

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

September 23, 2005

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

Land Board Members:

SUBJECT: Amendment No. 3 of Timber Land License No. H-101 held by TW, LLC.

**Background:** At its August 12, 2005 meeting, the Board of Land and Natural Resources (Board) denied Staff recommendations to find TW, LLC (TW) in default of the terms of their Timber Land License H-101 (TLL). The Board instructed Staff to enter into immediate negotiations with TW on issues of concern and to report progress of these negotiations to the Board on September 23, 2005 ("Negotiation Period"). The Board asked staff to negotiate terms that would allow the partnership with TW to continue, while compensating the State for lost opportunities or for Board approval of further extensions to TW project timelines.

**Proposed TLL amendments prior to August 12, 2005 Board meeting:**

1. Proposed assignment of interest to Rockland Capital Energy Investments, LLC (RCEI): Based on subscription agreements provided to the State by TW that are contingent on Department of Land and Natural Resources (DLNR) approval of amendments to the TLL, RCEI would hold more than a 20% controlling interest in TW. Further documentation indicates that RCEI will contribute a majority of Phase II construction funding for the TW project.

Analysis: Under the proposed terms, a continued partnership between the State and TW requires the assignment of interest to RCEI. Staff agrees with this amendment.

2. Change of Domicile for TW from a Washington LLC to a Delaware LLC: TW informed the Board on May 13, 2005 that the corporation wished to change its domicile from Washington to Oregon. The new request to change domicile to Delaware reflects the dominance of RCEI as a potential new investor in TW.

Analysis: After any potential closing of Phase II funding, two additional RCEI members would be added to the TW Board, effectively giving RCEI a controlling interest in the

corporation. This change is anticipated to occur approximately one year the proposed TLL amendments. At that time, Mr. Don Bryan would no longer have control of TW - RCEI appears to be requesting this change in domicile in anticipation of these events. Staff agrees with this amendment.

**Proposed TLL amendments from Negotiation Period:** The following proposed amendments to the TLL quantify terms discussed by Staff and TW during the Negotiation Period that concluded on September 12, 2005.

3. Milestones and Deadlines: Staff and TW agreed to the following milestones and deadlines for the Project:

<u>Milestone</u>	<u>Description</u>	<u>Deadline</u>
1.	Commence the filing of all applications for all state and federal permits associated with the project	January 15, 2006
2.	Commence plant construction	February 1, 2007
3.	Complete plant construction (construction is deemed complete when TW has received occupancy permits for both the veneer and power plant)	July 1, 2008

The above Milestones and Deadlines will replace all other milestones and Deadlines in the TLL and its amendments. The previous milestone requiring substantial completion of the plant by January 1, 2007, has been dropped.

Analysis: Under the proposed terms, a continued partnership between the State and TW requires the extensions of key performance milestones as detailed above.

4. Payment for option to extend Milestone 3 deadline: The TLL originally anticipated completion of plant construction sometime in calendar year 2005. The first amendment to the TLL amended Section 3.1, and established a January 1, 2008 Deadline for completion of construction. In recognition of a further extension of the Milestone 3 construction completion Deadline to July 1, 2008, the parties have agreed that TW will pay the DLNR an “extension fee” in the amount of \$90,000 for the 2.5 year extension (representing an 8% return on investment). This extension fee will be paid by TW as follows:
- 5.
- a. \$45,000 within 90 days of the date the Board approves an amendment to the TLL encompassing the matters set forth in this Status Report (The “Amendment Date”).
  - b. \$22,500 one year from the initial payment of \$45,000.

- c. \$22,500 two years from the initial payment.
- d. \$18,000 on or before January 1, 2009, if completion of the plant is extended to the “Drop-Dead” date of January 1, 2009 per *proposed amendment number 5*, below.

Analysis: Staff had proposed that the entire \$90,000 be payable within 90 days of the date the Board approves an amendment to the TLL. TW was not comfortable with this arrangement and requested the payment schedule detailed above. Staff agreed to this compromise.

5. Penalties for missing milestones: Staff and TW agreed to the following penalties and payments that TW would incur for failing to achieve Milestones on or before their respective Deadlines:

*Milestones 1 and 2*. If TW fails to achieve Milestone 1 (permit application) or Milestone 2 (construction commencement) on or before their respective Deadlines, then it will incur a penalty of \$200 per day for every day that the Milestone remains unmet following the respective Deadline. The \$200 per day penalty will be doubled to \$400 per day for those days in which both Milestones 1 and 2 remain simultaneously unmet. All accrued penalties will be paid on or before the 10th day of the month following each month in which a Milestone remains unmet.

*Milestone 3*. If TW fails to achieve Milestone 3 (construction completion) on or before its Deadline, then TW will pre-pay for stumpage at the rate of \$25,000 per month for each full month in which the Milestone remains unmet. This monthly stumpage pre-payment will be paid on or before the 10<sup>th</sup> day of the month following each month in which Milestone 3 remains unmet. All pre-paid stumpage payments will be credited to TW on subsequent purchases of stumpage under the TLL. The total amount of the credit will be amortized evenly over a 5-year period commencing in the month in which TW first purchases stumpage under the TLL for commercial product at its plant. For example, if TW is 12 months late in achieving Milestone 3, it will incur pre-paid stumpage payments totaling \$300,000, and repayment of such amount in the form of credits against subsequent purchases of stumpage will be spread over 60 months, i.e. \$5,000 per month. Any unused credit from one month will be carried over to the next month.

*“Drop-Dead” Date for Completion of Plant*. In the event that construction of the plant is not completed by January 1, 2009, the DLNR Board may declare the TLL in default in accordance with the default provisions of the TLL, in which case TW will have 60 days to remedy the default. In any case, should TW elect to extend the plant construction completion date from July 1, 2008 to January 1, 2009, it shall pay the extension fee as provided in Section B, above.

All amounts paid by TW for failing to meet Milestone 1, 2, and 3 Deadlines will be paid to the DLNR.

Analysis: Staff believes that the proposed Milestones, penalties and payments provide the Department with important means by which to monitor progress and address delays of the TW project.

6. Stumpage pricing: Staff and TW agreed that pricing for stumpage harvested under the TLL will be amended as follows:

The original pricing for stumpage set forth in Section 4.1 of the TLL will remain as-is (basically prices as stipulated by species in the TLL on a per-cubic-meter basis, plus the in-kind services required of TW under the TLL) and will run through the Amendment Date. Beginning on the Amendment Date and running through the 5<sup>th</sup> anniversary of the start-up of the plant (the “Pricing Extension Period”), the stumpage pricing will be equal to the original Section 4.1 price, adjusted to reflect any increases or decreases in the Bureau of Labor Statistics Producer Price Index for Lumber and Wood Products, index number WPS08 (the “PPI”) during the Pricing Extension Period; provided, however, that the stumpage price may never fall below the adjusted stumpage price as of the Amendment Date. All adjustments in pricing will be made on a quarterly basis.

Analysis: The first approved amendment to the TLL stipulated that “The price schedule for stumpage payments for tree species harvested under this license will be indexed to the consumer price index based on 2001, with annual adjustments.” Those terms were proposed by TW. In order to assist with a TW concern that it have quantified knowledge of stumpage pricing for its first five years of potential mill operation and timber harvesting, Staff proposed that this pricing schedule be extended through the Pricing Extension Period. TW was not comfortable with this arrangement in combination with the withdrawal of selected timber resources from the TLL (*proposed amendment number 7*, below) and other adjustments, and requested a concession on the pricing schedule detailed above, indexing stumpage prices with a base starting in 2005 rather than 2001. Staff agreed to this compromise. The difference in using the 2005 base date versus the 2001 base date is equivalent to an approximate \$220,000 concession to TW on the part of the State over the course of the Pricing Extension Period.

7. Proposal to expedite startup of a sawmill: Staff and TW had numerous discussions on various means to expedite the development of a more diverse value-added forest products industry in Hawaii. As a means to address this issue, effective on the Amendment Date, the DLNR will withdraw approximately seven (7) million board feet (or approximately 6.8% of the total timber subject to the TLL) from the TLL. The precise stands to be offered for sale are detailed in Attachment A. The withdrawn timber will be offered for sale to the public as a new RPF for the purpose of supporting a sawmill startup operation. Staff and TW agreed to this amendment.

Analysis: During the Negotiation Period, Staff felt that it was important to address the issue that TW no longer had specific or immediate plans to implement a plywood lay-up facility as part of its project scope. Because of the loss of value-added processing jobs

and the resultant stream of final forest products becoming available for local markets, Staff negotiated for conditions that would promote an alternative solution for this important component of a balanced forest products industry in Hawaii. In order to minimize potential impacts on the TW business plan, the timber stands proposed by staff for removal from the TLL were comprised of species and large tree sizes that were of secondary or tertiary priority for the TW veneer plant, yet were most likely to be of value to a sawmill operation. Sale of this stumpage under a new license could potentially generate from \$1,400,000-\$2,800,000 in revenue for the Department based on stumpage pricing adopted by the Board in January 2005.

8. Miscellaneous Other Changes to the TLL: Staff and TW agreed to make the following changes to the TLL:
  - a. *Cure Period*. Section 9.1 will be amended to increase TW's cure period for breaches of the TLL from 15 to 30 days, with further provision for extension of the cure period as determined in good faith by the Administrator of the Division of Forestry and Wildlife for a reasonable number of additional days if a delay in the cure has occurred through no fault of TW, such as delays due to inclement weather or other causes outside its control.
  - b. *Clarification in Scope of Facility to be Constructed*. Sections 3.0 and 11.8 will be amended to clarify the definition of "Facility" (currently, two different definitions exist in the TLL). The "Facility" will be defined to mean "a world class veneer plant capable of ultimately processing at least 200,000 cubic meters of logs annually together with a cogeneration power or boiler facility."
  - c. *Termination upon a Change of Ownership of TW*. Section 10.4 will be amended to allow a sale of 20% or more of TW equity to an existing equity holder (or an affiliate of an existing equity holder) without triggering the DLNR's right to terminate the TLL. For purposes of this understanding, the term "affiliate" will have its common definition as a party who controls, is controlled by, or is under common control with an existing investor.
  - d. *Clarification that Merchantable Logs will not be used as Biomass Fuel*. Section 3.2.2 will be amended to ensure that no Merchantable Logs (as defined in Section 11.13), other than the byproduct resulting from the solid-wood processing of such logs, will be used as biomass fuel unless authorized by the Administrator of the DOFAW. Currently, Section 3.2.2 only prohibits the use of Merchantable Logs, other than the processing byproduct of such logs, as a source of woodchips.

Analysis: Under the proposed terms, a continued partnership between the State and TW would require or be clarified by the changes to various TLL sections as detailed above.

RECOMMENDATIONS

That the Board of Land and Natural Resources approve:

1. The assignment of interest to RCEI as a Phase I investors for TW.
2. The assignment of the TLL to TW, LLC, a Delaware limited liability company.
3. The updated TW project Milestones and deadlines as detailed above.
4. The payment for option to extend Milestone 3 deadline as detailed above.
5. The penalties for missing milestones and establishment of a project “Drop Dead” date as detailed above.
6. Cancellation of stumpage pricing as stipulated in the approved TLL Amendment #1 to be replaced with the pricing terms detailed above.
7. The proposal to remove an approximately 6.8% of timber resources from the TLL to promote a sawmill startup as detailed above.
8. Changes in TLL descriptions or definitions of Cure Period, Clarification in Scope of Facility to be Constructed, Termination upon a Change of Ownership of TW, Clarification that Merchantable Logs will not be used as Biomass Fuel, as detailed above.
9. Authorize the department to execute TLL Amendment No. 3 subject to review and approval by the Department of the Attorney General.

Respectfully submitted,

  
PAUL J. CONRY  
Administrator

Attachment

APPROVED FOR SUBMITTAL:

  
PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

PROPOSED WITHDRAWAL OF TIMBER RESOURCES FROM TIMBER  
LAND LICENSE H-101 FOR THE PURPOSES OF SUPPORTING A  
SAWMILL STARTUP OPERATION – SEPTEMBER 23, 2005

Dominant species	Stand No.	----- Approximate -----	
		Acres	Volume <sup>a</sup>
Eucalyptus robusta	8134	38.7	9,321
	8138	57.1	6,495
	10290	30.4	3,882
Toona ciliata	10070	70.9	1,118
	10303	7.5	264
	10401	26.7	1,156
	10452	33.8	1,552
	10560	191.3	7,099
Alnus nepalensis	10463	24.2	2,302
<b>Total</b>		<b>441.9</b>	<b>33,189</b>

<sup>a</sup> cubic meters, logs with minimum diameter of 8"



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

DATE: FRIDAY, SEPTEMBER 23, 2005  
TIME: 9:00 A.M.  
PLACE: NATURAL ENERGY LABORATORY OF HAWAII  
AUTHORITY  
73-4460 QUEEN KAAHUMANU HIGHWAY  
KAILUA-KONA, HAWAII 96740

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

**MEMBERS**

Mr. Peter Young  
Mr. Ted Yamamura  
Ms. Taryn Schuman

Mr. Tim Johns  
Mr. Gerald DeMello  
Mr. Ron Agor (arrived at 10 am)

**STAFF**

Mr. Russell Tsuji, Land  
Mr. Dan Quinn, Parks  
Mr. Paul Conry, DOFAW  
Mr. Bob Masuda, Deputy Land  
Ms. Maryann Maigret, HP

Mr. Keith Chun, Land  
Mr. Sam Lemmo, OCCL  
Mr. Mike Donoho, DOFAW  
Ms. Jennifer Bethel, CO

**OTHERS**

Ms. Linda Chow, Deputy Attorney General  
Mr. Luna ONeil, D-1, J-1 D-4, D-3, E-1  
Mr. Robert Klein D-3  
Ms. Virginia Isbell, D-3  
Rep. Cindy Evans, D-3  
Mr. Jen Jensen, D-3  
Mr. Sam Kahanamoku III, D-3  
Ms. Jane Thompson, D-3  
Mr. William Meyers, D-3  
Mr. Douglas Carr, D-3  
Ms. Nancy Murphy, D-3, E-1  
Ms. Kamala Lockstader, D-3

Mr. Dickson Lee, D-4  
Mr. Frank Ramney, D-3  
Mr. Angel Pilago, D-3  
Ms. Maile David, D-3  
Mr. George Handis, D-3  
Ms. Gerry Bell, D-3  
Mr. Glen Ross, D-3  
Mr. Kelly Greenwell, D-3  
Mr. William Aila, D-3, E-1  
Ms. Kay Colton, D-3  
Mr. Don Bryan, C-2

Mr. George Martin, C-2

Mr. Steven Lim, K-1  
Mr. Ronald Self, K-1  
Mr. Bob Graham, K-1  
Mr. Jim Medeiros, K-1, E-1  
Mr. Jim Walsh, K-1  
Ms. Claudia Kane, E-1  
Dr. Roger Dills, E-1  
Mr. Gordon Leslie, E-1  
Mr. Cheryl Matthews, E-1  
Mr. Puhi Dant, E-1  
Ms. Corinna Rodrigues, E-1  
Ms. Marissa Pond, E-1  
Ms. Claudia Merrill, E-1  
Mr. Mitchell Allara, E-1  
Mr. Bryce Rork, E-1  
Mr. Iwa Tolleson, E-1  
Mr. Daniel Starsong, E-1  
Mr. Rob Shallenberger, E-1  
Mr. D. A. Nana, E-1

Ms. Luella Nohea Chang-Crutcher, K-3  
Ms. Keoalani Hanoa, K-1  
Rep. Bob Herkes, K-1, E-1  
Mr. Alfred Spinner, K-1  
Ms. Mikihala Roy, K-1, K-2, E-1  
Ms. Sheoli Makana, E-1  
Mr. Richard Harrison, E-1  
Mr. Yanos Malind, E-1  
Mr. Steve Amanson, E-1  
Mr. Luis Holiday, E-1  
Ms. Teri Leicher, E-1  
Ms. Betsy Morrigan, E-1  
Mr. Craig Hawkins, E-1  
Mr. Kevin Merrill, E-1  
Mr. Brock Stratton, E-1  
Mr. Kyle Fields, E-1  
Ms. Elaine Watay, E-1  
Mr. Sherman Williams, E-1  
Mr. Bill Zabolski, E-1  
Mr. Jeff Hand, E-1

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

**Item A-1: Minutes of September 9, 2005**

**Motion to Defer**

**Unanimously approved to defer (Johns/Yamamura).**

**Item D-1: Permission to Hire Appraisers for Land Division – Land Maintenance Funded Project.**

Russell Tsuji, Administrator for the Land Division made known is request for the Board to authorize the Chairperson to proceed with the hiring of qualified appraisers for the projects indicated in staff's submittal and to sign the necessary documents to implement the project.

Luna O Neil appeared before the Board and stated for the record that any individual that was previously involved in any part of the approval process or linked to an agency involved should not be considered for these positions.

**Unanimously approved as submitted (Johns/Schuman).**

**Item D-5: Quitclaim of State's Interests, if any, in a portion of Hart Street to the City and County of Honolulu; Kapalama, Honolulu, Oahu, Tax Map Key: (1) 1-5-33:04 (Adjacent Roadway).**

Written testimony was received from George J. Handgis.

The Board amended the Recommendation Section by adding the following

**“6. The Environmental Impact Statement (EIS) shall be presented to the Board in an open Board meeting prior to the issuance of the Master Ground Lease.”**

**Motion to Defer**

**Approved to defer (DeMello)**

**Members Young, Johns, Yamamura, Agor and Schuman voted No.**

**Motion fails.**

The Board made the following changes to the Recommendation Section

**1) Amended Recommendation 2)**

**“2. Approve the Development Agreement and form of Master Ground Lease, but with the following conditions and/or modifications:**

**a. The Environmental Impact Statement (EIS) shall be presented to the Board in an open Board meeting prior to the issuance of the Master Ground Lease, at which time the Board may elect to terminate the development agreement based on the results of the EIS; and**

**b. The lands encumbered by Revocable Permit Nos. B-93-53 to Hawaii Big Game Fishing Club and 6783 to the U.S. Government (Department of Interior/National Parks), shall be included in the lands to be set aside to DLNR, Division of Boating and Ocean Recreation and shall not be subject to the Development Agreement and/or Master Ground Lease to Jacoby Development, Inc.”**

**2) Add the following recommendation**

**“6. Staff shall report to the Board every six months on the status and progress of Jacoby Development, Inc. under the Development Agreement.”**

**Unanimously approved as amended (Yamamura/Johns).**

**Item C-2: Amendment No. 3 of Timber Land License No. H-0101 held by TW, LLC.**

Paul Conry, Administrator for the Division of Forestry and Wildlife (DOFAW) reminded the Board of the two proposed amendments to the timber land license that was agreed upon prior to the August 12, 2005 Board meeting 1) Proposed assignment of interest to Rockland Capital Energy Investments, LLC and 2) Change of Domicile for Tradewinds from a Washington

LLC to a Delaware LLC. At that meeting the Board asked staff to negotiate terms that would allow the partnership with Tradewinds to continue while compensating the State for lost opportunities and further extensions to Tradewinds project timelines. Mr. Conry identified six negotiated terms which addressed 1)Milestones and Deadlines 2)Payment for option to extend Milestone 3 deadline 3) Penalties for missing milestones 4)Stumpage pricing 5) Proposal to expedite startup of a sawmill and 6) Miscellaneous Other Changes to the Timber Land License. Mr. Conry recommended the Board approve the nine recommendations as listed in staff's submittal.

Don Bryan representing Tradewinds came forward to testify. Mr. Bryan conveyed that Mr. Harlan has taken the negotiated proposals to Rockland's board and they are in full agreement with the terms and conditions and ready to invest in this project. Mr. Bryan spoke of Tradewinds decision to upfront monetary payments for the extension and to negotiate for the deferral in the startup of the increased prices. He believes the toughest part of the negotiations was to give up 40 thousand meters of very high value wood. Mr. Bryan acknowledged Tradewinds still expects to build a small pallet mill, which would cut wood of value for internal consumption. Mr. Bryan announced to the Board he is satisfied with the results of the negotiation.

George Martin representing Okala Community Association and North Hilo Community Association asked the Board to look favorably on this proposal as it represents potential employment in these communities. Mr. Martin communicated if there are people interested in operating a sawmill the community he would welcome it as it would provide more jobs.

Written testimony was received from Scott Harlan.

#### **The Board amended staff's submittal**

**1) Page 2 "Milestones and Deadlines" milestone 1**

**"Commence the filing of all applications for all major state and federal permits associated with the project"**

**2) Page 3 "Penalties for missing milestones" fourth paragraph, last sentence**

**"In any case, should TW elect to extend the plant construction completion date from July 1, 2008 to January 1, 2009, it shall pay the extension fee as [~~provided in Section B, above~~] proposed in amendment #4."**

**3) Page 4 "Stumpage pricing" second paragraph, second sentence**

**"Beginning on the Amendment Date and running through the 5<sup>th</sup> anniversary of the start-up of the plant . . . adjusted to reflect any increases or decreases in the Bureau of Labor Statistics Producer Price Index for Lumber and Wood Products, index number [~~WPS08~~] WPU08 (The "PPI") during the Pricing Extension Period;"**

Members DeMello and Agor voted to amend  
Members Young, Johns, Yamamura and Schuman voted No.

Motion fails.

The Board amended staff's submittal

1) Page 2 "Milestones and Deadlines" milestone 1

"Commence the filing of all applications for all major state and federal permits associated with the project"

2) Page 3 "Penalties for missing milestones" fourth paragraph, last sentence

"In any case, should TW elect to extend the plant construction completion date from July 1, 2008 to January 1, 2009, it shall pay the extension fee as [~~provided in Section B, above~~] proposed in amendment #4."

3) Page 4 "Stumpage pricing" second paragraph, second sentence

"Beginning on the Amendment Date and running through the 5<sup>th</sup> anniversary of the start-up of the plant . . . adjusted to reflect any increases or decreases in the Bureau of Labor Statistics Producer Price Index for Lumber and Wood Products, index number [~~WPS08~~] WPS (The "PPI") during the Pricing Extension Period;"

4) Page 4 "Stumpage pricing" third paragraph, seventh sentence

"TW was not comfortable with this arrangement . . . and requested a concession on the pricing schedule detailed above, indexing stumpage prices with a base starting in [~~2005 rather than 2001~~] 2003. [~~Staff Agreed to this compromise. The difference in using the 2005 base date versus the 2001 base date is equivalent to an approximate \$220,000 concession to TW on the part of the State over the course of the Pricing Extension Period.]~~"

5) Add Recommendation 10)

"10. TW has thirty days (30) days to respond to the changes in the terms of the lease if not it is withdrawn"

Approved as amended (Johns/DeMello).

Member Yamamura voted no.

Item C-1: Annual progress briefing to the Board of Land and Natural Resources Regarding Implementation of the Management Plan for the Ahupuaa of Puu Waawaa and the Makai Lands of Puu Anahulu.

Mike Donoho, Project Coordinator for Puu Waawaa Ahupuaa Management Plan gave the Board a progress report on its implementation plan at Puu Waawaa and Puu Anahulu. As background information, Mr. Donoho reminded the Board on July 25, 2003, the Board approved in concept the management plan for the two subject areas. In approving the management plan, DOFAW and State Parks were directed to provide the Board with annual briefings that identified their progress and the effectiveness of the public and private sector involvement. The management plan consisted of sixty-two (62) objectives, many of which have been initiated. Mr. Donoho touched on the various subjects which include the proposed education center, the development of a public shooting range, fencing the remaining sections of native forest and removal of ungulates from the conservation units and the volunteer program.

**For future reports the Board asked staff to include a breakdown of the amount of money obtained, where it came from and what are the chances of obtaining additional funding from that source.**

**No Action.**

**Item K-3: Enforcement File No. HA-04-05 Regarding Alleged Unauthorized Structure, TMK: (3) 1-4-028:030.**

Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands (OCCL) pointed out the subject violations were identified a few years ago. Since then steps were taken to resolve these violations with the former landowner. During this period the subject land was transferred to Ms. Chang-Crutcher. Over the last year staff has been working with Ms. Chang-Crutcher to resolve the violations without much success. Therefore, Mr. Lemmo is recommending the Board find Luella Nohea Chang-Crutcher in violation of HRS, Chapter 183C and HAR, Chapter 13-5, and is subject to the conditions listed in staff's submittal.

Luella Nohea Chang-Crutcher, the landowner came forward to testify. Ms. Chang-Crutcher indicated when she purchased the subject land from the former owner they did not disclose they had a violation with the DLNR. Also upon obtaining a list of areas included in the conservation district it did not list Waa Waa. At the time Ms. Chang-Crutcher purchased the property she had limited funds but her intention was to build a single dwelling. She decided to live on the property in the structure until she could get the land cleaned. Ms. Chang-Crutcher indicated she needs to live on the property as she cannot afford a rental. Her intent is to use the structure until she can afford to build her home. Ms. Chang-Crutcher spoke of the work she has done on the property to clear it of trash, plants and cars. Ms. Chang-Crutcher asked the Board not to assess her a penalty because of the money she has already spent cleaning the subject parcel of the mess left by the previous landowner. She conveyed to the Board she would be able to remove the unauthorized structure within three months.

An identified speaker spoke of the unfairness of Ms. Chang-Crutcher's situation. He questioned why the previous developer was not fined for the subject violation. He asked the Board to not assess Ms. Chang-Crutcher a fine.