Mr. Holmes whether he had an alternative approach that could be managed by e harbor staff. Mr. Holmes suggested a turn arol.Uld in the basin is doable, easier and safer. Also, as of July 15[1]\ 20% of the temporary boats exceeded their 4 months stay to over 6 months. The Chair said tell us what you want changed and she l.Ulderstands many of you have concerns like this - rules not being enforced - but understand in some cases these rule changes are going into place because the courts have ordered us too. In some cases it was a request of people. And, yes they will always be dealing with the issue whether staff can enforce everything they have in place, but the example they are looking for and what is most helpful is if I don't think a buoy run is helpful here is a better alternative. Mr. Holmes said that the community would love to work with you and make things better.

Chair Thielen suggested at the public hearing come with written testimony and have the specific changes that you would recommend putting into those rules and send a copy to our Board Secretary so the Board members get it as well. That is the specific input you can have through the public hearing process. Mr. Holmes agreed that they can do that.

from the recommended rule changes due to the moratorium to go back for further discussion which was part of the presentation that Mr. Underwood gave.

Dave Cooper has a boat at the Ala Wai who testified that he has been to a number of harbo_rs around the world and that Hawaii has the most challenging rules and regulations. He related to Chair Thielen that they sent input on 60 different issues on the rule packet to Mr. Underwood and not one was·addressed: The Board has his written comments and suggestions. He does not support the rule package, but welcomes public informational meetings. 1) Changing the word "shall" to "may" regarding issuing of habitation, slip, mooring pennits and inspections on all sections of this document needs to be changed. Changing the word to may could allow DOBOR not to issue permits as timely as they do today. 2) Changing the definition of 13-230-8 buoy runs to see ifa boat is seaworthy. A barge is seaworthy, but doesn't meet the terms of a recreational boat and to reconsider the use of_the word "seaworthy." There is no staff on duty when he takes his boat out on a Sunday and when he r the following Sunday and he would have to make an extra run duri,ig staff's working hours which makes no sense. It takes a full day to prepare a crew for a full run. 3) Introducing mandatory boater education. He questioned the justificatio1_1 for this. In 2008, Hawaii had 5 boating related drownings. Hawaii boaters are more respectful which comes with living on the sea. Further study needs to be done to see if these issues are being covered. Mr. Cooper proposed and reiterated having a series of open public information meetings. He suggested cleaning up the document so that it reads correctly and he recommended deferring this package in its entirety.

Sam Monet distributed a petition by the boaters in the Ala Wai community who are members of the Ala Wai Comm.unity Association and we have another hundred names who have also signed on. These people ask you to defer any action on any more new rules until the new administration comes to power. That's the voice of the people. I've done some research on the U.S. Supreme Court level just to e a look and see how the high court has determined on states on municipalities that have chosen not to listen to the constituents of the people under which their boards or states create rules. What the Supreme Court has consistently said is that these boards and these agencies and commissions are required to take into heavy, heavy weight and consideration the people that are directly impacted by their decisions. Ed Underwood claims that he has been listening to everything that they've been saying, etc, but along with this petition he served the Board with a request for docmnents - financials, things that he is entitled to. Financial's, minutes of the meetings that Ed claims to have had and where he gets his information and he hasn't received anything from the Board or the DLNR and he is entitled to that info:r:mation. Along with that he knows he can get at under subpoena. Some of the people who signed the petition have agreed to fund a lawsuit that they will file and serve upon some of these members especially the administrator here before the elections that this thing will continue with you long after that and that's a promise because they made it very clear that they don't like being pushed around and we're not taking it any more. Also, my research at e high court I looked up the Statute. The Statute says the recreational boat shall be taken out of the harbor on a regular basis, regular basis. And the Supreme Court has defined regular as traditional. What has been the tradition? Since 1976 the tradition of the harbors has been agreed to use. I had a

Janet Mandrell testified that she is a boat owner for 22 years and has sat on numerous committees including the current package that she was there at the beginning of the lO years. It was her understanding from an insider that this item was a procedural matter and it was already decided that it would pass and asked whether that was true? The Board said they still have to hear everything. The current HAR package is not ready to proceed to public hearing stage and referred to written testimony from Reg White, David Cooper and Gordon Wood to why it is not ready. There are Ram yer format problems, issues with compound and obscure sentences and it's not clear what it means. The rules tend to be reactive to lawsuits rather than proactive and the reason why they've become so convoluted to the point that is conflicted in the rule package. referring to the Bernard Morry case. Mr. Morry only wanted to renew his permit within the same month having missed the deadline by 4 or 5 days. There is a provision in the rule package that says if a permittee utilizing a property or facility fails to renew a use pennit on or before the date in'which it expires the applicable renewal fee costs a penalty of $1.00 per month shall be collected from the permittee for each month or fraction of a month. The permittee is late in applying for the renewal of the permit and any other permit fee as provided by these rules. Per Mr. Underwood they can't use that rule because they have a wait list. If you give up your slip you have to give a 30 day notice and you're financially responsible for that extra month even if your boat is gone. A harbor agent doesn't know if a permittee is going to give up their slip until you give a 30 day notice or fail to renew. If you fail to renew staff has to prepare and mail you a mooring uest. You have 2 weeks to pick that up and you have 2 weeks after you signed at the post office. There was always a provision in the present rules. Ms. Mandrell recommended to the Board to hold the package, go to the pul>lic and have your workshops and develop from there similar to OCCL's process.

Debbie Owen-Smith testified that she works with the Hawaii Community Stewardship Network which is a non-profit organization that empowers Hawaii's communities to care for its environmental heritage. She is here on behalf of the Hanalei Watershed Hui and she supports testimonies shared by Barbara Robson and Carol Wilcox earlier. Staff has a good collaboration between the community and the agency through conversations with Joe Borden on Kauai and it would be a shame to breach the trust that has been established by putting the Hanalei section of the rule package forward for a public hearing when the community has been blindsided by the changes they've seen to take that piece out and continue the conversa ions outside of a public hearings format. She understands the desire to go ahead with public hearings through the Chapter 91 process, but public hearings aren't always a great form for discussion and the community wanted to have the conversation outside of the pressures of a public hearing and have with the attorney mentioned earlier and then go to a public hearing. If you go ahead and put the Hanalei rules forward as is it will affe_ct other good collaboration between DLNR and the community.

It was questioned by Board member Agor whether the Hanalei Public Hearing on October 13th was set. Mr. Underwood said no and explained that Joe has been working with e Hanalei community and the issue will always be DOBOR cannot prevent a

definition to meet our statutory mandate. They broke it down to 1% a year. He doesn't know what more Mr. Monet says it's customary and traditional. It's evident when you read the statute to running your boat once every 2 years is not what the intention is. Mr. Underwood has offered to go back to the Legislature and change it. Or go as a group and change the whole program. Ws going to go through the same thing and this has been years these rules have been discussed. He referred to what they did on the mooring rules which is still not efficient because of cost. Mr. Underwood recommended moving these rules forward. If there are rules like the Hanalei Bay rules that people can't agree on then pull it from the package. We can't kill the whole thing because the K eohe Bay rules have to get out because the Legislature is asking staff why aren't they out? There is a lot of other stuff that needs to go.

Member Gon asked whether Mr. Underwood had a strategy for dealing with regional unveilings of these like some have Legislative pressures to initiate the process. Other places, other issues, are there portions *of* the rules that might not have such strident push on them. Others have long standing issues, as in Hanalei, but there are key identified problems with those with the rules versus the process that led up to today. If Mr. Underwood feels there is a strategy *t9* deal with those that need to go forward immediately versus those that have the luxury of workshops with the users versus those that need focused meetings with particular users and· issues. If that is at least compartmentalized so that it's not a huge thing all going out at once that might be an approach to it he might initiate this rule making process. It's been a long time and these rules need to be made and in some_ cases desperately so and.in some cases not so needy. Mr. Underwood said that a large percentage of this package is Kaneohe Bay, Hanalei Bay, a lot of rules for personal partner that the ACLU requested staff amend to allow same personal partners to live on their boats and give them -parking _which is a lot of the rules there. There are a lot of rules either increasing or limiting the number of commercial activity permits that were issued to launch ramps as well as some of the harbors like Haleiwa Harbor. A comment came up like why did you change the time frame d make it to where you can't be on your boat from 10:0Opm to 6:00am. That came from community input saying you are not addressing all these illegal live aboards in the harbor which is why staff is knocking on boats. They get a list of people living illegally on boats where they are given a warning otherwise the next time they are out .It will be difficult at this point to go through these rules and pick ones that aren't going to be as contentious. Member Gon clarified he isn't suggesting to pull out one he is suggesting Mr. Underwood have a strategy to deal with the timely ones versus the less timely ones, the ones the community are immediately ready to engage with staff to adjust and-others you have the luxury to spend the next four months to working on to get right then he is willing to initiate this.

Chair Thielen said for instance this strategy on how to address Hanalei is a good strategy to address the comments today.. The Kauai Board member feels he can work that strategy through Boating while moving forward then that is good. She is interested to hear from Member Pacheco whether on the Big Island people are focused on particular sections of the rules as they contact him or just general I didn't know stop everything. What she heard today for the Oahu concerns are the buoy runs. As the Board they can give some

to everybody and we make everybody go through this. That is the challenge that goes back to the group.

Mr. Underwood sa1d what they are changing is the definition of a dormant vessel. Right now as the rules are written it shows if you show activity on the boat. Someone can say I was on the boat last night and had some activity, but staff wasn't around. They will change the definition to make it clear -the boat needs to move. Staff does a daily ht\fbor check and they know exactly what bo.ats are moving, but. they need to clean up the definition so when they come forward with the shore clause order. Mr. Underwood made it clear that staff doesn't have to see the boat move. Staff is not going to go look at it because they can tell. It's up to the permittee to show accorcling to the rule which is the first rule in the Boating Rules, the dormant vessel rules; they will have to show how they are using their boat. Chair Thielen said the testimonies that came in today about buoy runs had some valid points and what she would say if they just do nothing - nothing is going to happen. If we say lets hold back nothing is going to happen. If we say go forward with public hearings and direct the staff and the people who came in to testify to come up with some alternatives and if the AG's Office says the alternative. is not a substantive change it can go in and if the alternative are a substantive change when it comes back to the Board we wi-il ask what were the alternatives and if they like those better to take those back out for a public hearing and don't pass the buoy run. What they are being asked to do is do nothing and if they do nothing people aren't happy with the status quo either. They have had complaints from people asking staff to do things in these rules and including some people who came forward today who talked about the personal partner and that talked about the ability to give people a grace period.

Member Pacheco asked this will go out to public hearing and come back to be presented to the Board then the Board is able to piecemeal out specific sections. And approve them or not approve them as opposed to the whole rule package? Chair Thielen said maybe they should have their Deputy AG speak.. -The question is if they approved some of what went out to public hearing and not others that's not a substantive change, is it? Colin Lau, Deputy Attorney General said it's basically based on whether it's allowed at the public hearing. The public was given notice to comment on the proposed rules and based on public comment you could remove a rule. But, putting in a new one can get back to pi:oblems. What were sent out for rule making? A substantive change to the language of the proposed rule change might have to go through the whole process again. On the other hand, there might be a small·typographical problem which could be amended.

Chair Thielen said an example. They are going out with a package rules 1, 2, 3 and 4 where they go out to public hearing. Rules 1 and 2 have changes, but they want to pass them. Rule 3 people say we understand what you want to do, but they think that is a dumb way to do it here is an alternative and the alternative is a substantive change. They cannot pass that substantive change and send that back out for a separate public hearing to come back again. Rule 4 people don't like it and not to pass it and the Board doesn't pass it, but the Board could still pass rules 1 and 2. ·Mr. Lau acknowledged that.

come up for the Department and she wouldn,t support it. There are a lot of people at the harbors that want to be active boaters. Or why would you have a harbor? State boat harbors are not charging the same as private harbors. They are trying to make ocean recreation available for everyone. Why would someone fly in once a year for their third vacation home? Why would you do it where you,re operating a harbor where in some cases it becomes low income housing because it is very inexpensive to live there? What you are looking for are active boaters. People may or may not agree with the Rule, but you,11 get a bunch of comments on it You want to direct it in a manner to go forward to have specific discussion either on particular rules or particular regions. And, if you got questions coming from the Big Island, like Member Agor will lead discussions on Kauai to have on the Board level somebody there to give the input, to hear the conversation and come back to make informed recommendations to the other Board members on what to do on the rules that's an option to.

Member Pacheco asked whether there was a way to break these rules down into pieces and put them o t in multiple periods is not practical. Chair Thielen said what they can do you -may get the same people coming to five hearings and that is frustrating for them. You can get the comments to come in and then the Board would decide on the Rule based on the comments whether to send it back for further discussion, do we not pass them or do we want to pass them? She thinks the other thing we'll ask for is for all the comments to be sent to the Board members as they come in so they can read them after each hearing.

Member Gon said he would only be comfortable approving this particular item if we have the option of accepting sections of what goes out after public comment comes back. Chair Thielen said counsel confirmed that. Member Pacheco said he wasn't aware they could do that.

Member Pacheco asked what the public hearing schedule was on the Big Island. Mr. Underwood said first they have to go to the Small Business Regulatory Review Board and then the first public hearing, if it's approved, in mid October the week of the 11th. Member Pacheco asked whether two meetings one in Kona and one in Hilo were scheduled. Mr. Underwood said they didn't schedule one in Hilo, but they can. They scheduled it mid-way to accommodate both sides. Then they go back to the Small Business Regulatory Review Board and then come back to the Board again with those comments. Staff would come wifl?. all the comments with what people are suggesting. Like the Deputy AG said if there are too substantive they would have to pull that Rule and go through the process again. If it's a minor change they can leave it in the rule package.

Member Edlao suggested if this does come back to the Board to have a meeting specific to this alone. There was some discussion on how to do that. Chair Thielen said Department of Home Lands has two day meetings. Member Goode said he can deal with the rules in a one day meeting and he can serve the public and all their interests better all at once. Chair Thielen suggested staff to give the Board members the comments as they come in at the meeting. Don't wait until after staff has reviewed them. The Board will

Unanimously approved as submitted (Pacheco, Edlao)

Item C-3 Conservation District Use Permit Approval for the Laupahoehoe Nui Watershed Conservation Project by-Kohala Watershed Partnership for Laupahoehoe Nui LLC at Hamakua District, Island of Hawai'i, **TMK:** (3)-4-9-015:00J.

ltemC-4 **Subject: Request Approval to Issue a Request for Proposals and Authorize the Chairperson to Award and Execute Contracts for the Management of FY20 1 Statewide Youth Conservation Corps Program (RFP YCCU)**

Mr. Conry reported no changes to Items C-3 and C-4.

Member Gon disclosed the same situation with Item C-1 applies to Item C-3.

Unanimously approved as submitted (Pacheco, Gon)

ltemC-5 Request for Approval to Solicit a Request for Proposals for Revocable Permit or Lease of a Portion of Kuaokala Game Management Area, Oahu, for Cattle **Grazing** for the Purposes of Game Bird "abitat **Improvement; Renew the Revocable Permit Issued to Diamond K, LLC on Month-to-Month Basis for One Additional Year; Kuaokala, Waialua, Oahu; TMK (1) 6-9-003: Portion 002**

Mr. Comy communicated that the Diamond K Ranch is reorganizing changing their title to Diamond K Ranch, LLC d he related some background. They will enter into an RFP and ask for an RP later.

Member Gon asked.whether this area includes the bird nesting area and Mr. Conry said it did not.

Chair Thielen asked this request is for an RFP process and because it is close to Kaena Point and s ggested what she would like to see in that RFP is some way of putting in requirements for responsibilities or greater credit to applications to things that the Department is trying to do in surrounding areas. When you develop the RFP make it clear to applicants that they must provide those types of activities that will help the Department in the surrounding areas. Mr. Conry said that the reason they are doing a RFP is because this is not for cattle grazing RP. They will have requirements including the bird hunting going on which is why the RFP is appropriate. This is way above the State Parks. Chair suggested DOFAW give a higher ranking for proposed activities. Member Gon summarized for staff to include proposed activities compatible for the surrounding area including the State Park and NAR. That would be great.

Unanimously approved as amended (Edlao, Goode)

Association for Access and Utility Purposes at Honomalino & Okoe, South Kona, Hawaii, Tax Map Key: 3rd/ 8-9-03: portions of 1 and 83, and 8-9-05: portion of 2.

Item D-9 Set Aside to the Department of La.1,1d and Natural Resources, Division of Boating and.Ocean Recreation for Milolii Landing Purposes, Milolii, South Kona, Hawaii, TMKt (l) 8--9-04: 19.

Item D-11 Set Aside 0.612 acres, more or less and Issuance of Immediate Rigbt-of-Entry to State Department of Transportation, Highways Division for Highway Purposes, Honoapiilani Highway Realignment, Phase 1B-1, Federal Aid Project No. NH-030-1(38), Kauaula, Lahaina, Maui, Tax Map Key: (2) 4-6-()14:001 por.

Item D-13 Cancellation of Revocable Permit No. S-5545; Issuance of Revocable Permit to Joseph J. Hines and Elaine Nickie Hines, Waimanalo, Koolaup ko, Oahu, Tax Map Key:(1) 4-1-018:050.

Item D-14 .Issuance of Revocable Permit to Fireworks by Grucci, Inc. for Aerial Fireworks Display at Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-057:seaward of 017.

Item D"16 After-The --:-Fact Extension of Lease Term for General Lease S-4259, (Contract No. DACA84-5-70"16) to the United State of America, Department of the Air Force, Waimea, Kauai, Hawaii, TMK: (4) 1-2-001:009

Item D-19 Issuance of Revocable Permit to Maui's Original Hawaiian Corporate Games, Inc. for the UNIVERA Sand Sculpting Event, Wailea, Maui, Tax Map Key: (2) 2-1-008:seaward of 059, 089 and 109

Item D-20 Issuance of Revocable Permit to Valley Isle Masters Swimmers for the 25th Annual Maui Roughwater Swim, Polo Beach, Wailea, Maui, Tax Map Key: (2) 2-1-011:seaward of00l

ltem.D-21 Issuance of Revocable Permit to MC&A, Inc. for a Beach Activity Event at Fleming Beach, Kapalua, Maui, at Tax Map Key:(2) 4-2-004: seaward of 015.

{Jnanimously approved as submitted (Gon, Goode)

Item L-2 Application for a DLNR Dam Safety Construction/Alteration Permit, Permit No. 45 - Helemano 11 Reservoir (UOA-2010) Wahiawa Oahu

Unanimously approved as submitted (Edlao, Goode)

The Board may go into Executive Session pursuant to Sections 92-4 and 92-S(a)(4), Hawaii Revised Statutes (HRS), in order to consult with its attorney on questions and issues relating to dep_artmental permits, Chapter 343, HRS, and personnel ·matters, as pertai,ning to the Board's powers, duties, privileges, immunities and liabilities.

A journed (PRCh«.o, **Edlao)**

There being no fu.rther business, Chairperson Thielen adjourned the meeting at 5:22pm. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Adaline Cwnmings
Land Board Secretary

Approved for submittal:

Laura Thielen
Chairperson
Department of Land and Natural Resources

MEMORANDUM OF AGREEMENT BETWEEN

HILTON HAWAIIAN VILLAGE, LLC

AND

STATE OF HAWAII DEPARTMENT OF TRANSPORTATION

This Memorandum of Agreement (referred to as this **"MCA"") is** effective as of February 13, 2007 (the **"Effective Date")** by and between Hilton Hawaiian Village, LLC **("Hilton"),** whose business address is 2005 Kalia Road, Honolulu, Hawaii 96815 and the State of Hawaii Department of Transportation **("DOT"),** whose business address is 869 Punchbowl Street, Suite 509, Honolulu, Hawaii 96813 (collectively referred to as the **"Parties").**

RECITALS:

A. Hilton owns certain property located in Waikiki, Oahu, Hawaii, identified with Tax Map Key Nos. (1) 2-6-9: 2, 3, & 10, and upon which Hilton is developing a 331-unit timeshare project (the **"Grand Walklkian").**

B. In connection with the development of the Grand Waikikian, Hilton is required to make certain roadway improvements (the **'Walkiklan Roadway Improvements"** which are colored in blue and described on Exhibit A), along the Ala Moana Boulevard corridor from the Ewa side of Hobron Lane to Kalakaua Avenue.

C. The DOT desires that Hilton construct certain additional improvements (the **"AMB Improvements"** which are colored in red and described on Exhibit A), along a portion of Ala Moana Boulevard (the **"AMB Corridor")** from Station 71 + 00 on the Ewa side of Hobron lane to Station 98 + 00 at Kalakaua Avenue.

D. A remnant parcel (the **"Hilton Remnant Parcer) is** situated on Ala Moana Boulevard, fronting the Grand Waikikian and is generally depicted on Exhibit 8. The Hilton Remnant Parcel is owned by the State of Hawaii (the **"State").**

E. A second remnant parcel (the **"Ilikal Remnant Parcel") is** situated on Ala Moana Boulevard, fronting the Ilikai condominium and is generally depicted on Exhibit B. The Ilikai Remnant Parcel is owned by the State.

F. The Parties desire to memorialize certain understandings with regard to the design, installation, and costs of the AMB Improvements, the conveyance of the Hilton Remnant Parcel by the State to Hilton, and the use of the Ilikai Remnant Parcel by Hilton.

e \-le\•,-r 2-

AGREEMENT:

I. RESPONSIBILITIES:

The Parties agree as follows:

A. DOT shall:

1. Assist Hilton to develop plans and specifications (the **"Plans and Specifications")** for the AMB Improvements which shall conform to DOT standards. The final Plans and Specifications shall, in all events, be subject to DOT approval, but shall not be expanded to cover any work beyond the AMB Improvements shown and described on Exhibit A.

2. Provide Hilton with all applicable standards and specifications established by DOT as the same relate to the Waikikian Roadway Improvements and the AMB Improvements, and ensure that the AMB Improvements are designed in accordance therewith.

3. Unless otherwise noted herein, own and maintain the Waikikian Roadway Improvements and the AMB Improvements, including, without limitation, the landscaping within the median along the AMB Corridor. Hilton is required by the Department of Planning and Permitting, City and County of Honolulu (the **"City")** to construct a landscape median along the stretch of Ala Moana Boulevard from the ewa side of Hebron Lane to Kalakaua Avenue. To the extent that a Minor Waikiki Special District Permit is required for the planned landscape improvements, DOT agrees to work in good faith with Hilton and the City to reach a consensus regarding such landscaping and Minor Waikiki Special District Permit.

4. Provide a copy of the approved noise variance permit (the **"Noise Variance Permit')** to Hilton upon execution of this MOA. The approved Noise Variance Permit was issued by the State Department of Health on February 14, 2006 as Docket No. 05 NR VN 18 to the DOT. On February 9, 2007, the State Department of Health approved the amendment to the original Noise Variance Permit to add Hilton as a co-applicant. Hilton shall comply with the conditions and restrictions set forth in the Noise Variance Permit and the Parties shall work together to resolve any complaints received. DOT shall renew the Noise Variance Permit until the completion of the AMB Improvements and the Waikikian Roadway Improvements.

5. Permit Hilton to close one (1) lane of Ala Moana Boulevard from 8:30 a.m. - 3:00 p.m. and close two (2) lanes of Ala Moana Boulevard from 7:30 p.m. to 5:00 a.m., provided that Hilton ceases all work that causes undue noise between the hours of midnight (12:00 a.m.) and 5:00 a.m. generated by construction equipment specified in the approved Noise Variance Permit.

6. Expedite review and approval of all plans, specifications, pennit applications and other necessary DOT approvals, the approvals of which shall not unreasonably be withheld, for the Grand Waikikian project, the Waikikian Roadway Improvements and the AMB Improvements, including, without limitation, the following: (1) utilities crossing Ala Moana Boulevard, (2) sewer line crossing at the intersection of Ala Moana Boulevard and Kalia Road, (3) Ala Moana Boulevard intersection plans, (4) construction of the infrastructure for the full signalized intersection at Dewey Lane and Ala Moana Boulevard during Phase I of the Pilot Program Agreement (the **"Pilot Program Agreemenr)** between Hilton and DOT, effective as of August 8, 2006, (including, without limitation, underground conduits for traffic signals, and opening of the Ala Moana Boulevard Median[1]), (5) the Traffic Management Plan for the Hilton Hawaiian Village, and (6) any other improvements reasonably required or necessitated by the Grand Waikikian project. DOT will facilitate and expedite review and approval of all construction plans so that the same shall be completed by the DOT by approximately June 2007; provided that, in order to achieve final approval by June 2007, Hilton shall submit to DOT 90% complete plans and specifications by February 28, 2007 (the **"90% Date")** and 100% complete plans and specifications by April 30, 2007 (the **u100% Date")** and provided, further that if Hilton fails to submit the 90% complete plans and specifications by the 90% Date or the 100% complete plans and specifications by the 100% Date, then the State's obligation to complete its review and approval of the construction plans by June 2007 shall be extended by the amount of the delay in Hilton's submittal of the plans and specifications beyond the 90% Date and/or the 100% Date, as applicable. DOT shall work in good faith to complete its review of each set of plans and specifications within one (1) month of receipt of each set of plans and specifications from Hilton. DOT shall further, in good faith, reasonably facilitate any other permits that may be required from other State or City & County agencies or departments for the construction of the Grand Waikikian, AMB Improvements and the Waikikian Roadway Improvements. In other words, DOT shall use reasonable efforts to assist Hilton with any required permits for the construction and installation of the AMB Improvements and the Waikikian Roadway Improvements that are not within the jurisdiction of DOT. The State will expedite review and approval of the above stated plans, specifications, permit applications and other necessary DOT approvals provided that Hilton shall have submitted complete plans, specifications and all necessary reports required by DOT in a timely fashion and shall have met all state and federal design criteria.

7. Issue all permits under the DOT's jurisdiction for the AMB Improvements and the Waikikian Roadway Improvements at no cost to Hilton.

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1 Hilton will provide appropriate barricades around the open median until initiation of the full signalized intersection at Phase II of the Pilot Program Agreement It is the intent of the parties that Hilton would install and construct the AMB Improvements, the Waikikian Roadway Improvements and other improvements contemplated by the Pilot Program Agreement concurrently so as to minimize disruption and inconvenience to the traffic on Ala Moana Boulevard due to construction work on Ala Moana Boulevard, and to maximize efficiencies.

8. Appoint a designated DOT point of first contact person for all issues arising under or related to the AMB Improvements, the Waikikian Roadway Improvements or this MOA. The preliminary contact person for the DOT for design issues shall be Ms. Li Nah Okita.

9. Conduct inspections of the AMB Improvements and the Waikikian Roadway Improvements at no charge to Hilton during the construction and installation of the same.

10. Accept the AMB Improvements and the Waikikian Roadway Improvements upon satisfactory inspection of the same.

11. Work in good faith and on an expedited basis to achieve a target commencement of construction date of August 1, 2007 provided that Hilton shall submit all plans and specifications within a timely manner as provided in paragraph 6 above.

12. To the extent requested by Hilton, DOT, if feasible, shall provide approvals to Hilton on a piecemeal basis in order to allow for accelerated construction activities to occur. Piecemeal approvals shall be granted provided the desired construction activity being ierated consists of a complete set of plans and all DOT requirements as a stand alone permit project have been met. A separate permit shall be issued for each piecemeal approval.

13. State shall enter into a use and occupancy agreement (the **"Use and Occupancy Agreement·)** with Hilton for Hilton's use and occupancy of the Ilikai Remnant Parcel The Use and Occupancy Agreement shall provide that: (1) Hilton shall not be assessed any fees or rent for its use and occupancy of the Ilikai Remnant Parcel; (2) Hilton s all be obligated to landscape the Ilikai Remnant Parcel and to maintain such landscaping for so long as Hilton occupies the Ilikai Remnant Parcel; (3) Hilton shall indemnify the State, its officers, agents and employees from and against all claims, demands, liabilities, damages, suits, actions, costs and expenses resulting from or in connection with damage and/or injury to or death of persons, whenever such damage, injury, loss or death arises out of or is in connection with Hilton's exercise of the rights and privileges granted by the Use and Occupancy Agreement or is inflicted, caused by or results from any act or omission of Hilton, its contractors, officers, agents or employees; and (4) the State shall retain the right to re-enter and retake the Ilikai Remnant Parcel, at the State's sole discretion, upon ninety (90) days' written notice to Hilton.

B. **Conveyance of the Hilton Remnant Parcel**

1. Upon receipt of final approval from the City for the subdivision of the Hilton Remnant Parcel from Ala Moana Boulevard, the State shall convey the Hilton Remnant Parcel to Hilton, pursuant to Hawaii Revised Statutes **("HRS")** Chapter 171. The purchase price (the **"Purchase Price")** for the Hilton Remnant Parcel shall be determined pursuant to

the appraisal process as provided for by HRS Chapter 171. The State shall expedite the appraisal so that the appraisal is completed by no later than May 1, 2007. The Parties acknowledge and Hilton agrees to maintain the Hilton Remnant Parcel as open space for non-commercial uses for the benefit of the public, and the appraised value (the **"Appraised Value")** of the Hilton Remnant Parcel is to reflect this intended use of the Hilton Remnant Parcel. The total value of all reasonable actual construction costs (the **"Construction Costs")** incurred by Hilton to complete the AMB Improvements shall be credited by the State against the Purchase Price provided, however, that the maximum amount that may be credited to Hilton shall not exceed $2,241,825.00 unless the parties amend the existing procurement exemption in accordance with applicable law. To the extent Hilton believes its total Construction Costs exceed $2,241,825, it shall advise the State and provide supporting documentation. The State shall take reasonable, good faith steps to increase the amount of the procurement exemption, and subject to the State's approval of the increased amount, Hilton shall be entitled to a corresponding increase in the amount of the credit to the Purchase Price. "Construction Costs• shall include any and all costs incurred by Hilton in connection with the AMB Improvements, including, without limitation, costs for Basic Contract, Change Order Costs, Contingencies, Construction Engineering and Administration Costs. For purposes of this MCA, the following terms shall have the meanings set forth below:

- **"Basic Contracf** shall mean the actual costs for the total contract items charged to Hilton by its contractor for the construction of the AMB Improvements.

- **"Administration Costs"** shall mean the amount equivalent to forty percent (40%) of the Construction Engineering.

- **"Change Order Costs•** shall mean the actual costs for the total contract items charged to Hilton by its contractor for the construction of the Change Orders (pursuant to Section I.C.3 below).

- **"Construction Engineering"** shall mean the amount equivalent to fifteen percent (15%) of the sum of: (i) the Contingencies, and (ii) Basic Contract.

- **"Contingencies"** shall mean the amount equivalent to five percent (5%) of the Basic Contract.

Except as provided in the definitions set forth above, the "Construction Costs" shall exclude project management, design and engineering fees and construction period interest incurred by Hilton for the AMB Improvements. For illustrative purposes only, an example showing how Construction Costs are to be calculated pursuant to this Section 1.8. is attached hereto as Schedule I.B.. The hypothetical figures contained in Schedule 1.8. are illustrative only and the dollar amounts shown are not intended to be agreed upon

contract sums. If the Construction Costs are less than the Purchase Price, then Hilton shall pay the State the difference between the two amounts and concurrently with the receipt of such payment from Hilton, the State shall convey the Hilton Remnant Parcel to Hilton. If the Purchase Price is less than the Construction Costs, then the DOT shall not be obligated to reimburse Hilton for the difference between the two amounts, and the State shall convey the Hilton Remnant Parcel to Hilton without any further consideration being paid by Hilton.

C. Hilton **shall:**

1. Pay for all reasonable costs for the design, permitting, material, equipment. and installation of the AMB Improvements, including, without limitation, project management and design fees, and actual construction costs. The scope of work covered by the Plans and Specifications shall not be increased beyond the AMB Improvements described in Section I.A.1. above without Hilton's consent.

2. Provide the DOT with the records of the AMB Improvements Construction Costs.

3. Complete change orders (the **"Change Orders")** within the scope of work of the AMB Improvements during construction if such change orders are deemed necessary by DOT. DOT agrees to work with Hilton in good faith so as to minimize additive change orders for the AMB Improvements and so as to maximize cost savings and value engineering for the AMB Improvements.

4. Procure materials/equipment and install the AMB Improvements.

5. As part of the scope of work for the Waikikian Roadway Improvements, the Parties agree that Hilton shall pay for painted aluminum decorative lighting poles, aluminum mast arms, and luminaires along the median of Ala Moana Boulevard from Holomoana Street (Sta. 70+00) to Kalakaua Avenue (Sta. 98+00) at no cost to the State.

6. Construct the AMB Improvements in accordance within a timeframe mutually agreeable to Hilton and DOT, subject to reasonable extensions due to delays beyond Hilton's control, such as labor shortage, work stoppage, strikes, force majeure events, delays in receiving construction materials, delays in receiving required permits, and other delays beyond Hilton's control.

7. Purchase and maintain, or cause to be purchased and maintained, for the duration of this MOA, the following policies of insurance at commercially reasonable limits: Contractor's Comprehensive General Liability and Property Damage Insurance, and Contractor's Automobile Liability and Protective Property Insurance. Such policies of insurance shall name the DOT as an additional insured.

8. Apply for and obtain a National Pollutant Discharge Elimination System (NPDES)-Construction Activities permit and the National Pollutant Discharge Elimination System (NPDES)-Dewatering permit, if necessary; provided that, DOT shall sign the NPDES permit application as landowner, to the extent that the permit covers land owned by the State.

9. As part of the scope of work for the Waikikian Roadway Improvements, the Parties have agreed that Hilton shall install fiber optic conduits in the median from the ewa end of Hebron Lane to Kalia Road. Additionally, as part of the scope of work for the Waikikian Roadway Improvements, Hilton shall investigate, document and, if feasible, install the fiber optic conduits in the median on Ala Moana Boulevard from Kalia Road to Kalakaua Avenue. DOT shall work in good faith and reasonably cooperate with Hilton to obtain permits from the applicable agencies in order to permit Hilton to install such fiber optic cables. The installation of fiber optic cables pursuant to this paragraph shall be at no cost to the State.

10. Coordinate with public and private utility companies for utility work within the scope of the AMB Improvements and the Waikikian Roadway Improvements.

11. **GENERAL PROVISIONS:**

A. Disclaimer of Warranties. EXCEPT AS OTHERWISE PROVIDED HEREIN, NONE OF THE PARTIES MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, AND EXCEPT AS EXPRESSLY PROVIDED, EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FORA PARTICULAR PURPOSE.

B. Entire Agreement. This MOA shall constitute the entire agreement between the Parties, as of the Effective Date, with respect to the subject matter of this MOA, and shall supersede any and all previous agreements, oral or written, pertaining to the subject matter contained herein, except for the Pilot Program Agreement, which shall not be voided or superseded. The Parties have entered into this MOA in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided to one party by any representative of the other party.

C. Other Governmental and Regulatory Approvals. The completion of the AMB Improvements shall be contingent upon any and all required governmental and regulatory approvals, as well as any necessary coordination or approvals from HECO and the Board of Water Supply.

D. Amendments. No term, provision or condition of this MOA may be altered, amended or added except by written agreement signed by all of the Parties.

E. No Assignment. This MOA is neither transferable nor assignable, and any transfer or

assignment shall be null and void. However, all of the Parties shall be allowed to subcontract some or all of their respective obligations hereunder.

F. Force Majeure. Notwithstanding anything in this MOA to the contrary, neither party shall be liable or responsible for failure to carry out any of its obligations under this MOA caused by Force Majeure. A party rendered unable to fulfil any obligation under this MOA by reason of Force Majeure shall make reasonable efforts to remove such inability in the shortest possible time, and the other party shall be excused from performance of its obligations until the party relying on Force Majeure shall again be in full compliance with its obligations under this MOA. The term "Force Majeure• as used herein shall mean any cause beyond the control of the party affected, and which by reasonable efforts the party affected is unable to overcome, including without limitation the following: Acts of God; fire, flood, landslide, lightning, earthquake, hurricane, tsunami, tornado, storm, freeze, volcanic eruption or drought; blight, famine, epidemic or quarantine; act or failure to act of the other party; theft; casualty; war; invasion; civil disturbance; explosion; acts of terrorists or public enemies; or sabotage.

G. Go'leming Law. This MOA shall be governed by the laws of the State of Hawaii.

H. Counterparts. This MOA may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument. An executed counterpart of this MOA transmitted and received by facsimile shall be deemed for all purposes to be an original, executed counterpart hereof. Duplicate unexecuted pages of the counterparts (whether original or received by facsimile) may be discarded and the remaining pages assembled as one document.

I. Further Assurances. DOT and Hilton shall work together in good faith, and take such further actions, and execute such further instruments, as may be reasonably necessary to carry out the intent of this MOA.

J. Further Approvals. Notwithstanding anything to the contrary contained herein, this instrument shall not be binding upon the parties unless and until such instrument has been approved by the Board of Directors of Hilton Hotels Corporation, manager of Hilton Hawaiian Village, LLC - a notification of which shall be provided to the DOT in a timely manner.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURES APPEAR ON THE NEXT PAGE]

Executed by the Vice-President of Hilton Hawaiian Village, LLC and the IY1tev1m tm-ectoY of the State of Hawaii Department of Transportation effective as of the 13th day of February, 2007.

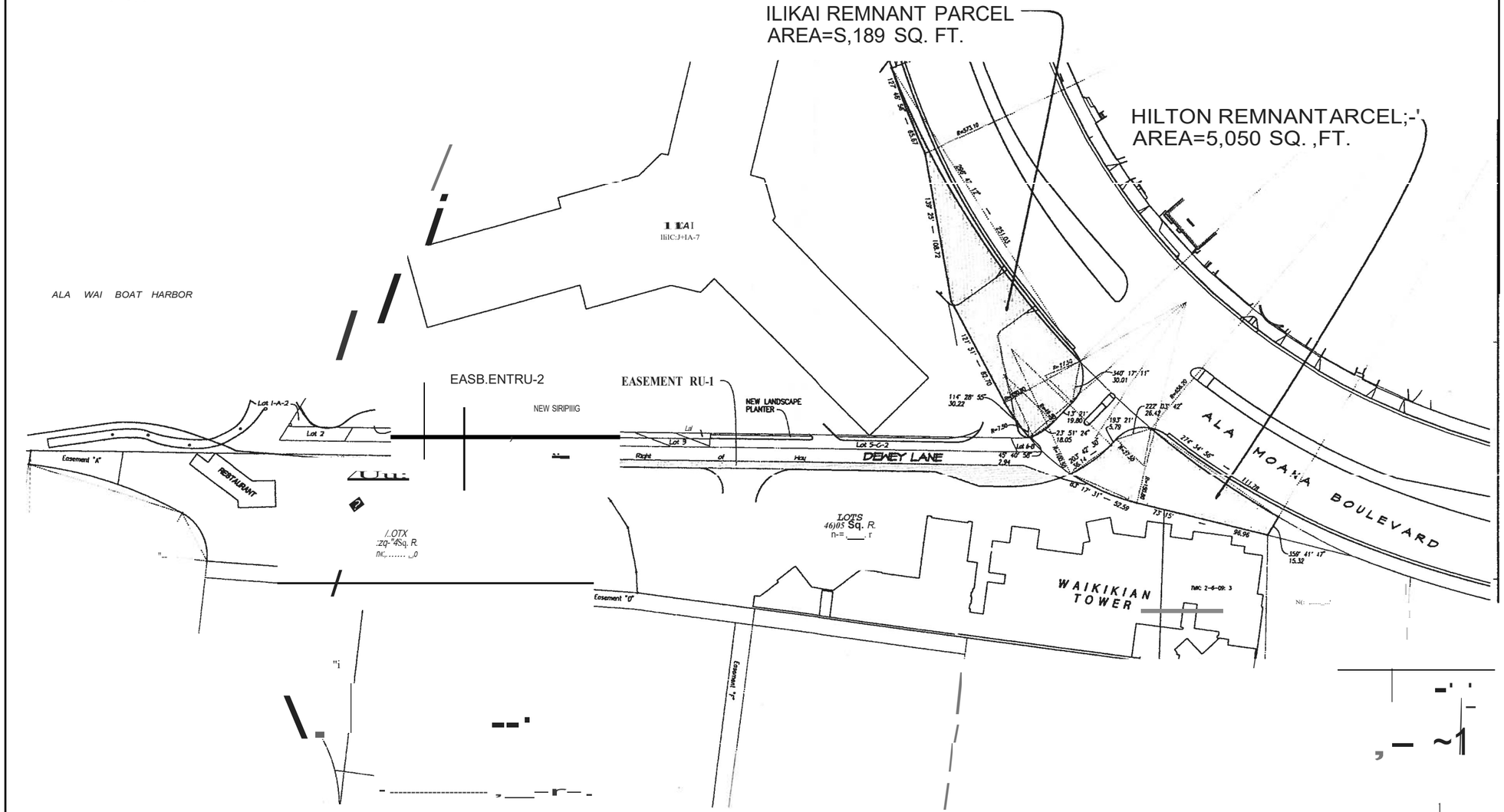
bert
Vice-President
Hilton H11t1allan Village, LLC

Barry Fukuiga
Interim Dir or of Transportation
State of Ha li
Department of Transportation

APPROVED AS TO FORM:

(;) y--c
Deputy Attorney General
State of Hawaii

Date: f<'Wvh q _1·ioA



COMPOSITE MAP SHOWING PROPOSED DEWEY LANE IMPROVEMENTS
WITI-i LANDSCAPNG ON PORTIONS OF LOT 5-C-2 ONLY
SCALE 1"RJO'

Hilton
Hawaiian Village

COMPOSITE MAP SBO111NG
PROPOSED DEWEY IANE
DIPROVEIIENTS 1IITH
LANDSCAPING ON PORTIONS
OF LOT 5-C-2 ONLY

HILTON HAWAIIAN VILLAGE
W41KIKI, HONOLULU, HAWAII
TAX M,11' Ifl : 2-46-09 : 2 t 10

Consultant

Project Number.
Dote: 7 FEB. 2007
Revisions:

EXHIBIT B
Page 1 of 1

BEGIN PROJECT
Ala Moana Blvd 1/l. Sta. 71+00

Airport
To

M.L. ℄ STA. 82+00

Hobron Lan

Limits of Resurfacing

P.C.C. Bus Pad

ALA MOANA BLVD

M.L. ℄ STA. 82+00.

New Driveway for Ilikai Hotel

Ilikai Hotel

Add 4th Lane

Limits of Resurfacing

Lengthen Left Turn Storage Lane

Limits of Resurfacing

R/W

E'na Road

P.C.C. ℄ Sta.

bus stop sign

P.T.

Lengthen Left Turn Storage Lane

M.L. ℄ STA. 82+00

P.C.C. Bus Pad

ALA MOANA BLVD

Dewey Lane

New Dedicated Right Turn Lane

P.C. : !fl. Sta. 88+-52.23

: P.T. lfl. Sta. 90+-07.23

To Waikiki -

New Waikikian Tower

AMB Improvements Limits

Waikikian Impr vements Limits

Katia Road

M.L. ℄ STA. 93+00

TRUE NORTH
SCALE : 1" = 40'

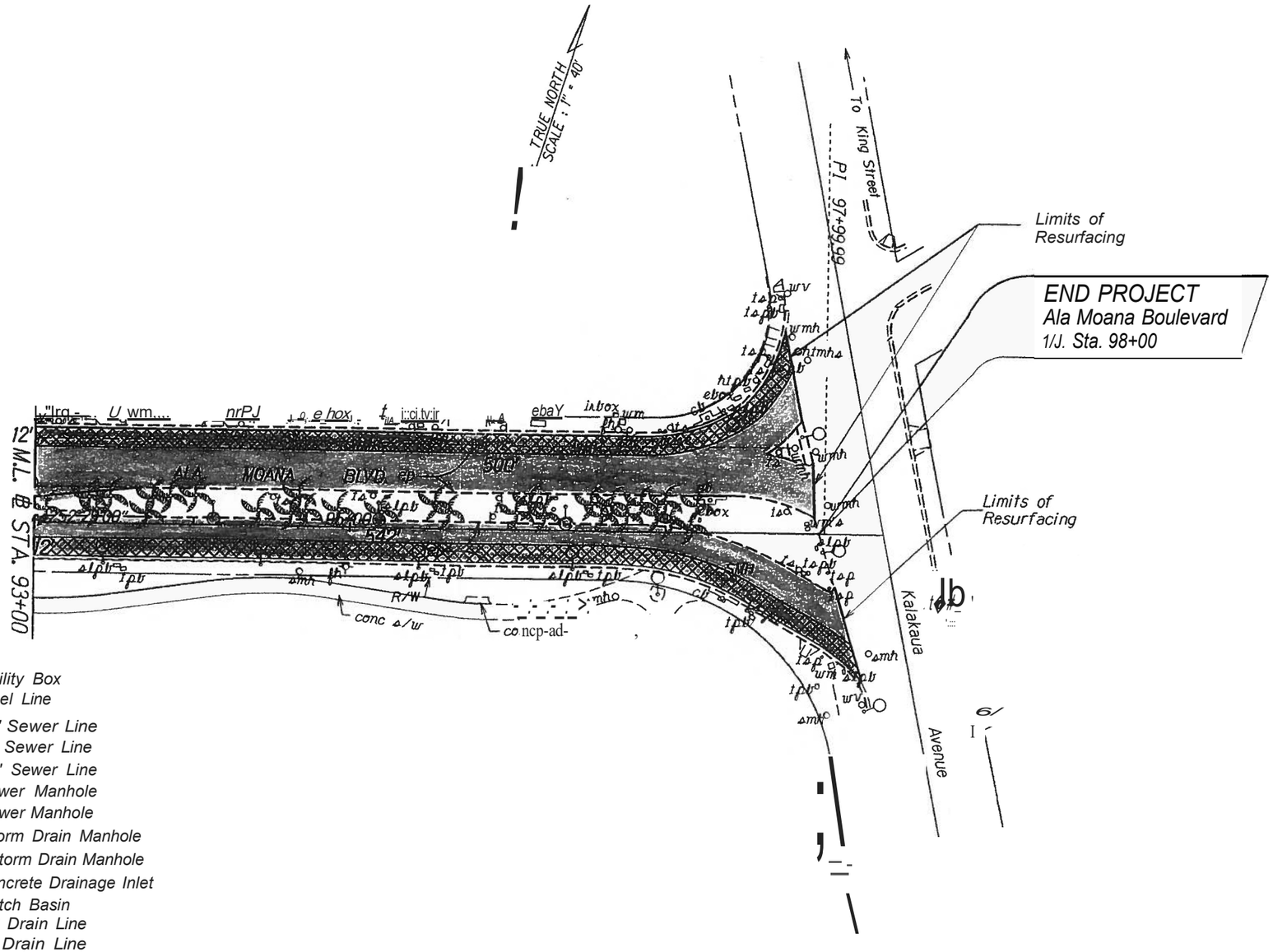
AMB IMPROVEMENTS

The scope of work involves resurfacing; cold planing; reconstruction of weakened pavement areas; reconstructing Portland Cement Concrete bus pad, damage existing sidewalk, Type 2DG curb ¢ gutter and face of catch basin; replacing existing median bituminous curb with Type 2D curb; adjusting manholes; driveway adjustment; installing signs, pavement markings and striping; installation of cable conduits (2-2" diameter for existing traffic signal system on Ala Moana Boulevard at intersection of Katia Road/Ena Road; replacement of new traffic signal system at intersection of Hobron Lane and Ala Moana Boulevard and archaeological mitigation at intersection of Hobron Lane and Ala Moana Boulevard.

WA!KIK!AN IMPROVEMENT$

The scope of work involves resurfacing; cold planing; reconstruction of weakened pavement areas; reconstructing Portland Cement Concrete bus pad, damage existing sidewalk, and Type 2DG curb ¢ gutter; replacing existing median bituminous curb with Type 2D curb; adjusting manholes; driveway adjustment; installing signs, pavement markings and striping; installation of State fiber optic conduits !/-2" ¢ /-4" with 2" inner duct) and pullboxes from Hobron Lane to Katia Road; replacing highway lighting system with decorative lighting system along the median of Ala Moana Blvd. from Sta. 70+00 to Sta. 98+00 (Kalakaua Ave.J; installing separate meter system to power the lightings from Sta. 70+00 to Sta. 98+00; landscaping the median; archaeological mitigation at intersection of Dewey Lane and Ala Moana Boulevard; reconstructing Dewey Lane intersection and reconfigure lanes from Hobron Lane to Kalakaua Ave.

EXHIBIT A



LEGEND

AC. Reconstruction Areas
C =:I Resurfacing Limits
r:-:::·.:::::.-1 New PCC Bus Pad Pavement
-.o.c-- Existing Signal Corps Line
--.e-- Existing Electrical Line
0 pp Existing Power Pole
oem1i Existing Electric Manhole
QEMH Adjusted Electric Manhole
D.e.t.rox Existing Electric Box
-- 1 -- Existing Telephone Line
0 tmll Existing Telephone Manhole
QTMH Adjusted Telephone Manhole
□1.1.rox Existing Telephone Box
- w4 - Existing 4" Water Line
- wB - Existing 8" Water Line
-w12- Existing 12" Water Line
0111mh Existing Water Manhole
0111m Existing Water Meter
Q WMH Adjusted Water MH Frame/Cover
0 ivv Existing Water Valve
Q wv Adjusted Water Valve Frame/Cover
--6--jh Existing Fire Hydrant
- g1 - Existing I" Gas Line
-92 - Existing 2" Gas Line
·-·- g4 _ Existing 4" Gas Line
Adjusted Signal Corps Manhole

□ ubox Existing Utility Box
-- f - Existing Fuel Line
-.o.10- Existing ID" Sewer Line
-.o.12- Existing 12" Sewer Line
-.o.18- Existing 18" Sewer Line
0.o.mh Existing Sewer Manhole
a SMH Adjusted Sewer Manhole
0.o.d:mh Existing Storm Drain Manhole
QSDMH Adjusted Storm Drain Manhole
□cd.i Existing Concrete Drainage Inlet
c Existing Catch Basin
-d/2- Existing 12" Drain Line
-d!B-.Existing 18" Drain Line
-d30- Existing 30" Drain Line
9 Existing Highway Lighting Standard
□ t.o.p/J Existing Traffic Signal Pullbox
(;ii TSPB Adjusted Traffic Signal Pullbox
© mi,n Existing Monument
@ MON. Adjusted Monument

EXHIBIT A
PaQe 2 of 2